



SIPA Inc

Submission to

Expert Panel on Securities Regulation

Because They Can

May 30, 2008

Expert Panel on Securities Regulation  
Ottawa, Canada, K1A 0G5

Thank you for inviting us to the luncheon roundtable at the Fairmount Royal York on May 28<sup>th</sup>. As indicated previously and as promised at the roundtable, we are pleased to make this submission for your consideration during your deliberations on securities regulation.

There have been many initiatives over the years to consider regulatory reform. Finally the Wise Persons Committee issued their report "It's Time" in December 2003 concluding that it's time Canada has a national regulator. However, little progress has been made towards this objective.

On February 27<sup>th</sup>, 2004 we issued our report "the Small Investors Perspective of Investor Protection in Canada. The investor voices appended to that report are included in the Appendix. Later in 2004 SIPA partnered with CARP to produce a report entitled "Giving Small Investors a Fair Chance". In that report we called for establishing an Investor Protection Agency. In February 2005 SIPA appeared before the Senate Standing Committee on Banking Trade and Commerce. Our written submission is available on the Finance Canada website. Our cover letter stated;

"It's a matter of Trust. Our society is based on trust. Canadians place their trust in our Government. The Government delegates regulation of the securities industry to the provinces. The provinces in turn delegate regulation to securities administrators. Finally, securities administrators delegate investor protection to self-regulatory organizations. It is the responsibility of Government, Regulators and Police to enable all Canadians to live and work in a society that does not foster wrongdoing."

While the Expert Panel's task is to make recommendation regarding securities regulation in Canada, we believe the panel must understand the impact on Canadian retail investors of the current laissez faire attitude of the captive regulators. The current regulatory system does not protect investors, in part because investor protection is delegated to the SROs. The dispute resolution mechanisms are industry sponsored and investors are not getting a fair deal.

Many investor voices are included in this report to hopefully raise Expert Panel members' awareness of the tragedy taking place in our society. When we hear the stories of victim's of financial crime and bear witness to the failure of our regulatory system to stem the flow of fraud and wrongdoing, and the failure of our justice system to provide a timely means for the victims to gain restitution, we ask ourselves why the investment industry behaves in such a way, we realize sadly that it's because they can.

Sincerely

Stan I. Buell  
President

## CONTENTS

### Letter from SIPA

1.	Forward	1
2.	Trust in Our Society	6
3.	The Primary Issue for Small Investors	11
4.	Regulatory Failure to Protect Investors	16
5.	Complaints Handling	21
6.	Impact on Victims	28
7.	Because They Can	31
8.	Recommendations	34
	APPENDIX	37
	- Markarian v. CIBC – 2006 Decision	38
	- Canadian financial industry no longer honesty and integrity	41
	- An Open Letter to Canadians	44
	- Code of Silence	49
	- Small Investor Voices	52

## 1. Forward

“My parents, ages 81 and 76 ... All of the money invested is lost. This was most of my parents’ life savings ... My father became depressed from losing all of his money. Coupled with the cancer that he had, this caused him to take his own life”.

We estimate that Canadians savings and retirement security are being eroded by industry fraud and wrongdoing at a rate of \$20 billion per year. In 2007 Keith Ambachtsheer wrote an article for the Globe and Mail entitled “The \$25-billion pension ‘Haircut’” stating:

“The deadly combination of investor naiveté and industry marketing savvy is costing Canadians investing through mutual funds as much as \$25 -billion per year.

Sustained wealth reductions of this magnitude will cut the retirement income of Canadians investing their retirement savings through the mutual fund sector in half or worse. This is a case of market failure on a massive scale, seriously undermining the retirement prospects of millions of Canadians, especially those working in the private sector. Rather than fiddling with ABM fees, it is this potential massive private sector pension shortfall that our politicians should be focusing their attention on.

The Rotman International Centre for Pension Management at the University of Toronto recently directed a study comparing the investment results of similar investment mandates between Canadian pension funds and mutual funds. It found that the pension fund results bettered the mutual fund results by a startling average 3.8 per cent per year. Applying the 3.8 per cent return ‘haircut’ to the \$690 -billion Canadians have invested in mutual funds implies a wealth transfer from Canadian mutual fund participants to others (mainly to the mutual fund industry itself) of some \$25-billion per year, leading to material shortfalls in retirement income down the road.”

Since SIPA’s founding in 1998 we have interviewed hundreds of small investors and regularly hear from investors and industry representatives. We summarized our findings in our report “The Small Investors’ Perspective of Regulation in Canada” delivered to 25 of Canada’s leaders in February 2004 with the hope that it would raise awareness of this issue. It was sufficient to cause David Brown to organize the OSC Investor town Hall Meeting in Toronto on June 2005 in which we participated. A crowd of 500 filled the CBC Atrium on Front Street and there was a mood of frustration and anger. Yet little has changed.

In February 2005 SIPA appeared before the senate Committee on Banking Trade and Commerce and our written submission is available on the Finance Canada website. Our cover letter stated:

“It’s a matter of Trust. Our society is based on trust. Canadians place their trust in our government. The government delegates regulation of the securities industry to the provinces. The provinces in turn delegate regulation to securities administrators. Finally, securities administrators delegate investor protection to self-regulatory organizations.

This approach to investor protection has failed Canadian investors. Many small investors have placed their trust in the investment industry and our regulatory system, but have lost their life

savings due to industry wrongdoing. The magnitude of these losses is unknown but estimated to be in excess of \$1 billion per year ... many times greater than the sponsorship scandal being investigated by the Gomery commission.

The mutual fund market-timing scandal, partially exposed in December 2004, illustrates the cavalier attitude of the industry towards small investors and how widespread wrongdoing actually is. Some of Canada's top banks, brokerages and mutual fund companies were involved in practices harmful to small investors.

- Canadians need one national Financial Services Regulator
- Canadians need a national Investor Protection Agency
- Canadians need a national register of representatives accessible to the public

It is the responsibility of Government, Regulators and Police to enable all Canadians to live and work in a society that does not foster wrongdoing. We trust that the Senate Committee will make every effort to enable regulators to stamp out financial crime and ensure that Canadians may continue to trust and be secure in their investments. An investigative inquiry into widespread industry wrongdoing would seem a logical step."

Senator Grafstein commented that they had been led to believe that all was well with the investment industry and regulators, and they were surprised by what the Committee was hearing from presenters. He asked for a report on the planned OSC Town Hall meeting. A transcript of the meeting is available on the SIPA website at [www.sipa.ca](http://www.sipa.ca).

In 2004 we partnered with CARP to produce a report on mutual funds entitled "Giving Small Investors a Fair Chance". The report incorporated SIPA's proposal for establishing an Investor Protection Authority and was outlined in one of the recommendations:

In order to ensure investor protection, a federal Investor Protection Act should be passed which includes the establishment of a single, national independent Investor Protection Agency (IPA) accountable to Industry Canada or the Attorney General of Canada.

The IPA, in collaboration with provincial regulators, should be empowered to:

- oversee the regulatory bodies
- establish a central registry of industry participants
- create a central database of complaints
- monitor dispute resolutions
- order independent investigations or inquiries
- order restitution in cases of industry wrongdoing.

Last year SIPA was invited to participate in the Ontario Bar Association Summit on Access to Justice. The OBA stated in one of the workshops that "The Justice system is not designed to provide justice ... it is designed to resolve disputes." We discussed the issues investors faced trying to resolve their disputes with industry sponsored agencies. We also discussed the possibility of establishing a tribunal similar to that used by Ontario housing that seems to resolve issues within short time frames. The OBA has recently released their report.

We recognize that most sophisticated investors have difficulty comprehending the problem small investors face, and many believe that lack of investment knowledge and greed are the two main issues. However, our opinion, based upon personal experience and talking to several hundred small investors one on one, is that we live in a trusting society, and Canadians believe they can trust the industry to have a fiduciary responsibility and provide proper advice. They also trust that the industry is properly regulated. They trust that if there is an issue to be resolved that they can obtain justice. Those unfortunate enough to have lost their savings due to wrongdoing know that reality is much different

It was personal experience that revealed to me the widespread fraud and wrongdoing that is stealing the savings of small investors

In the 1980s I was vice president for a Canadian transportation consultant and with responsibility for Africa and the Middle East I was required to travel extensively as we had active projects in several countries. As a senior executive I was also responsible for negotiating multi million dollar projects as well as budgeting and administration in addition to managing the projects. The amount of my personal investments, although substantial for me, were not significant compared to the size of the projects for which I was responsible. Therefore I placed my trust in my broker to look after my investments while I concentrated on my responsibilities.

As a trusting Canadian I felt fortunate that my broker from the London, England office, who looked after my investments while I was resident in the Middle East, introduced me to the vice president and branch manager of the Toronto office of a major brokerage firm, and he offered to look after my account. As I sat in his paneled office on the 54<sup>th</sup> floor, during the introduction, and spoke with three blue suits I felt confident that my investments would be looked after professionally

Three years later when I returned from a five week trip to Africa I learned that all of our investments, which totaled \$1 million, were gone and I had to pay the firm an additional \$70,000. owed as margin.

It was an extreme shock and devastating. It was difficult to deal with because I could not believe that such a firm would do anything that was legally wrong, and believed that it was the particular circumstance of my situation. Fortunately it was over the Christmas season and I had a couple of weeks to recover so I could continue to work and try to put this disaster behind me.

Years later I discovered that in fact there was wrongdoing including fraud. I also discovered that the firm was aware of the branch manager's wrongdoing as he had been disciplined three times for similar activity. The records indicated that he had continued these practices over a period of fifteen years. I discovered eight other victims and spoke with several, although some did not want to talk about it I have no doubt there were many others.

I have also experienced the stress of pursuing civil litigation and suffering the tactics and strategies used by the industry to frustrate the justice system and introduce delays and additional costs to break down plaintiff's willingness to persist.

The stories I hear today are no different. Nothing has changed. Small investors are still having their savings stolen by systemic practices of the industry. There are still the headline grabbing fines that are not collected, but few of the perpetrators go to jail. Some are banned from being registered but they have already had time to fabricate their golden parachutes.

Recently in B.C. a representative for a mutual fund company was fined and banned but not before he defrauded investors of \$20 million and moved to the United States. Will he be extradited and returned to Canada? Will the investors receive restitution for their losses? Will the regulators take action against the company that employed this individual? Based on previous performance by the regulators, the answer is not likely.

There is currently no acceptable mechanism for restitution. The complaints handling process still re-victimizes the victims with the result that few plaintiffs can weather the storm of sailing through the industry's complaints handling and then the justice system. Most disputes are settled out of court or simply abandoned as the plaintiff can no longer afford to fight or has died in battle

Armand Laflamme at age 61 began a ten year battle to get his money back. Finally the Supreme Court decision awarded him the \$2 million stolen from him. He died a few years later. This is not justice and it is not fair. It is sad commentary on our "just society"

The Markarian v. CIBC decision in Quebec in 2006 awarded the Markarians their losses of \$1 million plus interest plus costs. It also awarded moral damages of \$50,000 each and punitive damages of \$1 million. We believe this is a landmark decision for investors and should lead to future claims including moral and punitive damages. But will it happen in the rest of Canada?

While the Expert Panel's task is to make recommendations regarding securities regulation in Canada, it is improbable that Canada will have a national regulator in the foreseeable future. Québec's approach to securities regulation and to investor protection is far more advanced than the rest of Canada and it is unlikely that the rest of Canada would fall in line with Québec.

Nevertheless we believe the expert Panel can exert powerful influence on how Canada progresses with securities regulation, and there are many reasons why a national regulator is desirable for Canada

The current regulatory system does not protect investors, in part because investor protection is delegated to the SROs. The dispute resolution mechanisms are industry sponsored and investors are not getting a fair deal. The Ombudsman for Banking Services and Investments is also industry sponsored and another example of a good initiative hijacked by the industry. The anecdotal evidence we have indicates that victims are not getting fair treatment and when they do receive restitution it is pennies on the dollar.

The OBSI Annual Reports provide case studies and these indicate that OBSI believe that victims of wrongdoing have a responsibility to mitigate their losses and its recommendations are made on that basis. Yet the Supreme Court of Canada in the Laflamme case decided the firm is responsible until the account is closed. An article in Macleans in June 2000 by Brenda Bramswell had this to say:

"At issue before the Supreme Court was at what point Roy and Prudential-Bache's liability ceased. The Quebec Court of Appeals ruled that it ended shortly after they received a May, 1989, letter from the daughter, because Laflamme had sufficient information to close the account and stop the hemorrhaging. But the Supreme Court disagreed, ruling it ceased only after Laflamme closed the account."

It is our opinion that the firms should be held responsible for losses incurred as a result of their advice and they should not be allowed to hold the investor responsible for mitigating losses that occur as a result of the advice given by the firm.

We have proposed that a National Investor Protection Authority be established by Government with a mandate to be responsible for investor protection. They would have the authority to order investigation and the power to order restitution when there is evident fraud or wrongdoing. They would have a tribunal that could evaluate investor complaints and order restitution. They could liaise with the RCMP and police forces as well as regulators for enforcement and investigation. They would also have an investor protection fund that could be dispersed to aggrieved investors and subsequently recovered from the perpetrators, and have a special victim support unit to provide guidance and assistance to victims of financial predation.

We suggest the Expert Panel seriously consider the damage that is being done to Canadians by the extensive fraud and wrongdoing when you formulate recommendations for necessary reformation of the securities regulation system in Canada and providing remedial investor protection.

### If it can happen to Leonard Cohen



Could it happen to you?

## 2. Trust in Our Society

Our society is based on trust. Unfortunately that trust is being betrayed by an industry that fails to look after the best interests of investor clients, but instead develops innovative structured products to sell to unsuspecting investors. Some of these products are designed to circumvent regulations. Sometimes exemption orders provide exemptive relief from rules and regulations. Lack of disclosure and misleading information ensnare investors who might otherwise avoid purchasing these products that are inherently faulty or unsuitable.



In addition to the trust that is placed in the investment industry, Canadians trust that the regulators, and in particular the provincial securities regulators will properly regulate the investment industry and ensure that investors are protected. However, the CSAs have delegated investor protection to the industry's SROs that are the industry. This inherent conflict of interest results in an industry bias and failure to provide investors protection.

*"I started investing with [RR] in 1986 when he was with [Brokerage]. ... He had my trust. [RR] was in a respected position of trust; first as Vice President of the company and secondly as my financial advisor. He abused this relationship."*

Canadians trust that our Government will ensure that Canadians investments are protected and that legislation will provide for their protection against fraud and wrongdoing. They also trust that when Government says our justice system will provide a means for Canadians to seek justice they will have a final recourse to resolve their dispute and be made whole again when they have lost their savings due to fraud and wrongdoing by the investment industry.

Unfortunately the trust placed in the industry is often betrayed. Much has been said about this betrayal of trust and was probably best explained in a study commissioned by the Consumers Council of Canada, entitled *The Scorpion and the Frog* and authored by David Yudelman. He states:

*"The financial industry must always be true to its nature, 'which is to maximize returns to shareholders and to be well rewarded as employees and executives for doing so.'*

*The complexity of the financial services marketplace makes it unusually difficult for consumers to understand the self-serving nature of much of the information and advice they receive, and the fact that it is vendor-driven.*

*Actual or potential conflicts of interest are pervasive because the sellers are frequently the advisors as well, says Yudelman, who once worked in a major Canadian bank."*

The practice of registered representatives acting as sales agents but carrying titles such as "Financial Consultant" or "Investment Advisor" results in investors being misled into believing the "Advisor" will act in the investor's best interest. This facade is fostered by the regulators who also make a contribution by levying headline grabbing fines that are not collectable and banning perpetrators of fraud from the industry but not before they have fabricated their golden parachute and are able to retire offshore in luxury.

