



**SIPA has a mission:**

- to aid public awareness of how the investment industry operates;
- to provide guidance to those who have a complaint about investments with a bank, broker, financial advisor, or other seller of financial products;
- and to pursue improvement of industry regulation and enforcement.

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## SIPA Sentinel

The SIPA Sentinel is issued bi-monthly. From time to time we include articles and reprints that offer opinions on subjects related to investing and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions. regulatory system dependant upon self regulation and with no authority looking after

## SIPA Activity Highlights for 2007

Many members may not be fully aware of SIPA's activities and the work done for the benefit of small investors. In addition to association administration, our activities include lobbying provincial and federal governments, liaison with regulators and media, and speaking to groups to help raise awareness.

Ken Kivenko, Chair SIPA Advisory Committee, is SIPA's resource for mutual funds and also is effective in preparing comments on consultation papers. Dr. Pamela Reeve, a member of SIPA Advisory Committee, is SIPA's resource on the complaints handling process. She has also participated in CMI Roundtables and the OBA Access to Justice summit.

Several other members are quite active in taking initiatives. From time to time some members participate in events as SIPA representatives.

We also receive support from many others in our work for small investors. We are particularly pleased with the response from securities litigation lawyers to our new program to provide pro bono initial consultation to SIPA members. We now have a roster of lawyers willing to provide this service and members needing help will be assigned a contact after submitting requisite documentation.

### **The following are some of SIPA's activities in 2007.**

- Jan – Joint N.P.S.C.F./SIPA/U.S.C.O. submission to LeBreton.
- March – SIPA Power Point presentation to CAW Retirees, Brampton.
- April – SIPA submission to On Ombuds calling for investigation of OSC.
- May – Meet with RCMP (IMEB) from Ottawa to discuss white collar crime.
- May – Meet with Common Front in Collingwood. Retirement Security is the issue.
- May – Submission to OSC Consultation Paper NI 31-103. Prepared by Ken Kivenko.
- Jun – Telephone conference with consultant reviewing OBSI.

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- Jun – SIPA invited to Ontario Bar Association Access to Justice Summit in Toronto.
- Jun – SIPA talks to USCO Seniors Groups in Lindsay, Beaverton, and Haliburton.
- Jun - Joint N.P.S.C.F./SIPA/U.S.C.O. submission to Minister Flaherty.
- July – SIPA talk to Kiwanis in Barrie.
- July - Joint N.P.S.C.F./SIPA/U.S.C.O. meeting with Ontario Ombudsman re OSC.
- Aug – SIPA talk to Rotary Club in Toronto.
- Sep – Joint N.P.S.C.F./SIPA/U.S.C.O. submission to Ontario Ombudsman re OSC.
- Sep – SIPA submission to IMEB re forgeries.
- Oct – SIPA participates in CFRS presentation to Expert Commission on Pensions.
- Oct - SIPA participates in CFRS Meeting with Hon. Marjorie LeBreton in Ottawa.
- Oct – SIPA announces new service for members, pro bona legal consultation.
- Nov - Joint N.P.S.C.F./SIPA/U.S.C.O. presentation Expert Commission on Pensions.
- Dec – SIPA Submission to IDA on Complaints Handling by Dr. Pamela Reeve.
- Dec –SIPA Submission to OBSI on Consultation Paper by Ken Kivenko.

## THE TIPPING POINT

### Has it been reached for investor protection?

Canadian investors are losing their savings at an unprecedented rate in excess of \$20 billion per year while the regulatory system fails to protect investors.

For a half century there has been endless talk and studies calling for a national regulator. The Wise Persons Committee published their report in December 2003. The WPC reviewed all of the reports previously prepared, examined other regulatory jurisdictions and arrived at the conclusion that it was time Canada had a national regulator. It is evident that the WPC report entitled "It's Time" had little impact on the regulatory environment as the investment industry continued its predatory practices under the watchful eyes of the regulators who continue to try to create the perception that investors are protected but fail to prosecute the perpetrators.

Recent events in Quebec show that the courts are finally recognizing that the firms are responsible and holding them accountable.

