



SUPPORTING A NATIONAL SECURITIES REGULATOR

The following motion was passed at the 2009 Annual General Meeting of ACER-CART:

"That ACER-CART lobby the federal government and opposition parties to establish a National Securities Regulator through legislation that enhances the rights of investors, and seek support of other national seniors' organizations."

BACKGROUND

Claude Lamoureux, CEO OTPP

In an address to the Canadian Institute of Chartered Accountants, Claude Lamoureux CEO of the Ontario Teachers' Pension Plan said, "In Canada, white-collar crime is treated lightly by our legislators and our courts. Meanwhile, the level of concern among investors is increasing, he said. He pointed out that a 2006 Task Force to Modernize Securities Legislation in Canada got more comments on the issue of enforcement than on any others."

(Montreal Gazette, 2007 09 12)

Premier Jean Charest

"Quebec wants to crack down on white-collar crime by imposing stiffer sentences in areas it controls, while pressing Ottawa to take action on the criminal side, Premier Jean Charest said Tuesday. Charest said the first thing that has to happen is to better inform Quebecers about their financial options when they reach retirement age so they do not fall into traps run by fraudsters.

Lacroix was convicted of swindling 9,200 investors in his now-bankrupt Norbourg Asset Management Inc. out of \$115 million over a five-year period. The judge called the case "the biggest financial scandal in Canada."

Article: "Get tough on white collar crime": Que. Premier by Phillip Authier, Canwest News Service 2009 08 25

Dan Braniff CFRS

In its response to the Government of Canada Proposed Legislation to combat white-collar crime, "The Common Front for Retirement Security welcomes legislation to crackdown on white-collar crime.

Canadians Need an Investor's Bill of Rights (IBR)

The proposed legislation is a good start but Canada needs comprehensive reforms and restructuring of its overall justice and regulatory system to meet the challenges of our economic times. Retirement savings and pensions are under attack from unscrupulous forces that need to be reigned in to provide a fair and level playing field for citizens who deserve security in their efforts to provide education for their children and financial security in old age.

The CFRS is not asking for more laws and regulation. We ask for smarter rules and appropriate enforcement. Canada needs a national agency staffed by experts with credentials for surveillance, prevention and execution.

Regulation must be transparent while equally serving all stakeholders. The public needs education opportunities to achieve financial literacy.”

Response by CFRS to Hon Rob Nicholson, Minister of Justice and Attorney General of Canada about his proposed legislation on white-collar crime by Dan Braniff received by email to ACER-CART 2009 09 27

White-Collar Crime - Canada Tries to Get Tough

“Canada doesn’t have a reputation for taking corporate crimes all that seriously. In fact, we are known as somewhat of a safe haven for those guilty of fraud, insider trading and embezzlement. Convictions are fewer, trials are longer and sentences are lighter—as it stands, convicted white-collar criminals only have to serve one-sixth of their sentences in jail.

Take Garth Drabinsky, for example. At the helm of theatre production company, Live Entertainment Corporation of Canada (a.k.a. Livent), he managed to defraud his shareholders of \$500 million in the 1990s. It was 10 years later, in August 2009, that Drabinsky was sentenced to seven years in jail. As a first-time offender charged with a nonviolent crime, he is eligible for parole after one sixth of his sentence is served. That means Drabinsky could serve 14 months. The Bre-X case - one of the biggest stock scandals in Canadian history - also waited 10 years for resolution; in the end, Felderhof was acquitted and no one was charged.”

The Canadian Business Journal (October 2009)

Enough is Enough

After a recent ambush of high-profile cases of alleged investor fraud across Canada (i.e. Earl Jones, Brost and Sorensen), Justice Minister Rob Nicholson says enough is enough. In mid-September, he announced the federal government’s plan to introduce tougher legislation aimed at white-collar crime, such as mandatory jail sentences for criminals convicted of serious fraud, longer sentences and possible restitution orders for victims.

“This bill will acknowledge that those who fall victim to these kinds of fraud have been victimized just as much as the person who has been mugged in an alley,” Nicholson said at a press conference in Ottawa. “Moreover, the effects in terms of loss of financial security and confidence, as well as the sense of humiliation can be every bit as serious and damaging as physical threats and intimidation.”