Our society is based on trust but there is a feeling that many in our society no longer have any sense of values and standards and that the investment industry in particular can no longer be trusted. There are issues that are becoming more serious as each day passes.

Former OSC commissioner and securities lawyer Glorianne Stromberg stated in an article entitled "Listen up, Bay Street ":

"The lack of trust in Wall Street (and by extension Bay Street) is said to be unparalleled since the 1930s. Polls indicate that a growing number of people believe the stock market is no longer a fair and open way to invest one's money and that the market is rigged by and for insiders. A recent New York Times article bluntly stated that the hidden hands of speculators profiting from bad-news rumourmongering, good-news insidership, and no-news accounting has made markets unsafe for ordinary investors."

The Auditor General Sheila Fraser was quoted by the press:

"Our findings on the government's sponsorship program from 1997 to 2001 are deeply disturbing. Rules were broken or ignored at every stage of the process for more than four years. Even though the government has cancelled the sponsorship program, I am deeply disturbed that such practices were allowed to happen in the first place. There has not been an adequate explanation for the collapse of controls and oversight mechanisms."

The vast majority of Canadians still believe in honesty and integrity. Why then do we tolerate the widespread wrongdoing, cover-up and fraud?

If anyone has any doubt that the industry is betraying the trust of small investors they have only to read some of the court decisions that also describe the corporate behaviour of investment firms. We have included an excerpt from the Markarian v. CIBC 2006 decision in the Appendix for reference and reproduce below a portion of the excerpt.

[635] CIBC acted with full knowledge "of the immediate and natural or at least extremely probable consequences that [its] conduct [would] cause", to use the Supreme Court's words, In fact, there is reason to wonder whether it acted in "a state of mind that implies a desire or intent to cause the consequences of [its] wrongful conduct".

[636] CIBC's conduct as a whole demonstrates that it either intended to whittle down the plaintiffs' resolve and bring about a settlement for less than they were entitled to, or to ensure the plaintiffs paid dearly and laboured to exhaustion to obtain their due (perhaps because of the bad faith Monahan attributed to them), or both. Nothing else can explain why CIBC acted as it did in the circumstances.

[637] It must be concluded that CIBC used its dominant position and its custody of sizable assets belonging to the plaintiffs for a "power grab" at their expense, in order to seize their assets, sell them and pay itself.

[638] CIBC thus became the accomplice in Migirdic's fraud and did everything in its power to benefit from it directly.

[639] CIBC could have applied to the courts before seizing the plaintiffs' assets, if it so firmly believed it was right. It responded that it was not obliged to do so and had the right to act as it did, according to the very terms of P-6 and P-7. But those documents were null and worthless, and CIBC knew that. Everyone told it so! In the circumstances, its actions were perfectly illegal.

[640] Those who have a right to take the law into their own hands under contractual agreements with clients have a weapon of formidable power. Consequent prudence is required in using that weapon. Here, the Bank totally failed to fulfil its obligations of prudence and diligence in using its power to seize the plaintiffs' assets of which it had custody and in taking the law into its own hands. The Bank's duty to use that power in good faith is an obligation distinct from its other duties. It cruelly failed to fulfil it here.

[641] In a case where the very validity of the documents it intended to use as a basis for seizing the assets and taking the law into its own hands was contested, where it was alleged that the documents were false, where the allegations seemed serious (to say the least) and where its investigations had revealed that the documents no doubt were actually worthless, the Bank should certainly have refrained from exercising the supposed power it was given by the impugned documents and should have applied to the courts to find out its rights.

[642] By acting as it did here, CIBC found itself in a situation not very different from that of the towing companies ordered to pay punitive damages because they used force and carried out a de facto seizure of property in order to obtain immediate payment, without regard for the rights of the owners of the vehicles, even if it meant that the victims would then apply to the courts themselves. That is not the way that life in society and the rules of law work in a free and democratic society governed by the rule of law.

[643] Some of CIBC's conduct also demonstrates a troubling determination on its part to dissimulate. CIBC first hid Migirdic's confessions in order to claim from the Markarians the execution of P-6 and P-7. It even hid from them the extent of the fraud, the number of people involved, the existence of a true system and the fact that Gazarosyan was actually Migirdic. It even forbade Migirdic to reveal to the clients anything about his actions. Furthermore, CIBC did everything in its power to conceal from the plaintiffs the settlement it reached with Rita Luthi and to ensure it would remain secret ... whereas it had an impact on the plaintiffs' rights.

[644] CIBC also abusively refused to investigate the Markarians' allegations about the AMCC and Intergold shares. Not the least verification was made by CIBC in that regard. No one at CIBC even called Migirdic to ask him whether the transactions had been authorized, how the shares found their way into the Markarians' accounts and so on! The plaintiffs had to fight fiercely to obtain the relevant documents from the Bank, which objected strenuously to providing them, even before the Court. As it was of the opinion that the contestation deadlines had expired, the Bank had no interest in knowing the truth or doing justice to its clients.

[645] To all intents and purposes, CIBC gave no attention or consideration to the Markarians' complaints. Their claims were simply rejected out of hand, whereas, on their very face, they provided serious reasons for investigating. For example, the transactions involving the Intergold and AMCC shares were obviously speculative and not suitable for the Markarians, and Migirdic admitted he had parked the shares and acted in an irregular manner many times.

[646] The bad faith of CIBC is also apparent in the way it conducted the proceedings and made them last inordinately, as we will see later on.

This is a damning description of investment industry behaviour and although it describes one firm it is by no means untypical of language used by other learned judges in their decisions.

The Expert Panel must take into consideration the behaviour of the investment industry in the way they steal small investors' savings and in the way they frustrate victim's attempts to achieve justice through a court of law.

It is just this type of behaviour that is well known and well documented that leads us to the conclusion that there must be a paradigm shift in the regulatory system to ensure that Canadians rights are protected and they are not abandoned to be prey for a predatory industry and be used as grist for the mill of generating corporate profits by any means

Many Canadians place their trust in mutual funds and this product is a staple of Registered Retirement Savings Plans. Most small investors believe that mutual funds are a safe investment although we have heard from many Canadians who wonder why their savings in mutual fund fail to grow. The Keith Ambachtsheer report on mutual funds suggests Canadian investors in mutual funds are losing \$25 billion per year due to industry malfeasance.

As an example of the egregious activity of the investment industry to generate profit at the expense of unwary investors we have included in the Appendix a recent Mutual Fund Dealers Association Notice of hearing that describes churning in mutual funds to generate profit. It shows that one mutual fund salesperson (Advisor) was able to extract \$65,000 in commissions from 8 client accounts in a mere 2 ½ months. Once again this is not untypical of industry behaviour and tends to illustrate the magnitude of small investor losses of which the public is not aware. A portion of that notice is reproduced below.

#### "Misconduct

6. As set out in the table below, in the eleven week period between December 1, 2005 and February 16, 2006, the Respondent processed 34 related redemption and purchase transactions in 8 client accounts, generating sales commissions in the total amount of \$65,020.16.

7. There was little or no rationale for the related redemption and purchase transactions other than the generation of sales commissions to the Respondent's benefit. By carrying out the related redemption and purchase transactions in the manner he did, the Respondent was able to "re-commission" both matured units in DSC ("deferred sales charge") mutual funds and (DSC-free) units in FE ("front end" load) mutual funds.

8. The related redemption and purchase transactions did not result in any financial benefit to the clients. The related redemption and purchase transactions were not in the best interests of the clients in so far as client holdings of both matured units in DSC mutual funds and (DSC-free) units in FE were, upon the conclusion of the related redemption and purchase transactions in each client account, re-invested in DSC mutual funds, thereby commencing a fresh DSC schedule to the client's potential disadvantage.

9. Although the Respondent obtained the authorization of the clients prior to carrying out the related redemption and purchase transactions, the Respondent proposed the related redemption and purchase transactions to the clients.

10. On December 14, 2006, the Respondent attended an interview with the MFDA and admitted that 26 of the above 35 related redemption and purchase transactions in client accounts between January 23, 2006 and February 14, 2006 were conducted by the Respondent for the purpose of generating commissions."

There is overwhelming evidence available that indicates the financial services industry is out of control and is taking advantage of small investors at an unbelievable rate. There are systemic practices including churning and leverage that enable the firms to generate obscene reward schemes and huge profits at the expense of investors.

There is total disregard of rules and regulations and even the law. The headline grabbing fines and banning of registered representatives that have already fabricated their golden parachutes are simply window dressing to deceive the public into thinking the regulators are doing their job.

The recent ABCP debacle illustrates how investor trust is betrayed when the industry misrepresented the ABCP product and misled not only small investors but institutional investors including pension funds. The industry's proposal for a solution to the problem includes an exemption from the law. If they manage to achieve this exemption they may truly be called "Robber Barons"

It is time that our Government takes action to revise the Financial Services regulatory landscape to provide investor protection and honor the trust that Canadians have in our "Just Society".

### 3. The Primary Issue for Small Investors

"These 4 years have been a horrible nightmare, a lifetime of hard work and saving and dreaming is gone. What has happened to me seems incredible. Not only is my money gone, but also the broker continues to work and the wheels of justice just don't seem to be working at all."

Note: This is the fate of a young engineer who worked in Japan, married and returned to Canada to find that his life savings had been decimated by his advisor in whom he had placed his trust. He spent four years trying to resolve his dispute.



The most important issue for retail investors is the protection of their savings for their retirement security. They are persuaded to save for their futures and encouraged by Government to use registered retirement savings plans which afford tax deferral. This program allows Government to transfer responsibility for retirement security from Government to individual Canadians. There is nothing wrong with this plan provided Government protects Canadians from having their savings stolen by an industry that is given legitimacy.

There are many practices in the investment industry that allow Canadians Registered Retirement Savings Plans to be pilfered and these are aided by the Banks who often work in co-operation with nefarious investment plans that lead to loss of RRSP savings.

A common scam is property investment where RRSP savings are invested in second mortgages of overvalued properties with the result that the RRSP savings are essentially lost from the first day of investment. The banks that co-operate with these scams know or should know that these schemes are unsuitable for many of the RRSP holders.

Most Canadians invest in mutual funds. A common practice in the industry is to have investors use leverage by mortgaging their homes to invest, bank loans or margin loans. This strategy is good for the industry to increase assets under management, good for banks to increase their loan portfolios at enhanced rates and with assets to guarantee the loans, but bad for investors because the leverage increases the risk of extreme loss. In the previous section an illustration of mutual fund churning was provided, and this is not uncommon.

When investors lose their money due to fraud and wrongdoing when dealing with Government authorized agencies they should be protected and have an appropriate means of gaining timely restitution.

The Justice System does not provide such a means. The industry uses the Justice System to beat Plaintiffs into submission or make examples of those who would seek justice through the courts by manipulating the system and introducing procedural delay and motions to drive up defense costs and extend the time required to reach a conclusion. In the Complaints Handling section the text from the Markarian v. CIBC decision illustrates how industry attempts to frustrate justice.

There are many systemic practices in the investment industry including lack of disclosure and deceiving investors, but two of the main causes of extreme loss are unsuitable investments and leveraged investment. Some mutual fund companies are notorious for using leverage with all of their clients with the objective to build Assets Under Management (AUM) without concern for clients' needs. Many of the victims are seniors who had more than enough money for their retirement with absolutely no need to take any risk, yet these seniors were leveraged and sold unsuitable products with the resultant loss of major portions of their savings. This practice is unscrupulous and even unthinkable for most Canadians who are unaware of these practices. However, the practice of churning to generate commission described by the MFDA Hearing in the section on Trust in our Society is also unscrupulous and difficult for Canadians to believe these practices can escape the supervision of firms in this age of computerized controls.

These are some of the many reasons why we ask for a Government inquiry into the investment industry to bring out these ugly facts in the hope that Government will be goaded into action.

In Ontario last September we made a joint submission with the United Senior Citizens of Ontario and the National Pensioners and Senior Citizens Federation to the Ontario Ombudsman asking that he investigate the Ontario Securities Commission for their failure to provide investor protection. We see certain parallels with the Ontario Lottery and Gaming Corporation that was investigated by the Ombudsman, and are still waiting for a response. However we believe the regulators are captive to the investment industry and it is so strong it would be unlikely that the Ombudsman would investigate or if so find any substantial fault

The fact remains that the OSC is failing to protect investors and failing to prosecute perpetrators of financial crime.

The following are some comments from small investors to illustrate their primary concern: How are they protected and how can they get their money back that was stolen by a regulated industry. The average Canadian is led to believe that there is investor protection. Yet widespread practices and wrongdoing in the investment industry result in disastrous losses for many Canadians. These are not losses due to normal market risk, but due to unsavory practices that are condoned in an industry that appears to be strictly profit motivated.

*"As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million."*

*"On Friday, December 12, 1997, we reviewed (Broker)'s performance with (RR) and (Manager) ... As it turned out by December 31st our total accounts had fallen to \$250,137 from \$501,367 twelve months earlier."*

*"I have full and accurate documentation of all events, as well as statements showing the depletion of the account from approximately \$170,000 in early 1994 to almost zero."*

*"I have, within a four year period, lost 40% of my initial investment capital of \$300,000."*

"(Brokerage) and (RR) both failed in that duty. In addition to the loss of inheritance, I have spent to date \$30,000 in legal fees."

"I invested a large sum of money, \$125,000 with a broker at (Brokerage) and through mismanagement, inappropriate securities selections, not following directions, and various other infractions, he managed my portfolio in a matter of approximately 14 months down to a value of about \$60,000." A small investor - 1999

"My loss of \$40,000 may not substantiate making an individual claim, as I believe the court expenses could exceed that amount."

"I suffered a loss of over a million dollars through the same financial advisor in two different companies. (Mutual Fund Co) and (Big Bank Brokerage). An accountant's analysis later revealed a large amount of money was never transferred from (Mutual Fund Co) to (Big Bank Brokerage)."

"Within a time frame of less than 8 months, the value of Ms. (small investor)'s assets in her account dropped from the original of \$50,000 to less than \$10,000."

"My husband and I have lost over \$250,000 after our broker advised us to enter high risk technology mutual funds and stocks. We lost about 45-50% of our portfolio and we are in our 50's, and had planned on retiring at 55. This goal was clearly stated to our broker."

"Fourteen months after his taking over the account \$100,000 turned into \$45,000"

"My portfolio had decreased from an originating value of approximately \$150,000 to today's value of approximately \$25,000."

"I have depended upon (Brokerage) for investment advice and my account lost \$20,000 plus from December 16, 1996 to May 5, 1997."

"I lost hundreds of thousands of dollars. The firm lent me the money, I'm finding out now, fifteen years later, that they had a position in the stock."

"My cash account of approximately \$45,000 with (Brokerage) is worth less than \$10,000."

"We had one individual in the area lose \$300,000, his entire life savings."

"My wife and I have suffered a 37% loss over one year from mutual fund investments managed by (RR) of (Mutual Fund Dealer)."

It is difficult to quantify the extent of small investor losses due to fraud and wrongdoing by the industry because the facts are covered up. There are many disputes settled out of court with gag orders. The restitution paid is usually only a fraction of the total loss but plaintiffs are often so intimidated they are

willing to settle to put the life altering experience behind them. Many of course fail to seek restitution for many reasons.