Lawyers Nicholl Paskell-Mede stated in 2006 that *"Over the course of the last year a noticeable tendency to grant considerable punitive damages has emerged in decisions rendered by Quebec courts. Indeed, in both Chiasson v. Fillion, [2005] R.J.Q. 1066 (S.C.) (on appeal) and Johnson v. Arcand et al. [2006] R.J.Q. 395 (C.A.), the defendants were ordered to pay large amounts in punitive damages. In June 2006, the Honorable Jean-Pierre Sénécal of the Quebec Superior Court rendered a decision with similar conclusions, in the case of Markarian v. CIBC World Markets inc.."*

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The Markarian decision has recently been translated into English from the original French and will serve as a landmark decision for awarding substantial moral and punitive damages. This is a landmark decision.

Investors are fed up with the failure of the regulatory system to protect them and the reluctance of most legal firms to take a strong stand when representing investors against the investment industry. With the Quebec decisions, lawyers in the rest of Canada will be negligent if they fail to ask for moral and punitive damages when investors have suffered a significant life-altering event such as the loss of their savings.

As a minimum, this development could lead to the industry's willingness to make full restitution rather than offer only pennies on the dollar. The risk of being required by the court to pay significant moral and punitive damages may not be worth the amount that can be saved by offering only a partial settlement.

There is now light at the end of the tunnel.

### Markarian v. CIBC World Markets

In addition to ordering restitution, legal costs and interest, the decision also awards moral damages and punitive damages to the Markarians. This is a land mark decision and should influence all future claims against an investment industry that has blatantly taken advantage of small investors with little hindrance from regulators or courts.

Hopefully this ruling will act as a shot across the bow of the investment industry and lead to improved governance and diminishing practices of fraud and wrongdoing that are systemic in the industry today.

An English translation is available at:

[http://www.investorvoice.ca/Cases/Investor/Markarian/Markarian\\_v\\_CIBC\\_14June2006\\_E.pdf](http://www.investorvoice.ca/Cases/Investor/Markarian/Markarian_v_CIBC_14June2006_E.pdf)

### The Markarian Decision - Conclusions are reproduced below.

*[711] ALLOWS the action of the plaintiffs;*

*[712] DECLARES guarantee agreements P-6 and P-7 null for all legal purposes;*

*[713] Where necessary, CANCELS guarantee agreements P-6 and P-7 for all legal purposes;*

*[714] ORDERS the defendant to pay the plaintiffs Haroutioun and Alice Markarian \$353 026.12, with legal interest, plus the additional indemnity provided for in the Civil*

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*Code, from June 28, 2001, the date of the defendant's execution of guarantee P-6, the formal notice having been given before;*

*[715] ORDERS the defendant to pay the plaintiff 125134 Canada Inc. \$1 098 310.27, with legal interest, plus the additional indemnity provided for in the Civil Code, from October 24, 2001, the date of the defendant's execution of guarantee P-7, the formal notice having been given before;*

*[716] ORDERS the defendant to pay Haroutioun Markarian \$817.03 and Alice Markarian \$1200, with legal interest, plus the additional indemnity provided for in the Civil Code, from the summons;*

*[717] ORDERS the defendant to pay Haroutioun and Alice Markarian \$50 000 each in moral damages, with interest at the legal rate, plus the additional indemnity provided for in the Civil Code, from the summons;*

*[718] ORDERS the defendant to pay the plaintiffs Haroutioun and Alice Markarian \$1 500 000 in punitive damages, with legal interest, plus the additional indemnity provided for in the Civil Code, from the date of the judgment;*

*[719] ORDERS the defendant to pay the plaintiffs \$94 560 in extrajudicial costs, with interest at the legal rate and the additional indemnity provided for in the Civil Code, as of the date of the judgment;*

*[720] ORDERS the provisional execution of the judgment notwithstanding appeal and without security, for the sum of \$1 500 000, one third to be paid to Haroutioun and Alice Markarian and the balance to 125134 Canada Inc.;*

*[721] ORDERS the defendant to pay all costs, including the costs of expert reports and testimony, the whole including what is related to the claims and amounts linked to the AMCC and Intergold shares;*

*[722] ALLOWS the action in warranty of the plaintiff in warranty against the defendant in warranty, Harry Migirdic;*

*[723] ORDERS the defendant in warranty to compensate the plaintiff in warranty for the awards or agreements related to guarantees P-6 and P-7, the RRSPs and the AMCC and Intergold shares, in principal, interest and costs;*

*[724] ORDERS the defendant in warranty to pay the costs of the principal action and the action in warranty.*

*(s)*

*JEAN-PIERRE SENECALE J.S.C*

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The Markarians were represented by Letourneau & Gagne, (Mtre. Serge Letourneau and Mtre. Suzanne Gagne) acting as Counsel for the plaintiffs. They deserve congratulations for their victory. It is high time that the courts recognize the impact on victims of financial predation and punish the predators.

