

Small Investor Protection Association letter to Mr. Purdy Crawford

Mr. Purdy Crawford

Osler, Haskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, ON M5X 1BA
Osler, Haskin

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Re: **Five Year Review of Securities Legislation**

Dear Mr. Crawford;

In the two short years since our association was founded, I have spoken with hundreds of individuals who have lost substantial amounts of their savings when they trusted their financial advisor or registered representative. Many of these victims are seniors, widows and others who do not have earning power to recover their loss.

For many it is not just the loss of money; it is the loss of trust, the loss of hope, the loss of enjoyment of life, and sometimes the loss of health and family. While Minister Eves may believe that we have a well regulated industry and that justice can always be obtained through the civil courts, the reality is that there are many seniors and widows suffering their loss in silence. They have nowhere to turn.

Rules and regulations are breached with relative impunity. If there is an investigation due to a complaint the results are a simple reprimand, a disciplinary fine or sometimes a suspension. But what about the victims?

The regulators advise that the victim may wish to consult legal counsel. Many who have lost their savings and their trust, do not have the resources to pursue a civil action. Does a 78 year old widow have the physical and mental resources, as well as the time and money to launch a legal battle? We see brokers defending vigorously situations that would appear from a moral and ethical point of view to be indefensible. Many victims can not stay the course.

Although our Minister of Finance says that the civil courts are available to provide justice, for many it is not an option. Contingency fees for lawyers or a special fund created to assist victims who have been wronged but do not have the financial resources to seek justice could be part of the solution.

In the case of Armand Laflamme who lost his savings when the rules were breached, it took him ten years to get justice with a Supreme Court decision.

But is this really justice? He has his money back but he is now 71 years old. What about his ten lost years? What price can be placed on life?

With the current system of regulation, the rules are being breached on a regular basis with an arrogance as displayed by senior individuals in the RT fiasco this summer. SIPA has evidence on file which indicates a branch manager of a major brokerage firm continued to break the rules for a period of ten years although there were three disciplines during that time. The brokerage firm knew that he was breaching the rules and either condoned this practice or turned a blind eye.

The regulators are well aware of this attitude which prevails in the industry. As long as the industry leaders focus on profit and consider small fines simply the cost of doing business and are not **compelled to provide restitution**, this situation will continue.

Many of our seniors who had worked hard and saved to provide for their retirement will have to depend on the taxpayer to provide for a meager retirement when their savings are lost due to the actions of some unscrupulous financial advisor.

For the sake of our seniors we believe that legislation is required:

- **to provide a mandate to the regulators to order restitution when the Securities Act is broken and rules have been breached**
- **to provide a requirement to audit the accounts of any registered representative who has seriously breached the rules**
- **to require all sellers of financial products to be registered with the regulators**
- **to require all sellers of financial products to carry liability insurance to provide for payment of restitution when rules are breached**
- **to hold directors and officers responsible for client losses if their companies are declared bankrupt**

Recently the OSC has forced the closure of several Penny Stock Dealers. These dealers have preyed on an unsuspecting public for many years. Although the regulators knew about these practices nothing was done. Thousands of people have lost tens of millions of dollars. While these totals are not significant to the total moneys invested Canada, they are very significant to many of the victims.

But what can be done for the victims? While Charlie Ornstein continues to enjoy his horses, and Amit Sofer his car collection, thousands of Marchment & MacKay former clients are faced with the fact that will not recover their savings because they gave their money to Marchment for worthless stock.

In fact many years ago the OSC knew that Marchment had sold fraudulent shares and yet the firm was allowed to continue with their scheme of pumping and dumping penny stocks with no intrinsic value.

How can this happen in a well regulated industry?

There must be a mechanism to protect clients of sellers of financial products. This system should provide for **mandatory restitution of victims** when it is clear that the rules and regulations are breached. The current system of regulators proving the sellers have

breached the rules and caused losses to victims without the possibility of **ordering restitution** needs revision.

If corporate ethics continue to place profit ahead of morality and legality, and there is no mechanism in place to provide sufficient financial disincentive, profit motivated business leaders will continue money making practices which breach the rules.

There should be more stringent auditing to identify these infringements in order to protect an unsuspecting public. When complaints suggest that more extensive breach of rules is possible, audits should be carried out to determine the extent of these practices. **Offending firms should be required to pay the cost of these audits and to make restitution to all of the clients who have suffered financial loss** and not just to the complainant.

It would seem that legislation should also require a system of auditing that will reveal blatant breach of rules and regulations rather than rely solely upon complaints.

It is time to review the role of self regulation in the investment industry and provide one independent authority to oversee regulation of all sellers of financial products. Glorianne Stromberg is a former commissioner of the OSC and understands the plight of the consumer/investor. Her report "Investment Funds in Canada and Consumer Protection" clearly defines the problems and offers solutions that would improve protection for the small investor.

Our seniors, widows and those who no longer have earning power deserve better treatment. They deserve to enjoy the rewards of their lifetime of work and saving. It is unjust to allow financial predators, and profit motivated business leaders to deprive the consumer investor of their savings and escape unscathed.

It is grossly unfair that those who breach the rules and regulations, may prosper and enjoy the fruits of the efforts of hard working Canadians who have saved for their retirement. Many who believed that our society is fair are now disillusioned when they find there is little help and these predatory practices appear to be condoned even by the very regulators that are meant to protect the individual.

Something must be done.

Yours truly

Stan I. Buell, P.Eng.