Anecdotal evidence indicates that many seniors have lost over several hundred thousand dollars and some have lost millions. Yet they are reluctant to get involved with a lengthy dispute or civil litigation. Still others are reluctant to admit that they have suffered loss, as they do not want family and friends to know.

Industry participants are well aware of the financial predation that exists in the industry and many have confided in us details of what is going down. A retired lady broker writes:

"I watched brokers trade with abandon on accounts and the women had absolutely no idea what was happening. I watched one single retiree account go from \$175,000 to \$15,000. Her concept of money still left her with the impression that there were lots of funds. This view was promoted by the broker. We are not talking fly by night companies. I am talking (Big Bank Brokerage) brokers that I worked with. Yes, the managers knew what was happening."

Part of the problem in quantifying the extent of this problem of loss is the industry attitude towards covering up the problem rather than dealing with it in a socially responsible way. When a situation is exposed, the industry promptly brands one of their own as a "rogue broker". He is forced to pay the price for getting caught. In this age of computerized control it is improbable that a registered representative can do very much that escapes the attention of compliance and management. Evidence indicates that companies are aware of these malpractices but choose to cover-up because these practices generate excessive commissions. Because these practices are covered up it is difficult to obtain accurate figures of small investor losses due to wrongdoing.

Small investors need investor protection that is not industry sponsored. While some have suggested a federal regulator similar to the Securities and Exchange Commission in the United States would be appropriate, recent action by the New York State Attorney General Eliot Spitzer reveals even the S.E.C. has limitations. Spitzer's great concern, he said, is the fundamental effectiveness of how Wall Street polices itself for the benefit of investors

"The major failure has been at the SRO (selfregulatory organization) level."

Glorianne Stromberg, a former OSC Commissioner and author of several reports on the regulatory system wrote:

"It is obvious that all of the gatekeeping mechanisms designed to protect investors and to ensure a fair and efficient marketplace have either failed or shown serious shortcomings. Auditors, boards of directors, individual directors, lawyers, investment bankers, rating agencies, standard setters, analysts, regulators and lawmakers have each in their own way failed the public. Their failures have produced what many are referring to as a crisis of faith in the entire market system."

John Lawrence Reynolds is well known for writing on financial and investment matters. His book "Free Rider: How a Bay Street Whiz Kid Stole and spent \$20 million" describes how a broker with a major brokerage used fraud and deceit to take money from his clients. In his latest book "The Naked Investor; Why almost Everybody But You Gets Rich on Your RRSP" Reynolds writes:

"It is my view that avoidable RRSP/RRIF losses are rooted deeper than investor inattention and advisor malfeasance, They represent an attitude that permeates the industry at the top levels of

many brokerages, including those owned by Canada's chartered banks. The evidence seems to indicate that pressure is applied on individual brokers to maximize their commissions to the detriment of other more critical concerns, including the growth and security of the client's investment portfolio."

Canadians are not well educated with regard to investment in large part because they are encouraged to save for the future and invest in Registered Retirement Savings Plans. While this remains a great concept the problem is that small investors are not protected and are not equipped to carry out due diligence. Even if they were they would be misled by an industry that fails to disclose essential information and covers up situations that illustrate the risks faced in dealing with the industry.

With auditors' reports deemed to be tools for management, a proposal to adopt International Financial Reporting Standards that will allow more flexibility for managers accounting trickery, analysts that are influenced by industry, corporate skulduggery, prospectuses that are impossible to interpret, and deemed disclosure if information is posted on the internet, and failure to provide a satisfactory means of checking products sellers qualifications and disciplinary history, it is improbable that small investors would be able to protect themselves.

The primary issue for investors is how can they achieve restitution after they have been defrauded or cheated by a financial services industry that they are assured is properly regulated?

#### 4. Regulatory Failure to Protect Investors

Investor protection has largely been left in the hands of industry. The regulatory bodies tend to be staffed by those with industry experience. This results in an approach to regulation that appears to be industry biased. Widespread industry practices in a commission driven environment result in a conflict of interest when investment advisors are coerced into generating commissions often at the expense of their investor clients.

The Securities Commissions take a preventative approach to investor protection rather than a remedial approach. However this approach has failed to protect investors as recorded in many reports including the Government's own WPC Report. How long and how much financial carnage will it take to precipitate Government action?



The Wise Persons Committee Report, released December 13, 2003 in its opening statement of the Executive Summary states:

"Canada suffers from inadequate enforcement and inconsistent investor protection. Policy development is characterized by compromise and delay. Canada cannot respond as effectively or innovate as quickly as it should in the fast-changing global marketplace. The system is too costly, duplicative and inefficient. The regulatory burden impedes capital formation. Canada's international competitiveness is undermined by regulatory complexity."

The Wise Persons Committee Report also incorporates a statement submitted by Jarislowsky Fraser Limited of Montreal, Quebec:

"The greatest weakness of the regulatory system is that it does not protect investors.... There is ever more red tape and no real enforcement! The crooks rarely go to jail."

The WPC mandate was to examine the alternatives for securities regulation and did not include a requirement to look into investor protection. Chapter three of the report includes the comment

"The most frequent complaint we heard from small investors was that the current enforcement system is inadequate and fails to protect their interests."

And what do small investors say?

**"THE REGULATORY BODIES DO NOT PROTECT THE INVESTOR."**

Will the recent ABCP debacle that has impacted large and small investors, including pension funds, and could result in the direct loss of a major portion of the \$33 billion of non-bank ABCP for which the industry is seeking a solution that could involve exemption from the law finally raise awareness and prompt action?

In Ontario even though the regulators knew that penny stock dealers were selling worthless shares they were unwilling or unable to prevent the penny stock dealers from continuing to prey on small investors. They spent years in the courts trying to prove they had the right to take action. Why was this allowed to happen? Why did Government not see this was a symptom that the regulatory regime was failing?

Meanwhile many innocent victims were losing their savings to a bunch of firms while the regulators were ineffective in their role as regulators. The practices that were allowed to continue are shocking and are detailed in the settlement agreement reached between Norman Fredrych and the Ontario securities commission. In his statement he says:

"In my experience with Marchmont, of the thousands of customers that I dealt with all of them (except for clippers and others who insisted on selling the shares that they acquired contrary to our recommendation) lost virtually all of the money that they invested with the company."

Investors who look to the Ontario Securities Commission for help because the OSC is responsible for securities regulation in Ontario are often disappointed and frustrated by the cavalier attitude towards small investors. They routinely pass off the investor to the SROs or the firms that created the problem. One small investor wrote:

"I wrote to the OSC who forwarded my complaint and evidence on to the compliance department of the brokerage firm. That was 1999. It is now 2004, and five years have passed. With legal fees and loss of interest, apart from what the monies invested would be worth today had they been suitably invested my total losses amount to \$325,000.00. ... It appears that they are unwilling to investigate the behaviour of the broker or supervisor. In the meantime the broker has been disciplined - for the second time; and the IDA is investigating at least two other brokers, in the same branch. It appears that I am not 'being heard'."

The failure of the regulatory regime is due in part because the regulatory system is based upon rules rather than principles, and the regulatory system is based upon the administration of these rules. Therefore even when wrongdoing is plainly evident if there are no specific rules that have been breached the regulators are unwilling or unable to take action.

To complicate the issue the regulators provide exemptive relief from the rules and regulations when industry makes application. This enables industry to legitimately ignore the rules. A further complication is that industry develops products and strategies to circumvent the rules and there are no forward looking rules to deal with these developments. A principles based approach could overcome many of the current deficiencies in the regulatory system.

However, we believe that it is not so much the deficiency of rules and regulations or the legislation, the fundamental failure is regulatory capture and the lack of enforcement.

It is difficult to comprehend that Canada's regulatory regime can claim to be effective when they have been unable to determine wrongdoing in the Bre-X scam. Labeled the scam of the century, Bre-X cost investors billions of dollars. Many seniors lost their savings when their advisors had them invest heavily in Bre-X, an unsuitable investment for most seniors, without proper diversification or downside protection.

How could the regulators allow this to happen in the first place? The principals were known promoters of mining schemes. John Felderhof had previously operated a scam of smaller proportion in Australia. The industry aided the promotion of this scam and promoted the sale of the shares although there were doubts. Why did the regulators allow the principals to dispose of their shares before the collapse?

Having viewed the Market Regulation Services facility a few years ago I doubt that the regulators were unaware of the trading activity of the principles, or were they asleep at the switch?

Ten years later the OSC is unable to make any charges stick to Felderhof, the former Chief Geologist and Vice Chairman of Bre-X. He gets to keep the \$90 million he scammed from investors and continue his luxurious lifestyle in the Caribbean.

Should Canadians who lost their savings due to industry fraud and wrongdoing feel some comfort that they are indirectly contributing to the Caribbean economies by providing a continuous stream of Canadian fraudsters with their golden parachutes fabricated from seniors savings?

How can Government allow the Canadian Securities Administrators of the provinces to abdicate their responsibilities for investor protection to the investment industry through the Self regulatory Organization? This results in an inherent conflict of interest and a failure to provide meaningful investor protection.

The Canadian regulatory framework includes provincial responsibility for regulation of securities, pensions and insurance. This results in numerous regulatory organizations across the country, duplication of effort and lack of co-ordination amongst regulators. A national regulator would resolve these problems.

In Ontario the Ministry of Finance is responsible for securities regulation and has appointed the Ontario Securities Commission as Administrator for the Ontario Securities Act. The front page of the OSC website declares:

The Ontario Securities Commission administers and enforces securities legislation in the Province of Ontario. Our mandate is to:

- Provide protection to investors from unfair, improper and fraudulent practices
- Foster fair and efficient capital markets and confidence in their integrity

While the OSC claims to provide investor protection it is curious to note that when the limitation periods in Ontario were reduced from six years to two years (it was pushed through in an Omnibus Bill), the OSC with its ranks of highly paid in-house legal counsel ensured that the OSC was exempt from the reduced limitation period but made no representation on behalf of investors. Although SIPA took many initiatives including submissions to the Ontario Attorney General and the Ontario Standing Committee on Justice Policy we were unable to effect any change.

One of the many regulators is the Investment Dealers Association (IDA). It is one of Canada's SROs and bills itself as "Canada's national self-regulatory organization for the securities industry". The IDA claims to regulate the activities of investment dealers and states that investor protection is a top priority.

The IDA's stated mission is to protect investors and enhance the efficiency and competitiveness of the Canadian capital markets. However it also states:

"Under supervision of securities commissions, it aims at a balanced approach to regulation taking into account the often complementary, but occasionally conflicting, goals of investor protection, efficiency and competitiveness."

This IDA mission statement is an admission of the inherent conflict of interest between industry regulation and investor protection.

There is nothing new or revealing about the failure of the regulatory regime to provide investor protection. Glorianne Stromberg's 1998 report entitled "Investment Funds in Canada and Consumer Protection" states:

"The unsatisfactory situation for the consumer/investors that results from continuing the fragmented regulatory structure reinforces the need for an integrated regulatory and supervisory structure"

Québec stands out as appearing to be the most socially responsible province and has evolved a new Autorité des marchés financiers reporting to the Minister of Finance. Québec has effectively created a single regulatory system for the province by creating the new Autorité that combines the financial services regulators. The website of the Autorité states:

"The Autorité des marchés financiers administers different laws and regulations applicable to Québec's entire financial sector. For each of four sectors of activity, the laws, regulations, guidelines, and all other legal texts concerning the organizations merged into the Autorité."

The Honourable Yves Seguin Québec Minister of Finance, wrote to SIPA May 5, 2004:

"An indemnity fund exists in Quebec for the victims of fraud in insurance and in mutual funds. We are studying with interest the possibility of expanding this indemnity to the victims of fraud in securities sector as well."

Québec seems to be far in advance of the other provinces with their approach to investor protection and we believe it is improbable that the rest of Canada can make the quantum leap to this new paradigm in securities regulation. We do believe the Québec solution would be an appropriate model for a national regulator.

Several years ago the Manitoba government took an initiative that should prove beneficial for small investors in Manitoba. The Manitoba Minister of Finance, advises:

"The Government of Manitoba shares the views of the Small Investor Protection Association (SIPA). That is why we amended the Manitoba Securities Act in 2003 to allow the Manitoba Securities Commission to order financial compensation (restitution) to an aggrieved investor after an administrative hearing."

There should be no impediment to all the provinces and territories following suit during the transition period from provincial jurisdiction to a national financial services regulator.

The most damning comments come from former financial industry registered representatives. In an Open Letter to Canadians a former representative had this to say:

"After 21 years of service I have since left the financial services industry as a product selling advisor.

Canadians should start thinking seriously about what's been happening to their fortunes over the years and why.

Just how long will we continue to tolerate the greed, manipulation and rot that appear to permeate our financial service industry from top to bottom?

How long will we continue to ignore the damage and pain that has been inflicted, and continues to be inflicted, on investors and advisors alike by a financial system that is clearly out of control in its duplicitous, self-dealing drive for profits?

Something sure stinks in Canada's financial services industry."

The full text of this letter is included in the Appendices.

Canadian regulators require updated legislation to allow them to deal with today's investment marketplace. They must be able to move more quickly to minimize the number of potential victims due to wrongdoing that often continues for years while the regulators are investigating or engaged in lengthy court battles.

## 5. Complaints Handling

"We have found out with our case there are at least three others with the same complaint about the same broker. It was very difficult to find out what to do, where to go, and who didn't have a conflict of interest just to get the ball rolling."

The current complicated regulatory regime makes it difficult for Canadians to comprehend how to proceed when they have a complaint. How can the recognized regulator not have responsibility and delegate complaints handling to the self regulatory organizations?

It is also difficult for Canadians to understand why the regulator (SRO), when they determine that rules have been breached and at times fraud is evident, is unable to order restitution and the investor must either accept an industry sponsored dispute resolution or seek justice through civil litigation. How can regulators claim to provide investor protection? What good is the protection if there is no restitution after investors lose their money to industry wrongdoing?



Investors with a complaint have several options available but only civil litigation is not either industry or industry sponsored. Aggrieved investors tend to first contact the OSC and receive the advice to try to settle with the firm or to make a complaint to the IDA.

It is no secret in the industry that the investor is not protected. The regulators have failed the small investor.

The small investor's experience with dispute resolution is generally negative. His initial attempts to resolve the dispute are rejected. As he proceeds further he realizes he is not dealing with a level playing field. The industry-sponsored regulators are reluctant to act against the industry participants and fail to take appropriate action even in the face of overwhelming evidence of wrongdoing including fraud.

"I wrote to the OSC who forwarded my complaint and evidence on to the compliance department of the brokerage firm. That was 1999. It is now 2004, and five years have passed. With legal fees and loss of interest, apart from what the monies invested would be worth today had they been suitably invested, my total losses amount to \$325,000.00. ... It appears that they are unwilling to investigate the behaviour of the broker or supervisor. In the meantime the broker has been disciplined - for the second time; and the IDA is investigating at least two other brokers, in the same branch. It appears that I am not 'being heard'."

Investors can try to resolve their dispute directly with the firm that created the issue. Sometime this can result in a settlement for pennies on the dollar with an accompanying gag order to ensure the victim will not speak out and this whole ugly side of the securities industry will remain covered up. However, often the small investor is given the runaround, or the response may be inconsiderate and callous.

"I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done."

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"They told me to get lost and get a lawyer. And then made the crack that they doubted that any of the law firms would take them on because the law firms depended on them for business."

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"I attempted to solve this problem by meeting with the firm. To say I was laughed out of the office would not be an over exaggeration."