### **A National Securities Investigator**

Dr. Al Rosen has proposed a solution to the Canadian regulatory malaise. It is clear that regulation is failing investors as almost every day reveals new scams and frauds. One of the most recent, the Asset Backed Commercial Paper fiasco is impacting large investors as well as small. We can only hope that this will reinforce initiatives to revamp Canada's regulatory regime. Dr. Rosen proposes an Investigator to pursue the perpetrators. His following article appeared in the National Post.

#### ***We need a national securities investigator Provinces try to befriend firms they're regulating***

*Wednesday, October 10, 2007*

*Our provincial regulators clearly have no interest in seriously pursuing whitecollar crime. So it seems like high time to establish a separate national securities investigator for Canada. A simple amalgamation of current provincial regulators will do nothing to improve enforcement activities in Canada. A completely separate national entity is needed.*

*No sensible person would claim that Canada doesn't have a problem with whitecollar crime -- alleged whitecollar crime, we should say, because few convictions are being secured. Although provincial regulators boast of hundreds of enforcement settlements, they are mostly for small offences --cases nobody would recognize by name.*

*They try to paint these settlements as numerically balancing out the failure to secure timely convictions in high-profile cases such as Bre-X, Livent and Nortel. Clearly, that strategy is backwards.*

*One of the best tools in fighting crime is visible deterrence. Making examples out of highprofile*

*offenders gets the most bang for the regulatory buck. What in our national consciousness requires us to handle high-profile white-collar criminals with kid gloves? Simply put, fear. Regulators know anyone with decent financial resources will crush them, as provincial regulators are outmatched in terms of talent and resources.*

*Effective prosecutions can only occur when strong legislation and leadership is in place to*

*attract quality investigators to take on Canada's formidable stable of white-collar criminals. This is especially important given that Canada is often identified by international white-collar criminals as a safe haven to set up business.*

*Worst, however, is that our current slapdash network of provincial securities fiefdoms are*

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*conflicted at the core. They strain to make regulation as easy and as cheap as possible for regulated companies, yet they also claim to protect investors. They fail so miserably on the second count because they try so hard to make friends with the companies they're*

*regulating. Corporations push for lower regulatory costs, and regulators happily comply by putting minimal effort into enforcement.*

*All this despite a recent study by the Canadian Securities Administrators that says 91% of Canadians believe that the impact of investment fraud is as serious as violent crime. Yet, most frauds go unreported because 70% believe financial fraudsters escape with little or no penalty. The fallout is that 63% become more leery of future investments in Canada.*

*Granted, the call for a national securities investigator may seem similar to the current system of Integrated Market Enforcement Teams, or IMETs, which has proven a dismal failure to date. Unfortunately, among other problems, the involvement of the provincial regulators and their pro-corporate sympathies has seriously infected the diligence of process in the IMETs.*

*Canada's current wink-and-nod approach to dealing with securities violators has all the transparency of a third-world banana republic. So-called settlements are handled behind closed doors and as quietly as possible as often as possible. Examinations of questionable*

*financial reporting are so scarce one questions whether they are actively discouraged as being too sensitive for public consumption.*

*Currently, all of the provinces except Ontario are pushing back against the call for a national securities commission. They claim the current passport network is sufficient for cutting down costs for corporate clients. In other words, the corporations are satisfied, ergo their principal mandate is fulfilled. The problem, of course, is that they are supposed*

*to have a dual mandate which also includes protecting investors with the best enforcement efforts possible. I have yet to hear a chair of one of the provincial commissions claim that enforcement is best served 13 ways from Sunday, as under the current regime.*

*Rather, some have claimed they have no responsibility to prosecute high-profile cases of securities fraud whatsoever. It's a staggering admission, but nevertheless good prompting for the federal government to finally relieve the provinces of their responsibilities for prosecuting securities offences, and set up a new national securities investigator to handle the task.*

*--- - Al Rosen is a forensic accountant at Accountability Research, an independent equity research firm. [alrosen@accountabilityresearch.com](mailto:alrosen@accountabilityresearch.com)*