How It Hurts Canadians

The victims of investor fraud may not garner as much attention as those involved in, say, a bank heist, but it doesn't mean they are not out there suffering. People have been known to lose everything, left to start over from scratch. According to the Canadian Securities Administrators (CSA), approximately one million adult Canadians (nearly 5 per cent) have lost money to some kind of investment fraud or another. Of that number, almost one third of these victims report the investment fraud alone 'had an extreme or significant impact on their personal finances'.

Of course, this is saying nothing of the victims' personal anguish. Such losses are known to have subsidiary impacts on the psychological, emotional, and thus physical health of individual victims. The CSA states victims of fraud report high incidences of stress, anger, depression, loss and isolation.

As a country, Canada is also a victim. Although it might not be as tragic as a personal loss of finances, it is just as disruptive to the economy. White-collar crime can undermine profits and productivity just by simply turning investors off of certain goods and services. Simply put, people will hesitate before investing in Canada."

Cracking Down On White-Collar Crime

Today, the Conservative government announced new legislation to crack down on white-collar crime.

Our government understands that those who are defrauded by white-collar criminals have been victimized just as much as a person who has been mugged. That's why we are introducing mandatory jail sentences for those who commit fraud over \$1 million. We are also ensuring that aggravating factors, such as the impact on the victim or the size of the fraud, can lead to tougher sentences. In addition, we are working to allow judges to consider financial compensation for victims, and allowing affected groups to submit Community Impact Statements to the court.

This is not the first time our government has acted to tackle this type of crime; we have also worked to prevent serious fraudsters from serving their sentences from the comfort of their homes.

Website: Hon. Rob Nicholson, Minister of Justice and Attorney General of Canada
OCTOBER 20, 2009

Government Of Canada Intends To Seek Opinion Of Supreme Court Of Canada On Constitutionality Of Proposed Canadian Securities Legislation

OTTAWA, October 16, 2009 – The Honourable Rob Nicholson, P.C., Q.C, M.P. for Niagara Falls, Minister of Justice and Attorney General of Canada, today announced that the Government will seek the opinion of the Supreme Court of Canada as to whether Parliament has the constitutional authority to enact and implement a federal

securities regulatory regime. As part of this reference, the Government will submit to the Supreme Court of Canada draft legislation, expected to be ready in spring 2010.

“The Government strongly believes that Parliament has the constitutional authority to enact a comprehensive *Federal Securities Act* and is initiating preparatory steps in that direction,” said Minister Nicholson. “In coming to this view, the Government is supported by many of Canada’s foremost constitutional experts. However, for greater certainty, we will be asking the Supreme Court for its opinion, which is why we are proceeding with this reference.”

The Government is mindful of the importance of having a definitive answer on the issue. An opinion from the Supreme Court of Canada will provide legal certainty to all provinces and territories, and market participants, and thus protect the integrity of a Canadian securities regulatory regime.

The Government is also continuing to work with its provincial and territorial partners to develop federal legislation that would allow voluntary provincial and territorial participation and ensure the new securities regulator meets the high standards of Canada’s financial system.

The Honourable Jim Flaherty, Minister of Finance, announced on October 15, 2009 that Ontario, Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Saskatchewan, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut had joined the Advisory Committee of Participating Provinces and Territories for the Canadian securities regulation regime. The Government of Canada continues to welcome the participation of other jurisdictions.

“A Canadian securities regulator will create a more efficient and streamlined securities regulatory system that reinforces financial stability, strengthens enforcement, protects investors and is more accountable,” said Minister Nicholson.

Tackling white-collar crime

Fraud can include securities-related frauds such as Ponzi schemes, insider trading, and accounting frauds that overstate the value of securities. It also includes mass marketing fraud, mortgage and real estate fraud, and many other deceptive practices. There are always two elements that characterize fraud - deception or some other form of dishonest conduct, and depriving another person of their property or putting their property at risk.