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"Out of weeks of despair, work, stress, and worry and concerned that his (I.A.) latest promise was not kept in an attempt to discourage us, I telephoned you on April 16 to bring this matter to your attention. Needless to say I was astounded by your abrupt, bullying and belligerent tone"

Investors who make a complaint to the IDA fare little better. The IDA may investigate to determine if rules have been breached but will not get the investor's money back.

SIPA has received documentation from a senior who suffered significant loss when the broker purchased equities for his account. The average knowledgeable investor would have considered many of these equities to be inappropriate for a senior and the asset mix to also be inappropriate. A senior officer in the brokerage firm wrote a letter stating that each of the equities purchased for the senior was appropriate even though a significant loss was incurred. The letter exonerated the registered representative

The subsequent IDA investigation that took over a year admitted in writing to the senior that some rules had been breached. The IDA assured the senior that action was being taken and that a "letter of reprimand" was being issued. The brokerage was a major bank owned brokerage. This action was meant to satisfy the senior but letters of reprimand are not made public. Not only was the senior's problem not resolved but also there was no deterrent to repetitive rule-breaching activity.

A private interview with an IDA inspector provided some insight into regulatory problems. This investigator had several years of police investigation experience and took the Canadian Securities course in preparation for a change in career to carry out investigations in the investment industry

Having completed an investigation he returned to the IDA and prepared a written report outlining his findings in detail. He was surprised when his manager told him he would have to rewrite his report. He

questioned why there was a need to re-write his report when he was only reporting fact as a good investigator is taught to do. He was told that it was unacceptable to submit a report like this about that particular firm.

The investigator found that he was not alone. Other investigators had the same experience and faced a choice of making compromises or seeking employment elsewhere. This investigator left his employment with the IDA and sought employment elsewhere.

Another option is the IDA arbitration program available to clients of IDA members. The IDA has engaged an arbitrator to hear these cases and plaintiffs can argue their own case or bring a lawyer. The IDA claims the advantage of their process over court is that it is quicker and costs much less. On the negative side arbitration does not provide justice, it provides an arbitrary decision based upon the presentation for each party. It operates in similar fashion to civil court but the decision is final and binding. There is no chance for appeal if the plaintiff questions the arbitrator's decision.

There are also Ombudsmen employed by the banks and this may be useful for minor banking problems but we have no feedback to suggest this process would be worthwhile for investors. However, it is a prerequisite to "run the gauntlet" if an aggrieved investor wants to have the Ombudsman for Banking Services and Investments (OBSI) review his claim.

The Ombudsman for Banking Services and Investments will review claims but only after the victims have exhausted other industry avenues for dispute resolution. One of the problems that arose with the recently reduced limitation periods in most provinces is that aggrieved investors routinely take two years or more to learn the ropes and to "run the gauntlet" of first contacting the regulators and then approaching the firm, the compliance officer and management to attempt resolution. If it is a bank owned institution they can also approach the bank Ombudsman.

Often the first step is to file a complaint with the regulator but it takes time for victims to learn that there is wrongdoing because Canadians trust the industry and it comes as a shock that maybe that trust was misplaced. It then takes time for the victim, who depended upon their advisor, to get up to speed and fathom exactly what happened and put together documentation necessary to pursue a claim. By the time they find out from the regulator that the regulator will not get their money back they are well down the two year road of the limitation period. Then the approach to industry takes time because of delayed response and timing issues. As a result it can take more than two years to get to OBSI. With a two year limitation period the victim may lose their right to civil litigation.

Although OBSI claims to "stop the clock" of the limitation period it is only stopped when they open their file. Since "running the gauntlet" is a prerequisite, if victims pursue the OBSI route they may well lose their right for civil litigation.

As a result of the quagmire of industry complaints handling and OBSI's prerequisite to proceed through the quagmire, SIPA recommends that victims immediately seek counsel from a securities litigator. In 2007 SIPA recruited eight securities litigation lawyers, who act on behalf of small investors, to provide an initial pro bono consultation to assist victims to determine their best course of action.

The feedback we receive from those who have followed the OBSI process suggests that it is industry tainted and the best that can be expected is pennies on the dollar. The sole advantage is that it is one way for victims to put the issue behind them with minimum cost.

One of our members who used the process wrote:

"The Ombudsman's Office seems to have sided with the I.A. on all matters Regarding all the forged initials on my Application/Agreement, they say the I.A. said I signed them. Although I know the Assistant Ombudsman really knows they are not my initials, he is still saying, "Prove it!"

Several years ago when Mike Lauber was the Ombudsman, one of our members whose wife had terminal cancer wanted a quick solution and opted to go the OBSI route. We worked with him to help him along the way and eventually he called on Monday to say that he had spoken with Mike Lauber and Mike had promised to call him with a recommendation by Friday the same week. On Friday he called and said he had just spoken with Mike and Mike told him he couldn't give him the recommendation on Friday because he had been unable to reach Investors Group. It seemed abundantly clear why Lauber was able to claim that 100% of his recommendations were accepted by the industry.

The OBSI process appears to be industry tainted. The industry tries to deny any fiduciary responsibility unless they have discretionary authority, and deny having discretionary authority if there is no documentation to prove it. Common practice is to carry on discretionary trades without proper documentation, and later deny responsibility. OBSI also claims that investors are responsible for mitigating loss from the time they become aware there is a problem with total disregard to the fact that when investors rely upon their advisor for the management of their investments they have no idea how to mitigate the loss or that they have a responsibility to do so.

The OBSI annual report for 2003 includes a case study of an investor's complaint where OBSI finds the investor should have taken action to mitigate the losses when they became aware of the problem. OBSI rightfully found the broker at fault but, we believe wrongly, limited the amount of the reimbursement for losses up to the date the investor became aware of the losses while the account was still open with the brokerage:

"OBSI concluded that the clients' investments were not in keeping with their investment objectives and risk tolerances. The firm did not have evidence to show that their objectives or risk tolerances had changed. However, from March 2001 the advisor had given the clients numerous opportunities to reduce the risk in their portfolios. Since the clients were aware of the risks associated with their investments after March 2001, they had a responsibility to mitigate their losses but chose not to make changes."

With regard to client responsibility to mitigate losses, the Supreme Court issued a judgment in the Laflamme case that suggests the firm has a responsibility that cannot be laid off on the investor. The Supreme Court judgment reads in part:

"The trial judge noted the state of mind and the knowledge of the Laflamme family, who held onto securities in reliance on assurances given by the respondent Roy, whom they trusted. The losses caused by the bad advice and grossly negligent management by Roy cannot be laid at their doorstep. It is reasonable to assume that an average investor faced with similar circumstances would have been indecisive and hesitant when faced with the various options:

selling the securities and taking the loss, holding onto them and hoping that they would go back up in value, or transferring the account to another manager. Nor was any evidence tendered to suggest that, on the information available to them at the time, any of these options would have been beneficial. For all these reasons, the Laflamme family cannot be faulted for failing to take further measures in the hope of minimizing the losses. Those losses were sustained as a result of mismanagement by the respondents, which, as the trial judge found, continued until the account was closed."

The best available solution is civil litigation. However, there are very few complaints that actually reach court and result in decisions that are made public. This helps to reinforce the public perception that the industry is well regulated and deserves public trust. The public is not aware of the numerous actions that are proceeding on a regular basis.

However, civil litigation is not really an acceptable remedy for investment dispute resolution for small investors. Seniors do not have the resources required in physical and mental stamina, financial capacity, or time to pursue a legal battle that can take ten years to achieve justice. This is why most cases are settled out of court at substantial discounts from what would seem to be just.

The civil courts appear to be the only means to achieve a just resolution, but even the civil courts appear unable to provide. The legal process is long and costly and there is no recognition of the detrimental impact on the victim's life except in the province of Québec as illustrated by the 2006 Markarian v. CIBC decision when the court also awarded moral and punitive damages.

There are reasons so few cases reach court. The industry employs delaying tactics to run up the costs and frustrate the small investor. They defend "vigorously" cases that morally and ethically seem indefensible. They introduce motions that seem meaningless except to increase the costs and delay the process. The Plaintiff sees that action will take many years and incur large legal bills to achieve a court decision. Often a trade-off is made to accept a partial settlement for a quick resolution of the dispute. The result is that the small investor is once again victimized.

There have been several significant decisions in favour of small investors during the last few years. However, the case of Armand Laflamme illustrates how unsuitable this process is for seniors. The Supreme Court issued a 7-0 decision that Prudential should pay Laflamme the total of his losses, some \$2 million. Laflamme started his action at 61 years of age. He was 71 years when he received the decision. He died a few years later. Mr. Laflamme spent 70% of the final years of his life, the best years, fighting a protracted legal battle. These should have been his golden years.

Other judgments highlight the actions of industry participants in creating delay in civil cases. There appears to be a lack of case management to speed up the process. There is no oversight by the regulators to determine whether or not civil litigation is a viable option for dispute resolution. The regulators freely recommend this option without consideration that for many it is just not possible.

An article by Derek DeCloet in the Financial Post March 12, 2002, entitled "Judge slams TD Evergreen compliance" quotes Justice Peter Hambly of the Ontario Superior Court of Justice. "Justice Hambly found Mr. Hunt's story more credible than Mr. Schram's (their broker) and awarded a judgment of \$59,319, their estimated loss. DeCloet writes that the judge saved his harshest words for more senior officials at TD Evergreen and quotes Justice Hambly as writing:

"Their investigation of the complaints of Melville Hunt and Marion Hunt that Mark Schram sold their BCE stock without authority was a sham," ... "The letters of Robert Strickland and Jacqueline Hatherly are patronizing, demeaning and insulting," wrote Justice Hambly. "In a word, the conduct of compliance is disgusting. In dealing with the complaints, Toronto-Dominion Evergreen did not comply with their fiduciary duty to the Hunts."

Note: Justice Hambly found in favour of the Plaintiff.

Another case that also provides observations on industry behaviour is Justice Morneau's judgment on the Lizotte v. RBC Dominion Securities case in November 11, 1999 reads in part:

"Although certain commitments were made in 1994, ... , some of the documents had still not been sent at the time of the trial. The defendant claimed at the time that they did not exist. Their sudden appearance during the hearing and the fact that they were available to witnesses for the defence in the meantime point not only to the defendant's reluctance to submit to the judicial process, but to its resistance to doing so. ... This behaviour is shocking and inexcusable. The Court sees here a deliberate effort on the part of RBC to wear down, not to say exhaust the plaintiff in order to evade its responsibilities. ... The defendant's attitude throughout the case, including its tardy tender, justifies the plaintiff's fears. Despite its initial reticence to consider the possibility of complying with this request, the Court believes that the circumstances justify ordering provisional execution of part of this judgment, notwithstanding appeal. The Court is convinced, in fact, that otherwise the plaintiff will sustain serious and irreparable injury through the repetition by his powerful adversary of the manoeuvres proven in the first instance."

Note: Justice Morneau found in favour of the Plaintiff.

The Wise Persons Committee reported there is a need and an opportunity to make significant improvements to our current regulatory structure to correct its flaws:

"Enforcement must be significantly improved. Insufficient resources are directed towards enforcement. Wrongdoers too frequently go unpunished, and adjudication is unduly delayed. Coordination difficulties impede investigations and can lead to multiple proceedings that are inefficient and unfair. There are disparate priorities and a lack of uniform investor protection. All of this undermines confidence in Canada's capital markets."

The unfortunate aspect of complaints handling is that investors are not only victimized by financial loss, but the victims are often treated with indifference or callousness by the industry when they attempt to resolve the dispute. Dr. Pamela Reeve addressed this issue in her submission to the Ontario Securities Commission regarding the Fair Dealing Model on August 9, 2004.

Dr. Reeve provides an analysis of client relationships with the investment industry when complaints are pursued, and suggests that these relationships are impaired relative to the factors that constitute fair dealing, because of inherent conflicts of interest. In her analysis Dr. Reeve concludes:

“There are strong reasons for the Ontario Securities Commission to consider stricter standards of business conduct for firms that provide these (investment) services.”

A copy is available at: [http://www.sipa.to/library/Documents/OSC-FDM-Reeve\\_040809.pdf](http://www.sipa.to/library/Documents/OSC-FDM-Reeve_040809.pdf)

In 2002, an 80-year old widow became concerned about her investments, and complained that she didn't authorize the trades and didn't understand the investments. Ultimately, the bank owned brokerage decided to settle the matter by paying her \$250,000. She signed a settlement in release form, but the firm did not. In March 2003, the firm then sued her broker for breach of his employment contract and initial claim of damages for \$250,000. In February 2004, they added the widow as a defendant, claiming that her broker refuted her testimony. This seems a rather callous treatment of an 80-year-old widow.

There is overwhelming evidence that there is a culture of non-compliance with rules and regulations as well as a deviation from normal levels of morality and ethics. It is time that we focus on what is right and what is wrong and establish an authority to ensure that those who suffer from wrongdoing are treated fairly and made whole again.

There is a need for a special court to deal with white-collar crime with a judiciary educated and trained to deal with these types of issues. The education and training of specialized judiciary should include not only the applicable laws and regulations, but also the impact on victims of financial crime.

It is time that white-collar crime is recognized as a serious issue and that its impact on people's lives can be sufficiently devastating as to be life threatening. Perpetrators should be prosecuted for their wrongdoing and made to disgorge profits and to pay restitution, punitive damages and fines that discourage repeat offences. Management should be held accountable and made to pay the price.

Government must revise the regulatory system so there is a satisfactory means for small investors to have their complaints addressed by a non industry agency in order to have a fair chance of achieving justice and gaining restitution.

## 6. Impact on Victims

“Suicide seemed to be my only solution.”

The magnitude of investor losses in financial terms probably amounts in excess of 20 billion dollars per year, the impact upon small investors is far greater in other terms. The negative effect is more than just a loss of money.



Those who have never experienced significant loss of life savings have difficulty to understand the impact on victim's lives. The realization that the accumulated assets of your life's work have been blown away by someone in whom you placed your trust is extremely distressing. The victim realizes that he does not have another chance when his working career is at or near the end.

“This loss was very distressing for me. I am in my 64th year and with little chance of recovering any major losses. The effect has been considerable stress, loss of sleep and strains on family relationships.”

Many victims of major financial loss suffer from Post Traumatic Stress Disorder. When the loss of a small investor's savings is caused by fraud or wrongdoing of those in whom trust had been placed, a lawyer once compared the impact similar to that on a victim of incest. The victim has placed their complete trust in others and that trust has been violated. The victim has trouble believing that the perpetrator has done wrong and therefore feels guilt for having “allowed” the transgression to happen. The victim feels somehow at fault and is often embarrassed to admit that the event has happened.

“Unfortunately, people are very reluctant to admit they have been taken, myself included, and most also do not want to make public their private lives and financial situations.”

Most victims are encouraged to believe that they somehow have contributed to the event and therefore nothing can be done. Many victims go through life carrying this burden. Sometimes it becomes overwhelming. In our ten years of existence we have heard from many victims of investment industry fraud and wrongdoing. There are some tragic stories that are never told. We have been privy to these comments but our policy is not to reveal names of members. However the Expert Panel needs to hear these voices to understand the importance of action to provide investor protection for Canadians and put in place a Financial Services Regulator that can act not only to provide investor protection but to provide restitution for financial loss and help to the victims who have suffered beyond imagination

While we have included a few comments throughout this submission we believe the following comments can best convey the impact on victims of financial crime.

“I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to ...(unintelligible) ... and it

is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today.”