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### **OSC Investor Advisory Committee**

Dr. Pamela Reeve is a member of the SIPA Advisory Committee and has participated in CMI Roundtables and the Ontario Bar Association Access to Justice Summit as a SIPA

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representative. She recently prepared SIPA's submission to the IDA on the complaints handling process, and has written an article for Investment Executive published December 5, 2007 entitled "Consultation Framework needs makeover". Dr. Pamela is an associate professor of philosophy at St. Augustine's Seminary. The following is an excerpt from the IE article:

*"For the past two years, I have served on the Investor Advisory Committee of the **Ontario Securities Commission**. The IAC was established following the OSC Investor Town Hall in May 2005 with the intention of making the views and concerns of consumer retail investors accessible to the commission.*

*Nevertheless, the IAC functions within constraints determined by the OSC. It has met for about 20 hours per year for the past two years, with up to three months between meetings. The members work on a volunteer basis and the committee has no research budget. The committee's terms of reference and discussions are confidential. It has not produced any reports that are available to the public.*

*The public cannot communicate with the committee nor is there a mechanism for the public to verify whether and how its interests have been considered by the committee. The IAC does not discuss issues with the OSC's other consultative committees.*

*The contrast with the equivalent body in Britain, the Financial Services Consumer Panel ([www.fs-cp.org.uk](http://www.fs-cp.org.uk)), is striking. The consumer panel is a well funded, productive, and transparent organization. It monitors the FSA to ensure that it regulates the industry in the interest of consumers. For the past two years, it has evaluated the FSA from a consumer perspective and has assessed its regulatory work according to a set of performance criteria. Although the panel is an independent body, it receives a budget from the Financial Services Authority of about \$1 million as well as staff and office space."*

### **Asset Backed Commercial Paper Debacle**

The investment industry has created structured investment vehicles that package debt and sell it to large investors in a manner similar to creating structured products such as principal protected notes that are sold to small investors.

Sub prime mortgages and other debts were bundled and sold to pension funds and institutional investors who believed they were guaranteed investments paying an enhanced rate of return. However it became apparent that there was a high probability that many of these debts could not be collected so Canadian banks used weasel clauses to avoid redeeming these S.I.V.'s.

The issue came to a head last August and the industry scrambled to find a solution to this credit crisis. The resultant Montreal Proposal was meant to extend the term so that eventually the investors could receive full value. However those who needed the cash more quickly would be forced to sell at a discount. This is similar to the situation faced by small investors who invested in structured products guaranteed at maturity. When

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the distributions were cut or suspended investors found that if they wanted their cash back before maturity they would have to accept a discount of as much as 30%.

This ABCP fiasco can impact the profitability of corporations who parked cash in these investments believing they could source this cash when needed. It can also impact pension funds that invested in ABCP for an enhanced return on cash investments.

### **SIPA INTRODUCES A NEW SERVICE FOR MEMBERS**

SIPA issued a Press Release on October 19<sup>th</sup> via the Canada News Wire Service.

#### **Attention News/Business/Financial Editors:**

SIPA offers new service and asks for investigation

Many investors are losing their savings due to widespread industry wrongdoing and fraud, and the regulatory system is failing to protect investors. The Small Investor Protection Association (SIPA) estimates these losses to exceed \$20 billion per year.

The recent Innovative Research Group study for the Canadian Securities Administrators indicates one million Canadians have been subjected to fraud during the last three years.

As retirement plans move from defined benefits to defined contributions, more Canadians will be responsible for managing their investments and their retirement security will be at risk.

As a result of these developments SIPA made arrangements for members with an issue to receive free initial consultation with a securities litigator who will provide information to help the member decide how best to proceed to resolve the dispute. Several lawyers are offering pro bono services to SIPA to enable this offer to be made.

SIPA jointly with the United Senior Citizens of Ontario and the National Pensioners and Senior Citizens Federation made a submission to the Ontario Ombudsman asking for an investigation into the OSC's failure to provide investor protection and failure to alert aggrieved investors about reduced limitation periods.

SIPA was founded in 1998 to advocate better investor protection and act as a voice for small investors. SIPA incorporated as a national non-profit organization in 1999 and now has members in nine provinces. Information is available on SIPA's website [www.sipa.ca](http://www.sipa.ca).

**We wish all of our members and colleagues  
Merry Christmas  
and health and happiness in the coming year.**