Fraud can have a devastating impact on the lives of its victims, including loss of life savings and feelings of humiliation for having been deceived into voluntarily handing over their property. The Government of Canada is proposing to amend the fraud provisions of the *Criminal Code* in order to better respond to victims of economic crime by providing tougher sentences for those who victimize honest citizens.

Sentencing-related measures have been proposed to better ensure that sentencing for large-scale fraud reflects the serious nature of the crime. These measures are aimed directly at shaping the sentence that can be imposed on the offender. These include:

- a two-year mandatory minimum sentence for fraud over \$1 million regardless of the number of victims involved;
- additional statutory aggravating factors that can be applied to sentencing in fraud cases such as:
 - the financial and psychological impact of the fraud on the victim, given the victim's particular circumstances, including their age, health and financial situation;
 - the offender concealing or destroying records relating to the fraud or the disbursement of proceeds of the fraud;
 - the offender failing to comply with applicable licensing rules or professional standards; and,
 - the magnitude, complexity, and duration of the fraud and the degree of planning that went into it.
- requiring the court to indicate which statutory aggravating and non-mitigating factors it considered in determining the sentence, and;
- allowing the court to impose a prohibition order to prevent the offender having employment or working in a volunteer capacity that involves having authority over other people's money.

Additional proposed measures are aimed at improving the responsiveness of the justice system to the needs of victims of fraud through restitution and community impact statements. These amendments are intended to increase the use of restitution orders in fraud cases by:

- requiring judges to consider restitution from the offender in all cases of fraud involving an identified victim with ascertainable losses. Judges would also be required to provide reasons if restitution is not ordered.
- requiring the Crown to advise the court what steps have been taken to allow victims to set out their readily ascertainable and quantified losses to the court so that restitution can be considered. This would ensure that sentencing does not proceed without any consideration of restitution or without any opportunity for victims to indicate to the Crown that they wish to seek restitution.

- developing a standard form for victims to indicate that they want the Crown to seek restitution from the offender and to set out their ascertainable losses.

A final measure proposed is with respect to Community Impact Statements. Currently, the *Criminal Code* requires the court to consider a Victim Impact Statement of an individual. This is a written statement made by the victim of a crime that describes the harm done to the victim and, more generally, the effect that the crime has had on his or her life. The statement is considered by the judge who is sentencing the offender.

In some fraud cases however, where a group of people have been targeted for fraud, direct victims and even others not financially affected may still suffer other impacts. The proposed amendments will include a provision to permit the court to receive a Community Impact Statement that would describe the losses suffered as a result of the fraud perpetrated against a particular community, such as a neighbourhood, an association or a seniors' group.

Source: Website Canada – Ministry of Justice

Making Sure Crime Doesn't Pay

“OTTAWA — The Conservative government is promising to make sure crime doesn't pay with mandatory prison terms and tougher restitution measures for white-collar cons.

Flanked by fraud victims, Justice Minister Rob Nicholson said the feds will table legislative amendments that include minimum jail terms and aggravating factors to justify longer sentences. The bill will also address ways to improve restitution for financial loss of victims.

Nicholson said being ripped off by a fraudster is no different from being mugged in an alley. “The legislation we plan to introduce will send the message that committing fraud will have serious consequences,” he said. Nicholson did not provide details on what measures might be put in place to force restitution.

NDP MP Joe Comartin said heavier regulation and beefed-up resources for police investigators are also required to tackle white collar crime.

“We also need an insurance scheme which those investment counsellors and people who do investment would pay into so you'd have a fund for situations where if the regulations break down, if it actually fails, there would be funds there to reimburse people,” he said. “It doesn't do any good to have people go to jail for five, 10 or 20 years when the people who have been the victims get absolutely no compensation. So we need a scheme for compensation as well.”

Victims of various financial schemes held a news conference on Parliament Hill calling for an independent Securities Crime Unit. The federal pledge comes after two Alberta men were charged this week with operating a multi-million-dollar Ponzi scheme and Montreal investment dealer Earl Jones was charged with fraud in July for allegedly operating similar scheme that took investors for \$30 million.”

Ottawa Sun – Nov 8, 2009