\*\*\*

“You frequently recall dark days in your life, we know and we have been there. I know the private Hell of trying to sleep, (my wife) and I have both been suicidal, everyone will try to distract you with irrelevant issues in little hurtful but personally invasive comments shattering your confidence in your task, you will in your mind retrace everything you ever said or wrote, you will find yourself hurt, angry and down to the point you cannot think clearly and you will recall it as quite oppressive and next to Hell.” - (now deceased)

\*\*\*

“The pressure and the losses and uncertainty of the future were too much for us at the time. ... The irrational and probably illegal handling of my portfolio has cost myself and my wife great damage financially and psychologically. ... My wife and I have been through a terrible three years and have serious doubts about our future now.”

\*\*\*

(Broker) said he had 200 seniors in his file one as old as 99. I cannot help but wonder if any were as unfortunate as myself.”

\*\*\*

“I would willingly let other people know so they don’t fall victim to these ruthless predators.”

\*\*\*

“The current financial and legal systems left us battered and bruised.”

\*\*\*

“We have not decided on any action, it is quite a decision as to whether or not to get involved in a lawsuit, or even mediation. The more we find out about the intricacies and dirty dealings, the less we want to become more entangled.”

\*\*\*

“I probably don’t have any legal right to pursue him but it would be nice if others were warned.”

\*\*\*

"I became aware of a problem late in 2000 and moved my RSP. I didn't know where to move the investment account, they lost \$180,000. This is my retirement. I am now 60 yrs old. I was a financial ignorant. I can't take any more lawyers or their costs. I am so exhausted."

\*\*\*

"I'm frustrated at not knowing where to turn."

\*\*\*

"It appears the majority of the victims are well over 70 years old and one may be in his 90's!"

\*\*\*

"It (the financial loss) has caused much stress because of the way it has forced us to live both from the enjoyment of retirement plus ability to pay our bills. There is the constant mistrust of people with whom we deal, most of whom are probably honest and hard working but ... I have always been cynical of government but my cynicism is now much more widespread and deep. We have developed a healthy total disrespect for lawyers and our legal/judicial system. I consider them leeches on society."

\*\*\*

"It is small people like me who work and save and then are led to trust and believe that these pros will work to invest our savings for our best interests, not theirs. My wife and I have been through a terrible three years and have serious doubts about our future now."

It is time to recognize the victim impact of small investor losses due to industry fraud and wrongdoing and take action to deal with these issues in a meaningful way. Victims lose substantially more than money when their trust is betrayed. The courts should recognize moral and punitive damages as an integral part of court awarded restitution.

But more than that, our Government needs to take action to stem the flow of victims of investment industry wrongdoing. Whether Canada opts for a national securities regulator or retains the system of provincial regulators, unless there is a paradigm shift to a regulatory system that provides a priority for protecting investors and providing restitution for victims of financial services fraud and wrongdoing Canadians and particularly seniors will continue to lose their savings due to systemic practices that seriously erode savings.

## 7. Because They Can

While there are many valid reasons why Canada should have a national regulator our primary concern is investor protection. The current patchwork of regulators makes it difficult for investors to understand who is responsible for protecting investors and often receive the runaround when they realize they have an issue that needs to be addressed.

While many investors understand that securities regulation is a provincial jurisdiction they also believe the securities commissions are responsible for investor protection.

Eventually they discover that investor protection has been delegated to the Self Regulatory Organizations, for the members of those organizations, and this applies to the majority of small investors who invest in mutual funds or other investment products.



The victims of white collar crime are frustrated when they find that the SROs who are supposedly responsible for investor protection will only investigate to determine whether rules have been breached. In many cases products and strategies are ahead of the regulatory curve and have been designed to circumvent the rules and regulations. This is one of the reasons that Canada should move to principles based regulation rather than prescriptive rules. It may be one of the reasons that the investment industry prefers prescriptive rules although they will express other reasons

In Quebec the consolidation of regulators into the Autorité des marchés financier (AMF) provides one source for investors and eliminates the confusion that exists in other provinces. The AMF also provides a complaints resolution process and restitution for aggrieved investors. Although we have not examined the AMF in detail due to a lack of funding and resources, in our opinion Quebec has taken the right approach to develop one financial services regulator that regulates banks, insurance companies, mutual fund companies and securities dealers and provides a single point of contact for investors that will address their concerns and provide a means of restitution.

In our opinion, the Quebec model for regulation would serve Canada much better than the fractured system that exists not only in Canada but also in each of the provinces and territories. For example most investors do not see much difference between mutual funds and segregated funds yet there are different regulators for each. Investors with diversified investors may find they must deal with several regulators and in some cases have been given the runaround and gone full circle as various bodies deny responsibility.

The Toronto Star editorial on May 29, 2008 comments on Minister Flaherty's meeting with the provincial Ministers of Finance which succinctly summarizes the issue of the need to reform Canada's financial regulatory system:

*"And they could stop resisting Flaherty's repeated appeals to replace Canada's existing patchwork of provincial securities regulators with a single national regulator."*

Flaherty certainly deserves praise for the tenacity with which he has tried to make headway on this important issue. But his proposal for a national regulator should be a no-brainer.

That's because the ultimate purpose of securities regulation is to protect investors. Can anyone really make the case that all Canadian investors should not have the same level of protection, regardless of where they choose to invest? Only a national regulator can make that guarantee.

By the same token, foreign investors considering Canada surely expect the same degree of protection they get at home – an assurance that can't now be given by the only major country in the world that does not have a national securities regulator.

And to meet the requirements of 13 jurisdictions, publicly traded companies in Canada now must incur excessive and unwarranted costs. Flaherty estimates that cost to be at least \$59 million a year."

Anecdotal evidence indicates that many seniors have lost over several hundred thousand dollars and yet they are reluctant to get involved with a lengthy dispute or civil litigation. Still others are reluctant to admit that they have suffered loss, as they do not want family and friends to know. The reluctance of many victims to speak out coupled with the enforced silence of those who would, enable the industry to cover up the ugly side of the industry that results in destruction of savings.

Industry participants are well aware of the financial predation that exists in the industry. A retired lady broker wrote to SIPA saying:

"I watched brokers trade with abandon on accounts and the women had absolutely no idea what was happening. I watched one single retiree account go from \$175,000 to \$15,000. Her concept of money still left her with the impression that there were lots of funds. This view was promoted by the broker. We are not talking fly by night companies. I am talking (Big Bank Brokerage) brokers that I worked with. Yes, the managers knew what was happening."

Canadians are not aware of the extent of wrongdoing as this is covered up by industry in many ways. It is not only lack of disclosure and deceit of investors but it is also the fact that the industry is allowed to force victims to sign gag orders and force their silence. A National Register of all Complaints and Settlements would soon provide quantification of this cancer that is eating the savings of our seniors. A former registered representative had this to say:

"Conditions will improve when investment firms are told by legislators that gag orders, codes of silence, written or unwritten sanctions against people who speak out in the public interest are forbidden. With investment scandals, corruption and evidence of a corporate "psychopathic" behavior among certain members of the industry, it is time we attempted to eliminate the dark corners that these things hide in."

The full text of this representative's comments is included in the Appendix under "Code of Silence".

However, some Canadians are learning but it is an expensive lesson. They are learning that the financial services industry can not be trusted. They are beginning to speak out. It would not be surprising to see a groundswell of public opinion. There is ever more evidence becoming available as the internet is

empowering the public. There is no doubt that it was Brian Hunt's entry on Facebook that helped small investors get together and affect the attempt to rescue the industry from the ABCP debacle.

On April 24<sup>th</sup>, 2006, a small investor wrote to the Ontario Standing Committee on Justice Policy. Fred Scholl is just one example of Canadians who are fed up with what is going on and who is speaking out. Many are also writing their Members of Parliament to express their dissatisfaction with how Canadians are having their savings compromised by the financial services industry in which they have placed their trust. His e-mail to the Standing Committee is included in the Appendix and he says:

*"The Corporate Culture has changed in the Canadian financial industry. It appears to be all about maximizing revenue, large legal staff in order to 'squash' complaints, limiting/containing possible liability, lobbying Government in order to promote self interest. In my opinion, no longer a business model based on honesty/integrity."*

The lack of appropriate legislation and the failure of regulators to provide adequate enforcement and investor protection enable a corrupt financial services industry to engage in systemic industry practices of fraud and wrongdoing that fleece investors to enhance industry profits and executive remuneration.

The question inevitably arises "Why does the industry behave in such a fashion?"

Sadly the answer is "Because they can."

## 8. Recommendations

Recognizing the mandate of the Expert Panel is to recommend reform to securities regulation we are submitting our recommendations with regard to improving investor protection which we believe the current system is failing to provide. Lip service is paid to the need for investor protection but the regulators believe they are providing preventative investor protection rather than remedial investor protection. The result is investors' savings are being stolen by industry fraud and wrongdoing at a rate exceeding \$20 billion per year.

Although we fully support a national securities regulator we believe it should be a national financial services regulator similar to the Québec model. We also believe that it is unlikely to come to fruition in the near future. There is considerable effort towards harmonization and uniform securities laws as securities regulation remains a provincial jurisdiction. With the advance made in Québec with the formation of the Autorité des marchés financiers and the forward looking decisions of the Québec courts it will likely take years for the rest of Canada to reach the enlightened position of Québec with regard to investor protection and restitution of the victims of industry wrongdoing. Nevertheless we believe that Canada could make progress towards a national regulator by encouraging Uniform Securities Laws and harmonization amongst the provinces and territories and recognizing and reinforcing some of the good initiatives of the regulators and self regulatory organizations.



Two examples of such initiatives which we believe should be inherent in a national approach to regulation are:

1. The IDA's ComSet database. This database was initiated to record all complaints received by members of the IDA and settlements made with aggrieved investors. Recently the IDA has taken some disciplinary action against registered representatives reported by the firms. This is a system that should be adopted by a national regulator and expanded to apply to all firms selling investment products.
2. The BCSC initiated an alphabetical list of individuals and firms disciplined by the BCSC shortly after SIPA had introduced a "Hall of Shame" on our website that listed alphabetically registered representatives and firms that had been disciplined by the regulators or reported in the media. We believe the BCSC is the only CSA to provide such an alphabetical list. Other regulators offer to provide information on disciplines but it is not available as an alphabetical list, and search mechanisms are not always user friendly. As an example, if you do not have the exact spelling of the registered name a search will not produce results.

The Expert panel should carefully review the Autorité des marchés financiers and consider how the Québec model for regulation could be applied on a national basis.

We believe that investor protection must be paramount in any regulatory system. Ralph Goodale, former Minister of Finance, wrote to SIPA on May 31, 2004;

“I share your view about the importance of investor protection. Indeed, one of the fundamental objectives of securities regulation is to protect investors from unfair practices. It is imperative that any reforms to our current system of securities regulation measure up to this objective.”

Having witnessed events for the last ten years, read many report from experts and various recommendations, and interviewed hundreds of small investors we recommend the following:

1. A National Regulator for Financial Services (NRFS) similar to Québec's Autorité des marchés financiers. The website of the Autorité states: The Autorité des marchés financiers administers different laws and regulations applicable to Québec's entire financial sector. For each of four sectors of activity, the laws, regulations, guidelines, and all other legal texts concerning the organizations merged into the Autorité. The Securities Sector, the Distribution of Financial Products and Services Sector, the Financial Institutions Sector, and the Compensation Sector are all incorporated in the Autorité des marchés financiers. The NRFS should work with an enforcement agency such as the RCMP/police or Attorney General depending upon revised securities legislation.
2. A National Investor Protection Authority (IPA) with a mandate for investor protection in all financial sectors. The IPA would be independent from the industry regulators and empowered to investigate or order investigations by police or regulators. The IPA would be established by statute and funded by Government. It could report to the Auditor General. The IPA would incorporate a special tribunal to hear investment complaints from small investors and pronounce judgment in timely fashion. When industry is found to have committed fraud or wrongdoing, the IPA would also be empowered to order restitution to the victims from an Investor Protection Fund. The IPA would also have Financial Services Victims Assistance Unit that will be staffed by specialists that can assist victims to deal with their situation and provide guidance on how to proceed. There are cases where victims need counseling and there should be provision for gaining exemption from limitation periods for those who proceed to civil litigation.
3. A Financial Services Investor Protection Fund (FSIPF) that would respond to the IPA. The Government would provide initial funding to be recovered from the industry and/or regulators. This fund would be available to make payments to victims of financial wrongdoing including fraudulent acts, deceptive practices, or embezzlement, and would be paid out upon instruction from the IPA. These funds would be recovered from industry and supplemented with punitive fines against firms who commit wrongdoing or employ representatives that do. The firms would be responsible for repayment for any wrongdoing by the firm or their representatives. In the event of bankruptcy of the firm the industry would be responsible through insurance or the regulators to compensate the FSIPF. The Government would provide initial funding to be recovered from the industry and/or regulators.
4. A Financial Services National Registration Database (FSNRD) to record all firms and registrants selling financial products. It would also record all Complaints and Settlements in the Financial Sector similar to the ComSet database established by the IDA but would be accessible to the public to enable investors to determine if

a registered representative is disciplined. This database would also provide an alphabetical list of disciplined representatives and firms similar to that provided by the British Columbia Securities Commission.

5. National Financial Services Legislation that will govern the financial services industry. It should be written to accommodate the new reality and be forward looking to cope with new developments. It should ensure that protection is provided for TruthTellers to enable witnesses to come forward without fear of persecution . It should make provision for enforcement of rules and regulations and establish financial penalties for financial wrongdoing such as disgorgement of profits, payment of losses plus interest plus expenses plus moral and punitive damages. It should prohibit gag orders in settlements and other forms of cover-up to enable the truth to be exposed, and call for principles based regulation.
6. A Special Court for Financial Crime with a judiciary schooled and experienced in securities litigation and white collar crime to hear cases involving financial crime that are not suitable for resolution by the IPA tribunal. This could include major fraud, systemic wrongdoing practices, large institutional investors or pension funds, or complex cases requiring court resolution.

During the transformation period Government should establish an special implementation office that would initially research the issues raised so that the shortcomings of the present regulatory system can be rectified to ensure the new financial services regulator is structured to be able to monitor financial services activities and root out corruption and unsavory practices that are decimating seniors savings and eroding their retirement security.

## APPENDIX

- Excerpt Markarian v. CIBC – 2006 Decision
- Canadian financial industry no longer a model based on honesty and integrity
- An Open Letter to Canadians
- Code of Silence
- Small Investor Voices

## Markarian v. CIBC – 2006 Decision

The following excerpt from the English translation of the decision includes comments on CIBC behaviour that is indicative of industry behaviour generally.

[620] Tom Monahan was never able to indicate in his testimony why he doubted all the testimony and statements of Migirdic and the clients, if only to say that the fraud continued for too long to be believable and that too many documents were signed for the guarantees not to be good. He added that the Armenian clients all belonged to the same community as Migirdic.

[621] Monahan acknowledged that Migirdic's fraud justified his dismissal. He acknowledged that it did not, however, prevent ... the guarantees from being executed.

[622] Monahan testified that, at the time the guarantees were executed, he was not 100% convinced that his decision was well founded. But he felt he had documents

[TRANSLATION] "with a legal basis". His view was that the written documents CIBC had were [TRANSLATION] "that is, the "guarantees", and audit and confirmation letters) and that he was justified in relying on them rather than on the various testimonies. From his comments, we can see, on the one hand, the expression " He even repeated that and stressed the word [TRANSLATION] "sold" of a voluntary blindness and considerable bad faith, and on the other, that all that CIBC wanted was a "legal basis" for acting, regardless of its value.

[623] Monahan acknowledged that he was well aware the Bank could have applied to the Court before acting in order to find out its rights in regard to the plaintiffs' assets in its custody. But it deliberately decided not to do so.

[624] CIBC's bad faith and obstinacy continued

[625] Its obstinacy and bad faith continued despite the settlement with Rita Luthi, the repeated confessions of Migirdic in his examinations on discovery and the IDA'S decision in 2004.

[626] Indeed, CIBC did not change its tune when the IDA tribunal concluded that Migirdic had defrauded the clients, including the Markarians, and decided to bar him for life from working as a securities representative, in addition to ordering him to pay a fine of over \$300 000, and underlining the criminal nature of his actions.

[627] Monahan testified that the IDA'S decision did not change his mind, although he acknowledged that he had no reason to doubt what the IDA investigations revealed, their observations or their conclusions.

[628] Tom Monahan still concludes the following:

A I still think those guarantees, today, were again duly acknowledged, duly signed

...

Q. Do you still maintain, Mr. Monahan, that you were right in taking one and a half million dollars in Markarian's account in 20017

A. yes

[629] Let me point out that, in this case, CIBC was sent a formal notice by the plaintiffs' attorneys not to act as it did. It was formally advised by the attorneys that the documents were false, It nevertheless deliberately decided to disregard the notice.

[630] CIBC even took money from one account to cover a debt that the account did not guarantee. That matter has since been settled but it illustrates the Bank's scandalous conduct.

[631] Although it could not fail to realize that the "guarantees" were fraudulent and worthless, CIBC nevertheless availed itself of them. In the circumstances, it must be concluded that, CIBC was voluntarily blind and showed bad faith in seizing the Markarians' assets and subsequently maintaining its position, while acknowledging it was aware of the inevitable consequences of its actions.

[632] CIBC retreated behind a "logic" that led to the trial; it refused to see the invalidity of P-6 and P-7 and to conclude that its employee had committed fraud. CIBC persisted in that "logic" well beyond what reasonable diligence or prudence dictated. It made a deliberate decision to wear blinders and never show the least bit of good faith.

[633] By acting as it did, the defendant truly violated the Markarians' right to the peaceful enjoyment and free disposition of their property. And they did so unlawfully and intentionally.

[634] CIBC must have, in fact, been aware that there was no basis for acting as it did. It was perfectly aware of the situation, It had no real reason for refusing to accept the facts, It had no reason for ignoring what Migirdic and its own clients were telling it. It had no reason to ignore even what its own employees observed and told it.

[635] CIBC acted with full knowledge "of the immediate and natural or at least extremely probable consequences that [its] conduct [would] cause", to use the Supreme Court's words, In fact, there is reason to wonder whether it acted in "a state of mind that implies a desire or intent to cause the consequences of [its] wrongful conduct".

[636] CIBC's conduct as a whole demonstrates that it either intended to whittle down the plaintiffs' resolve and bring about a settlement for less than they were entitled to, or to ensure the plaintiffs paid dearly and laboured to exhaustion to obtain their due (perhaps because of the bad faith Monahan attributed to them), or both. Nothing else can explain why CIBC acted as it did in the circumstances.

[637] It must be concluded that CIBC used its dominant position and its custody of sizable assets belonging to the plaintiffs for a "power grab" at their expense, in order to seize their assets, sell them and pay itself.

[638] CIBC thus became the accomplice in Migirdic's fraud and did everything in its power to benefit from it directly.

[639] CIBC could have applied to the courts before seizing the plaintiffs' assets, if it so firmly believed it was right. it responded that it was not obliged to do so and had the right to act as it did, according to the very terms of P-6 and P-7. But those documents were null and worthless, and CIBC knew that. Everyone told it so! In the circumstances, its actions were perfectly illegal.

[640] Those who have a right to take the law into their own hands under contractual agreements with clients have a weapon of formidable power. Consequent prudence is required in using that weapon. Here, the Bank totally failed to fulfil its obligations of prudence and diligence in using its power to seize the plaintiffs' assets of which it had custody and in taking the law into its own hands. The Bank's duty to use that power in good faith is an obligation distinct from its other duties. It cruelly failed to fulfil it here.

[641] In a case where the very validity of the documents it intended to use as a basis for seizing the assets and taking the law into its own hands was contested, where it was alleged that the documents were false, where the allegations seemed serious (to say the

least) and where its investigations had revealed that the documents no doubt were actually worthless, the Bank should certainly have refrained from exercising the supposed power it was given by the impugned documents and should have applied to the courts to find out its rights.

[642] By acting as it did here, CIBC found itself in a situation not very different from that of the towing companies ordered to pay punitive damages because they used force and carried out a de facto seizure of property in order to obtain immediate payment, without regard for the rights of the owners of the vehicles, even if it meant that the victims would then apply to the courts themselves. That is not the way that life in society and the rules of law work in a free and democratic society governed by the rule of law.

[643] Some of CIBC's conduct also demonstrates a troubling determination on its part to dissimulate. CIBC first hid Migirdic's confessions in order to claim from the Markarians the execution of P-6 and P-7. It even hid from them the extent of the fraud, the number of people involved, the existence of a true system and the fact that Gazarosyan was a ctually Migirdic. It even forbade Migirdic to reveal to the clients anything about his actions. Furthermore, CIBC did everything in its power to conceal from the plaintiffs the settlement it reached with Rita Luthi and to ensure it would remain secret ... whereas it had an impact on the plaintiffs' rights.

[644] CIBC also abusively refused to investigate the Markarians' allegations about the AMCC and Intergold shares. Not the least verification was made by CIBC in that regard. No one at CIBC even called Migirdic to ask him whether the transactions had been authorized, how the shares found their way into the Markarians' accounts and so on! The plaintiffs had to fight fiercely to obtain the relevant documents from the Bank, which objected strenuously to providing them, even before the Court. As it was of the opinion that the contestation deadlines had expired, the Bank had no interest in knowing the truth or doing justice to its clients.

[645] To all intents and purposes, CIBC gave no attention or consideration to the Markarians' complaints. Their claims were simply rejected out of hand, whereas, on their very face, they provided serious reasons for investigating. For example, the transactions involving the Intergold and AMCC shares were obviously speculative and not suitable for the Markarians, and Migirdic admitted he had parked the shares and acted in an irregular manner many times.

[646] The bad faith of CIBC is also apparent in the way it conducted the proceedings and made them last inordinately, as we will see later on.

## Canadian financial industry no longer honesty and integrity

----- Original Message -----

From: [anne\\_stokes@ontla.ola.org](mailto:anne_stokes@ontla.ola.org)  
To: [fredscholl@sympatico.ca](mailto:fredscholl@sympatico.ca)  
Sent: Monday, April 24, 2006 9:21 AM  
Subject: FW: Bill 14, Access to Justice Act, 2006

Dear Mr. Scholl, Your email was forwarded to me by Lisa Freedman. I am the Clerk for the Standing Committee on Justice Policy.

Thank you for your comments on Bill 14. Your submission will be forwarded to all members of the Standing Committee on Justice Policy for their information and consideration of Bill 14.

Anne Stokes  
Clerk of the Committee  
Standing Committee on Justice Policy  
Room 1405, Whitney Block  
99 Wellesley Street West  
Toronto, Ontario M7A 1A2  
Phone: 416-325-3515  
Fax: 416-325-3505  
email: [anne\\_stokes@ontla.ola.org](mailto:anne_stokes@ontla.ola.org)

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From: Freedman, Lisa  
Sent: Monday, April 24, 2006 9:17 AM  
To: Stokes, Anne  
Subject: FW: Bill 14, Access to Justice Act, 2006

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From: Fred Scholl [<mailto:fredscholl@sympatico.ca>]  
Sent: Monday, April 24, 2006 8:02 AM  
To: Freedman, Lisa  
Subject: Bill 14, Access to Justice Act, 2006

Dear Madam,

Thank you for giving me this opportunity to express my thoughts on the subject of reducing the limitation period to 2 years. Strictly speaking based on my personal experiences with the Canadian investment industry, I have to state that a 2 years limitation period in my case would not have been sufficient. I never pursued matters with two major Canadian financial institutions that to

my mind were totally disinterested in my financial wellbeing, but strictly focused on maximising their revenues to the detriment of my financial wellbeing (my retirement funds, that I had managed to accumulate over 40 years). Statements in their 'sales pitch' were blatantly false and misleading.

My sources of information were the institutions that I was dealing with. I had no knowledge that an OSC or IDA even existed.

The OSC was brought to my attention by the 'investment advisor' of the brokerage arm of the second Canadian bank that I was dealing with. He stated, that I needed to hire a lawyer to address complaints and deal with the OSC. No mention at all of an IDA. It took me more than 2 years to even find out that they existed. Nowadays probably the public is more aware of the IDA due to their lobbying the former minister of finance the day of the announcement on Income Trusts.

The process for an uninformed investor (I at the time) is complex.

To begin with, the second bank sent me prospectuses on the mutual funds I had purchased through them about 1 month after the fact (4 separate envelopes of prospectuses, all received the same date – 1 month after the fact). Only then did I become fully aware of what I had purchased and the fees involved (penalties for early redemption, etc.).

Of course I cannot be sure that this was done on purpose, in order to prevent the lodging of a timely complaint. However it appears strange, that the post office would delay delivery of 4 separate envelopes.

In the end, I decided to write the whole sorry mess off to very bad personal judgment (trusting the Canadian financial industry).

Recently I did read in a financial publication an analysis by a 'financial advisor' (true professional, working based on fees. Not one of those people calling themselves 'financial advisors', but peddling specific mutual funds). She had examined a family's investment structure. I immediately recognized, that the institution that family was dealing with, was the same firm I had been dealing with (same funds, same sales pitch, etc. probably the firm had some special incentive arrangement with those funds). No mention of the name of this fine institution, a cornerstone of Canadian society.

The conclusion of the professional was that their 'investments' were totally wrong for this family's circumstances. The fees were enormous to boot. With authority of her client, she contacted the financial institutions to be informed, that they had no further interest in that account, requesting that the account be closed immediately, refusing to provide further information.

What I did find even more interesting is a brief follow up article in their next publication. They were astonished as to how much correspondence they had received from people stating that the family the article had covered must have been them. Like I, such people immediately had recognized the institution involved (still no mention of the name of the institution), with identical negative results of their 'investments' (except fees of course). I have closed the chapter on this unpleasant episode of my life. While I do blame myself for having been so trusting and blinded by a perception of honesty/integrity of well recognized Canadian financial institutions, I now trust no one. Now I do fully comprehend how this industry operates and how highly protected this industry is by Government. Unfortunately it was the most expensive lesson of my life at a time when I could least afford it (in retirement), no longer having the ability to make up for such losses.

Kind regards,  
Fred

PS – I do not hold any income trusts due to my inability to figure out from their financial statements where the 'distributable cash' comes from.

When I did see one income trust come to market, my reaction was 'you must be kidding me'. I lived in that province for 5 years. This firm constantly was in the local news. Labour disputes (strikes), bankruptcy, Provincial Government subsidies to keep this thing going. Complete closure was considered by Government as a possible option. Eventually sold to a Dutch company by the Province for peanuts, hailed at the time as a major coup, the Province no longer having to pump large sums of taxpayers' money into this to keep it going. THAT company being sold as an income trust to Canadian seniors/retirees 'steady, predictable flow of revenue???' Much must have changed over the past years. Their share price does not appear to support that theory, dropping like a rock. According to my calculations, well over 100 Million already has been wiped out of investment moneys. I know, I know, not the responsibility of regulators. Investors are expected to exercise 'due diligence'. The change in company name might hinder such efforts somewhat. (Or is 'due diligence' the responsibility of the financial institution, who's 'investment advisors' sold this firm to seniors/retirees for the purpose of steady/predictable cash flow? Well, no worry, reducing the period for possible claims to 2 years has tidied up possible liability in that area very nicely for such institutions – thank you.). Likely you do not recognize the firm I am referring to, not being in the news very much and you not having lived in that Province. Hopefully that will be the case in years to come. I sincerely wish my perceptions are wrong, in the interest of those seniors/retirees that have invested hundreds of millions of Dollars into this.

One last, however, important point. I am certain, that there are many honest/competent people employed in the Canadian investment industry. I simply have not found one (nor am I looking). There is no way for me to be reasonably sure that I can find one, as present status of self regulation (read unregulated) permits for honest and dishonest people to equally flourish side by side.

It took me probably 5 years to figure out what my options are in dealing with disputes. To then speak with a lawyer to be represented, I would think that a 10 years limitation period would be more realistic. Keep in mind that the 'investment public' is not a firm, supported by qualified accountants, lawyers to detect wrongdoings. It takes a while to even figure out that wrongdoings did take place. Like I, many investors probably end up blaming themselves, for having put so much trust in the Canadian financial industry. The Corporate Culture has changed in the Canadian financial industry. It appears to be all about maximizing revenue, large legal staff in order to 'squash' complaints, limiting/containing possible liability, lobbying Government in order to promote self interest. In my opinion, no longer a business model based on honesty/integrity. Just takes a while for that fact to sink in.

## An Open Letter to Canadians

While what follows is not intended to besmirch or otherwise impugn the character of anyone, I am angry and provoked. This is because I just read John Reynolds' book *Naked Investor*.

It also brought to mind experiences I had while a branch manager with Fortune Financial (1994-1998), Equion (1998-1999) and Assante Financial Management Ltd. (2000-2002).

Let me begin with my last dealer first.

Assante, as you may know, was the brainchild of Michael Nairne and Martin Weinberg and was hatched back in the mid-1990s. Their plan was to take the original company, Equion, which was a small Winnipeg-based investment firm, and use it as a core around which to build their new company and launch it as a public company in 2000.

Their strategy was to buy out other small financial planning and investment firms and lock them into the new Assante structure. They did so by way of a complicated share swap scheme.

If this conversion venture proved successful, both Nairne and Weinberg stood to pocket millions of dollars as Assante's publicly-traded shares increased in value.

As a new branch manager with Equion I had reservations about this plan. You see, before joining Equion I had been a successful branch manager at Fortune Financial, Richmond Hill. With 22 brokers and financial planners under my direction, my branch office was rated one of the top producing offices in the country. After three years at the helm I was unceremoniously dumped by the principal shareholder and owner of Fortune, David Singh. I angered Mr. Singh because I would not buy any of his company's shares and "support" his enterprise. Neither would I support his new proprietary mutual fund products called Infinity Funds.

When asked by attendees of my public seminars about Fortune's Infinity Funds, I suggested people interested in them purchase the funds on a dollar-cost averaging basis since they were new and unproven. I recommended that people not invest large lump sums in Fortune's proprietary funds at the time.

After moving to Equion in June 1998, I witnessed a similar kind of development. I was offered an opportunity to buy privately-held shares of Equion before the scheduled transformation of the firm into Assante in 2000. I politely declined the offer, preferring to wait and see how Equion's transformation transpired.

Like Fortune before it, Equion, too, had been developing a range of proprietary investment products called Artisan Portfolios and Optima Funds.

In 1999 I attended a company-wide sales meeting in Mississauga, Ontario. At this

meeting Artisan and Optima products were introduced and promoted heavily by Mr. Nairne and included glowing testimonials from senior Equion sales representatives. The presentation for these products was based on two ideas.

First, as “managed” portfolios, both Artisan and Optima products allowed sales people more time to market their franchises and build their businesses rather than continue to worry about the choice and monitoring of third-party mutual funds offered by manufacturers such as Mackenzie, Templeton and Trimark.

Second, Equion executives told the audience that the mutual fund industry was becoming increasingly litigious. Financial advisors who sold mutual funds would be held increasingly liable by their clients for portfolio performance. Artisan Portfolios and, in particular, the Optima Strategy product would act as a bulwark against such developing industry trends.

The assertion was, of course, that diversified portfolios and managed portfolios required little or no mutual fund advisor input. The conclusion was, and the representatives I talked to after the presentation understood, that putting clients’ capital in Artisan and Optima products would better protect Equion’s mutual fund sales people from client wrath and future stock market risk.

I had only one nagging issue. Would Artisan and Optima products live up to the billing?

With the Equion transition complete, Assante was launched and got its systems up and running in 2000. Once accomplished, the company again turned its attention to the promotion of its Artisan and Optima products.

I had already researched Equion’s original Artisan and Optima product -presentation and concluded that as a group Artisan and Optima products were young, below-average performers, and expensive to own when compared to alternative mutual fund products previously available in Canada’s investment marketplace.

Out of two hundred or so clients I serviced as a Chartered Financial Planner, I had only one client who purchased Assante’s Optima Strategy product, a kind of fund-of-funds management format. After two years of watching her capital go nowhere, she left Assante, much to my dismay.

With one or two exceptions, Optima products had not done that well over the years. It hadn’t helped either when an oversight on Mr. Nairne’s part resulted in Optima funds being performance-rated before management fees, which resulted in better investment performance than the funds actually had achieved.

Assante admitted to its sales force that those of its proprietary products that were poor performers were due to a restrictive management style. Assante promised that, in future, a more comprehensive management style would be applied to help mitigate the effects of future securities market risk.

As time passed, many managers and their sales reps, some of whom were top sales

producers and Assante stock holders, sold their clients out of their original third party mutual fund portfolios and poured millions of dollars in proceeds into Assante's Artisan and Optima products.

I, for one, did not participate in this conversion process. My partner and I then attended a branch manager and Assante executive meeting at the Sheraton Toronto North Hotel on Highway 7 at Leslie Street on or about April 22nd 2002. At this meeting we were horrified to hear Mr. Nick Mancini, Executive Vice-President, Assante, tell us that Assante executives and other principal shareholders expected all managers and sales representatives to redeem up to 80% of their clients' money that was not invested in Assante investments and reinvest the proceeds in Assante's Artisan and Optima mutual funds.

Mr. Mancini gave a number of reasons why such a conversion to Assante -owned mutual funds was a great idea. Here are three of them:

1. Such activity would be good for all Assante shareholders. This is because Assante's fee income charged to clients of its Artisan and Optima funds was higher than fee income Assante received from third party fund companies such as Trimark. By raising Assante's cash flow the company's balance sheet would look much better and attract other potential Assante stockholders.
2. Assante shareholders could benefit from an increase in the price of the company's publicly-traded shares.
3. Those Assante managers and sales reps who sold their clients into Assante's own products would benefit not only because of increasing Assante stock prices, but they would retain greater control of their clients' monies through the company's Artisan and Optima products.

I couldn't see any advantage to my clients to convert a portion of their third-party mutual funds and I refused to do so. I couldn't justify moving my clients out of above-average performing and less costly mutual funds to Assante's Artisan and Optima products.

On September 30th 2002 the axe dropped and I was "fired without cause" by Assante. The transfer of my securities licence was cleared with restrictions on January 2003. During this period my clientele and business equity were allocated to another Assante representative.

After 21 years of service I have since left the financial services industry as a product selling advisor.

But, this little story doesn't end here.

You may be wondering why I waited until now to convey this one small experience of Fortune, Equion and Assante.

Over the past few years I have listened to similar accounts from other mutual fund sales people and have watched as similar stories passed in and out of the media, all without consequence or resolution. The final provocation for me occurred with the following:

- Jon Chevreau's brave call for further investigation of apparent breaches of

securities law by an established sales rep and one-time founding member of a national financial planners association called Advocis. See Chevreau at <http://regulators.itgo.com/PI/1166.htm>.

- According to a respected source, Mr. Chevreau's attempts to investigate these issues further have been spiked by his handlers which, as an investigative reporter and journalist, I know often occur when a company or person receives threatening letters, impending lawsuits or "slap suits" as they are otherwise called, or is the object of collusion by parties with similar, vested interests.
- The release of John Reynolds' expose of the self-serving, turtle-like acts of our Canadian securities regulators and their appointed Self-Regulatory Organizations (SRO's) such as the Investment Dealers Association (IDA), the newly minted Mutual Fund Dealers Association (MFDA), and our very own securities Ubermensch, the Ontario Securities Commission (OSC). See Reynolds at [http://www.penguin.ca/nf/Book/BookDisplay/0,,0\\_0143016237,00.html](http://www.penguin.ca/nf/Book/BookDisplay/0,,0_0143016237,00.html).
- I was recently informed that a courageous securities industry "whistleblower" with boxes of incriminating evidence once in his possession, was found dead under as-yet-to-be-determined circumstances on Christmas Eve 2004. His death represents, at the very least, an example of the ultimate consequences of corporate and regulatory sweep-it-under-the-rug-and-hope-it-goes-away business practices that have plagued Canada's financial services industry for decades.

Consumer and industry rights advocate, Joe Killoran, goes so far as to call the unfortunate death of this one-time mutual fund sales assistant a "blatant collective murder" where government regulators, SROs, and corporations should be held accountable.

On the other hand, remember Royal Trustco? How about Bre-X? What about our big banks' involvement in the Enron fiasco? Has Air Canada's humiliating bankruptcy and fall from grace, and the wealth of thousands of stock holders who were dragged down with it, been investigated properly?

Oh yes, let's not forget Nortel, and the recent imbroglio of mutual fund market timing. The list goes on and on.

I am truly amazed.

Canadians should start thinking seriously about what's been happening to their fortunes over the years and why.

Just how long will we continue to tolerate the greed, manipulation and rot that appear to permeate our financial service industry from top to bottom?

How long will we continue to ignore the damage and pain that has been inflicted, and continues to be inflicted, on investors and advisors alike by a financial system that is clearly out of control in its duplicitous, self-dealing drive for profits?



Where is the raft of class-action lawsuits by Canadians who have been suckered by corporate robber barons who hide behind entire law firms, manipulate the media and infect an already twisted, self-serving and conflicting regulatory environment?

And not the least, how will Canada's financial services community and industry regulators compensate a struggling, conscientious young man who wanted to better the financial system by revealing transgressions of the most lurid kind, but got death instead?

Something sure stinks in Canada's financial services industry. Where is Eliot Spitzer?

Stephen Gadsden, B.A., M.A., CFP (1991)  
Aurora, Ontario  
Canada

## CODE OF SILENCE

### No Longer Appropriate Investment Behaviors

Larry Elford, CFP, CIM, FCSI, Associate Portfolio Manager, (retired)

There have always been written or unwritten rules dictating silence within the ranks of the investment industry. Employees experience threats of termination if anything is said that may embarrass the industry or the firm. But here is a quandary. What does an industry member do when they witness client abuse, or code of ethics violations, and reporting to management causes no change? What if they ignore it, or sanction the behavior? What happens when the very people you are required to report to are found to be part of the problem?

Management compensation in the industry is partially determined by sales or revenues. This puts the industry in the position of having to walk the line between, "acting as professionals to benefit the client", or, "acting as salespersons to maximize revenues". It also puts their direct superiors in a similar conflict.

The industry code of silence is one of the largest impediments I have found, preventing progress on becoming truly professional. It grew out of the days when investment dealers called themselves "stockbrokers", and made a living buying and selling shares. While many now feel and act as if they are professional, the code of silence allows a few to remain in business acting as salespeople, or worse, as financial predators hiding inside a business that runs on trust.

Today, much of the industry in Canada is owned by the five largest banks, and they advertise about the duty of care and trust that they will bring to benefit you, the client. Are they delivering this duty of care to clients? No one knows, since the results when things go wrong are hidden by the industry code of silence. It allows the industry to talk the talk of trusted professionals, with high levels of honesty and integrity, while perhaps walking the walk of commission based salespeople. Let's look at some examples that I find of interest.

Example #1, mutual fund trips....when Globe and Mail reporter Bud Jorgensen started writing articles about advisors being sent on holiday junkets by mutual fund companies, I was told by my manager, "anyone who talks to the press about this is fired". He was enjoying his yearly trip to the Indy 500 courtesy of a fund company. Only after our entire industry was embarrassed by our own greed, and after much public disclosure was the practice changed.

Example #2, double dipping. When advisors sell a fee based account, clients are supposed to avoid paying commissions on each subsequent transaction and it usually works out. However I have witnessed many a case whereby a greedy advisor has reversed the process to his or her benefit. First investing a client's assets using a commission based account, and then later advising them to move over to the new and improved asset based or fee based account. If the move results in no other change besides adding a new fee to the commissions you already paid, you have just been double dipped. If the move costs you a commission in order to move to a fee based plan, you have been really abused and probably have right to ask for your money back. The code of silence will keep this one under wraps for a while.

Example #3, "No duty of care". What does the industry literature say about the duty of care owed to you the client? What does its advertising promise? "Client interest comes first". It also specifies a duty

of care and a fiduciary responsibility to clients to a professional standard. However when 90 year old Norah Cosgrove of Ottawa took her bank owned investment dealer (see Norah Cosgrove vs RBC, Ontario Superior Court of Justice, Small Claims Court File No. 03-SC-083313) to small claims court in Ontario for a \$10,000 problem, the investment dealer statement of defense said clearly that, "at no time were the defendants acting in a fiduciary capacity", and "the plaintiff was responsible for directing the course of investments in her account". At an age close to 90, they were claiming no duty nor any responsibility to the client. She was on her own? That is not what their advertising would lead one to believe. What is so important about this case is not that a client lost money and did not get it back, but rather that our largest and most supposedly trusted financial institution admitted that they feel they owe no duty of care for this type of account. I must point out this is exactly the same type of investment account held by the majority of Canadian investors. Will this be the defense claimed if others run into a poor advisor?

Example #4, Gag orders to cover up abuse or crime. When an investment firm is finally pushed into knowing they did wrong, (which often takes many years, and many more dollars) they offer to give the client some cash to make the problem "go away". Part of this settlement process involves a confidentiality agreement that the client must sign, promising never to reveal the facts of the case. Does this mean that our most honest and trustworthy corporations can cover over sometimes criminal acts by paying clients, at times using clients own money or the proceeds of the abuse? Perhaps, but the silence these cash settlements buy will never allow the light of day to shine on these transactions.

(There was no disclosure of the 90 year old man who lost his home. It ended up being owned by his trusted Kelowna, B.C., based investment advisor, who helped the gentleman into an assisted living facility in 2004. Family members later found the old fellow's home went into the advisor's name without money changing hands, at less than market value, without benefit of appraisal, and at a zero interest rate. In order to get his home back he had to sign something that started out saying, "for value received...". I saw this and asked myself, what value did the fellow receive for signing this document, and promising whatever he had to promise? He received his OWN HOME back. (I feel like saying "HIS OWN \$\$\$%^\*&\$ HOME" but it would probably only make me feel better, without actually helping) They actually used his own residence as the "value" they offered him to buy his silence?

Further evidence of the internal code of silence was when the IDA was notified of this, they were met with levels of silence and non-co-operation by the firm involved. They simply did not follow the rules of disclosure on this fraud. They do however, follow carefully the code of silence in my experience.

Example #5, mutual fund commissions. Rather than the plain, true, and clear disclosure that the industry demands, much of the compensation on mutual funds remains hidden behind legal language in a prospectus, which does not meet the test of plain, or clear disclosure. This might explain why the newer, Trimark Select fund, which pays 5% to the advisor, has grown twice as large as the original, identical Trimark fund without the hidden commission structure. This despite a higher management cost to the client, and a many year penalty to the client to get out of it. Which fund does your advisor suggest to you? The DSC version or non DSC? Why? Where is the disclosure?

Example #6, employees forbidden to reveal commission free funds. When this author penned educational investment articles for more than a decade, they were met with approval and sometimes applause. However in a 17 year career, only two articles were met with application of the internal code of silence. Those two explained to clients that they could purchase mutual funds without sales charge. The article was in the public interest, and in line with our code of ethics, but not the code of silence. I

was threatened with termination since I had "made other advisors look bad" according to several in senior management at RBC. Is the code of ethics and client treatment more or less important than revenues? How many times has your "trusted advisor" come to you and informed you that mutual funds were deregulated (in the 1980's), and showed you how to find the lowest cost method of purchase? Why not if they are truly advisors to you?

Conditions will improve when investment firms are told by legislators that gag orders, codes of silence, written or unwritten sanctions against people who speak out in the public interest are forbidden. With investment scandals, corruption and evidence of a corporate "psychopathic" behavior among certain members of the industry, it is time we attempted to eliminate the dark corners that these things hide in. A code of silence is a dark corner that allows abuse to grow, like mould in the corner of your shower.

Written by a retired investment industry veteran, who could not tolerate the industry code of silence and spoke against it. His input was not welcome, however, and he was constructively removed from his position. He can be reached for comment at [investoradvocate@shaw.ca](mailto:investoradvocate@shaw.ca)

## Small Investor Voices

### From the SIPA Inc Five Year Review entitled “the Small Investors’ Perspective of Investor Protection in Canada” - Appendix I – Small Investor Voices – February 27, 2004

Since SIPA’s founding in 1998, small investors have submitted their stories by telephone, fax, mail and e-mail. These case studies are anecdotal but many are supported by documented evidence. These “voices” are provided in the hope that those individuals in positions of authority and responsibility may better understand the problems faced by small investors.

This appendix contains only a small number of comments from the many that SIPA receives. It is these hundreds of stories that have enabled SIPA to develop a unique perspective that is representative of the small investor, and to realize that there is a problem of major proportion— many small investors who placed their trust in the investment industry are losing their life savings due to widespread wrongdoing by industry participants.

In accordance with SIPA policy not to disclose member’s names without prior approval, and in order to protect the privacy of individuals, names of investors, investment advisors and corporate identities have been removed.

“I truly believe that the vast majority of people just are not aware of how unprotected we are. They falsely believe that our laws will protect them against criminals. On the other hand, people tend to be protective of their money. Their failing is their faith (in) people. They do not fall into traps because they are stupid. For example our group included university professors, an R.C.M.P. officer, businessmen and lawyers.”  
A small investor – Feb 1999

“My broker was fired in January 1997. His boss, who happened to be a Director of the Investment Dealers Association and chairman already of the Discipline Committee, promised a “forensic investigation” the product of which has stalled ever since. I accused my then broker of churning \$60,000 in commissions out of my account in 1996. I’m debating with myself whether to sue over that and a dozen items of damages. ... I am retired; I practiced law for some 45 years and am now contemplating litigation.”  
A small investor – Nov 1998

“I commend you on your perseverance and continuing to inform investors who believed in the faith of another person who regretfully suffers such a conflict of his interests in this life but who nonetheless betrays that belief and trust. You frequently recall dark days in your life, we know and we have been there. I know the private Hell of trying to sleep, (my wife) and I have both been suicidal, everyone will try to distract you with irrelevant issues in little hurtful but personally invasive comments shattering your confidence in your task, you will in your mind retrace everything you ever said or wrote, you will find yourself hurt, angry and down to the point you cannot think clearly and you will recall it as quite oppressive and next to Hell.”  
A small investor - Nov 2000

"I was also talked into some stupid (I won't call it investment) calls by [Brokerage] "advisor". ... Small investors beware of anyone or anything claiming to be an "investment advisor". There are plenty of alternatives out there for you to choose from when putting your hard earned money to work – investigate them all."

A small investor – Feb 1999

"We should be hearing any day now as to whether our case has been committed to trial. The Crown and Police and OPP have indicated they think it will – but it will be nice to get the final word. ... There is still so much dishonesty in the investment area and still so many victims."

A small investor – Dec 2001

"It is my understanding that [Brokerage] and my broker, [RR], have a fiduciary duty to their clients to ensure that their financial interests are fully safeguarded. [Brokerage] and [RR] both failed in that duty. In addition to the loss of inheritance, I have spent to date \$30,000 in legal fees."

A small investor – Jan 2000

Letter to Broker

"Out of weeks of despair, work, stress, and worry and concerned that his [RR] latest promise was not kept in an attempt to discourage us, I telephoned you on April 16 to bring this matter to your attention. Needless to say I was astounded by your abrupt, bullying and belligerent tone. After what we have been through – how dare you! Without ever having talked to me, nor letting me explain – let alone having the decency to ask for my side of the story, you start off by dictating that it's not your problem, but a 'problem between [Fund Company] and me', that your Company's only responsibility is to sell the shares ..."

A small investor - Apr 1999

"I started investing with [RR] in 1986 when he was with [Brokerage]. He changed brokerages several times. Each time that he changed brokerages he would send me new forms to fill out; I would always fill them out and send them back without question – He had my trust. [RR] was in a respected position of trust; first as Vice President of the company and secondly as my financial advisor. He abused this relationship. You would think that as Vice President of a company and financial advisor that he would have carried out the terms of "the [Brokerage] Management Account", which was to preserve my capital and income, in a more prudent manner. I am sure there are other investors that are having the same set of problems or did have the same problems. I am still wondering if [RR] actually retired or was forced out due to these looming problems, which seem to indicate mishandling or misappropriation of client funds. All the trades beginning in 1996 until he retired, are completely unsuitable and imprudent for my investment objectives; a severe breach of trust."

A small investor – Jul 1999

"I suffered a loss of over a million dollars through the same financial advisor in two different companies. (Mutual Fund Co) and (Big Bank Brokerage). An accountant's analysis later revealed a large amount of money was never transferred from (Mutual Fund Co) to (Big Bank Brokerage). I do not know how to proceed to recover this loss from a previous company My advisory account held a mixture of stocks and mutual funds. My advisor failed to notify me of the use of a margin account to leverage high tech stocks mainly. He lied through omission most

of the time. He failed to notify me of every transaction and misrepresented to me the extent of losses in 2000, 2001 whenever questioned. Tech stocks went down and he kept on buying more and more and every sale incurred a loss and he kept on using margin without my knowledge. Statements from . (Mutual Fund Co) and (Big Bank Brokerage) were extremely poor failing to give me a clue as to what I had in every statement. I questioned my advisor often but was given a cock and bull story. I was willing to go along with my advisor because I had no close friends or family to consult with. In 2000, I had surgery and relocated. I was preoccupied with running my apartment building and disposing of my property, but I had total trust in my advisor though I worried constantly.

When I finally learned of my loss I felt devastated, especially after the death of my spouse It was a terrible let down and breach of faith. I feel I cannot trust anyone in this industry anymore. It has had an adverse effect on my health since October 2001."

A small investor – Dec 2003

"In 1995 a group in Port Elgin lost over \$1.8 million. The process that we followed has led us down many roads but they all ended up in the same place. In front of a lawyer looking for \$50,000 to even look at the case. I would like to help others to not fall for these unscrupulous scenarios where individuals lose their life savings to these people. We had one individual in the area lose \$300,000, his entire life savings."

A small investor – Feb 1999

"I would like to draw your attention to unethical trading practices, discretionary and unauthorized trades, and trades unsuited for my circumstances. [RR] was my consultant for over fifteen years. He moved to [Brokerage] about a year and a half ago. They have a sales meeting every Monday morning, which pushes him into bizarre, inappropriate purchases. These were not only inappropriate, but also discretionary. I sent a letter to his branch manager who concluded "The information before me regarding your account does not lead me to conclude that [Brokerage] can support your request for redress." Thus I assume this is the way [Brokerage] behaves with all of their accounts, and their purpose is to make money for themselves and lose money for the client."

A small investor – Mar 1999

"I have spent 2 ½ years fighting this and I just seem to get stalled and put forward all the time. Thank God I did not hire a lawyer; I'm sure my legal fees would be astronomical. It is hard to fight on your own."

A small investor – May 2001

"I had my accounts transferred to an account under his jurisdiction. This arrangement went all right for a while until he found he couldn't contact me when he felt I should be making a trade because I was traveling most of the time. He then suggested I consider giving him authority to operate my account on a discretionary basis, which I did. I understood he would watch all the stocks, etc. that he got me into and make the trades he felt were timely, even taking a loss sometimes to get into something else.

The discretionary account went on for quite some time and he would send a transaction slip each time he made a trade. Operating this way I had no knowledge of the stocks he purchased for me, but I trusted him.

After a while I realized I wasn't getting any transaction slips so I decided to take time off to go to his office to talk with him, because my portfolio had decreased from an originating value of approximately \$150,000 to today's value of approximately \$25,000.

I went into the office and asked for him and was told he was no longer an employee and that someone else would be looking after my account."

A small investor – Aug 1999

"I have depended upon [Brokerage] for investment advice and my account lost \$20,000 plus from December 16, 1996 to May 5, 1997. The loss becomes even more significant when calculated on a percentage basis, predicated on total account dollar values.

Amongst other things I believe [Brokerage] have breached their fiduciary duty. At age 67, and retired, capital preservation is important for future security.

Several complaints have been submitted to the compliance officer. The response did not provide a satisfactory resolution of my account."

A small investor – Dec 1999

"As one who has experienced first hand the severe, well crafted, fraudulent schemes and activities of a major Canadian brokerage firm, and who has put a great deal of effort educating myself about what is going on in the investment industry and among the regulators (both Canada and the US) I have reached, sadly, the realistic conclusion that greed and fraud shall always be with us.

Given that state of affairs, I feel it is important that investors, particularly new, first time investors, for example widows who suddenly have the responsibility of overseeing their husband's portfolio, etc. must simply recognize that this is a high risk, very corrupt industry throughout, and that it will never change. Therefore, it is in their personal best interest to put forth a great deal of effort and commitment to educate themselves.

Investors should never trust an advisor or broker to tell them what is best for them. They should never act on an advisors advice without first thoroughly investigating the situation and demanding full disclosure. They should never allow themselves to be befriended by a broker or advisor but treat them simply as a sales person who has their own best interests in mind and in many cases, because the laws and regulators are essentially impotent, are not above lying and defrauding them using numerous, devious schemes, all carefully designed to separate them from their savings."

A small investor – Jan 2004

"In 1995 we liquidated our many diversified mutual fund accounts and opened an account with [Brokerage] for their professional management skills. The initial "Wrap Fee" was 3.5% of gross market value. Their letter of January 20, 1995 welcomed us aboard, outlined how their "discretionary asset management" worked, and reiterated how they would trade within the recommended guidelines of our agreed investment strategy. Furthermore, we were promised periodic updates on strategic development, at all times initiated, as it turned out, by us.

What communication transpired between [Brokerage] and us was generally verbal over the telephone, rarely placed in writing nor related directly to the management of our accounts.

On Friday, December 12, 1997, we reviewed [Brokerage]'s performance with [RR] and [Manager], expressing our concern with the losses, despite a reduction of the management fee

from 3.5% down to 2%. As it turned out by December 31<sup>st</sup> our total accounts had fallen to \$250,137 from \$501,367 twelve months earlier."

A small investor – Nov 1998

"I have been seriously swindled, frauded and beguiled by [Brokerage], Investment Counselor. Their wasting of the account is tantamount to a criminal act, in my regard.

[Brokerage] Counselor lied, and cheated my account while I was living out-of-country. I was never notified of trades and my account was unscrupulously involved in discretionary trading without my notification, permission, or my signature.

I have requested compensation and total reimbursement. They refuse. They have no faults I have full and accurate documentation of all events, as well as statements showing the depletion of the account from approximately \$170,000 in early 1994 to almost zero."

A small investor – Nov 1998

"He suggested that I sell three high interest yielding Canada Bonds held in my RRIF totaling \$99,000 and in my cash account he suggested I sell 1500 Royal Bank 1<sup>st</sup> Preferred Series G shares and buy Nortel. Worse advice was never given – not only of the unforgivable loss of interest that ensued – but there is no possible way that he did not know about the (sell) recommendation since he was part and parcel of its preparation and he knows the status of every stock in the [Brokerage] list of companies and most certainly whenever any change in a buy or sell recommendation is made.

[RR] said he had 200 seniors in his file one as old as 99. I cannot help but wonder if any were as unfortunate as myself."

A small investor – Oct 1998

"In April of 2000 my wife and I made a US\$50,000 investment with our (Mutual fund Co.) representative. There were no guarantees of returns but the worse case scenario was the return of our principal as our rep had the only signing authority. This assurance was key as the funds were earmarked for my eldest daughters education, a fact that our rep was aware of We had bought into the (Mutual fund Co.) mission statement on investing and were convinced that we should trust the rep sitting in our living room. Why shouldn't we trust him? (Mutual fund Co.) had used our rep as the "face" of (Mutual fund Co.) reps everywhere that should be trusted in their national advertising campaign. In addition, numerous other (Mutual fund Co.) staff and clients were involved which bolstered credibility. Needless to say the money disappeared and I reported the scam to the York Regional Police, the OSC and the IDA in August 2001.

Let me recap:

York Regional Fraud Squad - had my file for 6 months with no investigation, passed it on to Toronto Police.

Toronto Fraud Squad - had my file for 23 months with no investigation, did not even interview me until a complaint to the Civilian Commission on Police Services, have returned my file to York Regional Police as of Jan16/04.

OSC - stated that (Mutual fund Co.) had done an internal investigation and found no wrongdoing so they had no further interest.

IDA - my rep is out of the business so their job is done

MFDA - at the time contacted were not set up for complaints.

OBSI - are investigating but with a (Mutual fund Co.) director on the board can I expect a fair shake?

Civil Court - unfortunately I no longer have the funds to pursue this route

(Mutual fund Co.) - "Do you know any good hit men?" (Mutual fund Co.) regional manager I must add that I was not the only (Mutual fund Co.) client who was a victim of this scam as my rep "pooled" over \$1.2 million US of six clients. Other reps were involved and at least one is still employed by them. My reps regional manager was also aware of the deal and was subsequently fired.

I guess I was under the delusion that my investment would be backed up by (Mutual fund Co.). In reality a serious crime has been committed and it seems like the policing agencies don't care. Should someone not be doing their fiduciary duty or is the crime not important enough to be investigated?"

A small investor - Jan 2004

"We would like to inform you about a deplorable financial situation that exists for over two hundred people in Ontario. Upwards of half, many retirees or seniors, reside in North Bay, Sudbury or Sault Ste. Marie districts. A total of approximately \$10,000,000 has been removed from the Ontario economy resulting from investments in partnerships

These investments were recommended and sold by our financial advisors as a secure risk free financial plan that had 100% liquidity redeemable in a period of thirty to ninety days' written notice. This has proven to be untrue. Also, much of the assets have proved to be unrecoverable and a considerable amount used to pay fees to the principals and for lucrative commissions to the sales agents - financial advisor).

As a result of the above, many investors, particularly those on fixed incomes, are now facing a very grim financial situation having lost part or all of their life savings and denied future income from these sources. Further, investors who transferred funds from their RRSPs are now potentially in danger of having to pay income tax since the investment has been deemed to be non-RRSP eligible.

We, like other investors, believed our financial advisor had thoroughly investigated the security and creditability of these investments. We trusted our financial "advisor" and took his word that these investments were safe."

A small investor – Jul 1999

"The IDA has finally granted me an interview, however, not until the week of January 14, 2002. I was hoping the IDA would be able to do this in less than 14 months after the initial complaint. Investment firms such as [Brokerage] will fight the lonely investor even when this much evidence is stacked against them. One has to ask, "How can an investment firm let a broker get away with such conduct and then allow him to keep working?" This is much bigger than the Broker. The Branch Manager and the Compliance are implicated by letting this misconduct go on. This is more than just a case of discretionary trading and lack of suitability ... we have evidence to prove that this guy traded for himself and then dumped the stock on clients like me when the stock price went in the other direction."

A small investor – Dec 2001

Letter to IDA -

"[Brokerage] advertises through the mail, a young and inexperienced investment councilor as being an Investment Executive. This was misleading information to create business by [Brokerage]

I have received written statements reporting a gain of our investments for the period of May 1994 to February 1997 informing me that Senior Investment Executive, Associate Director has made between 19% and 20% gain in my wife's RRSP and my RRSP. I question this statement and the real gain was less than 11%.

I was informed by the office Manager that Senior Investment Executive made a minor calculating mistake.

... I am requesting an investigation of business ethics of [Brokerage] and [RR]'s personal portfolio."

A small investor – Jun 2000

Letter to Broker -

"I am writing this letter on behalf of Ms. (small investor) to express deep concern about the management of her investment account with your firm. As a member of the Federation of Chinese Students and Professionals in Canada, I have been involved in the investigation of this issue.

Ms. (small investor) opened an investment account with your firm on February 25, 1999. Up to October 14, 1999, within a time frame of less than 8 months, the value of Ms. (small investor)'s assets in her account dropped from the original of \$50,000 to less than \$10,000. Among the loss nearly \$26,000 were taken as commission for over 350 transactions

Ms. (small investor) s Account Opening Agreement indicated her annual income was below \$20,000 and her total assets worth less than \$70,000. If protecting clients' interest was considered as part of responsibilities of your firm, wouldn't your staff take at least some efforts to double-check with Ms. (small investor), who fell into the category of people with very low income while with her life-time savings being put at very high risk, about her understanding of the nature of margin account?"

A small investor – Nov 1999

"I have had a case pending with the IDA and have been in litigation for over one year. We have found out with our case there are at least three others with the same complaint about the same broker. It was very difficult to find out what to do, where to go, and who didn't have a conflict of interest just to get the ball rolling. The brokers know this too!

One thing I have found so far is that everything is stacked against you exactly as Rob Carrick said in the article. I hope that in numbers we can right this unjust situation."

A small investor – Dec 1998

"Presently I am reviewing all reports and technical data concerning Bre-X I can put my hand on. If I found anyone's negligence I could pursue in Quebec courts, I'd look for other investors with similar complaints I have to share the legal expenses. Otherwise I'd have to give up and get on with my life. My loss of \$40,000 may not substantiate making an individual claim, as I believe the court expenses could exceed that amount."

A small investor – Jun 1999

"I have a Financial Advisor who gave me totally inappropriate advice. It has cost me practically everything. The FA did not disclose the product he put me into, manipulated information to get the product, ignored my request to cancel the product four days later, changed the loan details twice, ignored my messages and cost me to date 50% of the small amount of savings I had. This FA needs to assume responsibility and accountability for his inappropriate actions. I would willingly let other people know so they don't fall victim to these ruthless predators."  
A small investor – Jan 2000

"My wife and I were about to retire debt free when we got involved with bad advisors and bad investments. The current financial and legal systems left us battered and bruised. Nearly half our present income now goes to service the debt brought on us by these investments. We naively assumed we were dealing with people who were totally open, moral and ethical. We assumed that the accountants and lawyers involved would protect our interests and warn us of the pit-falls. After all, I was a busy preacher; my wife was a busy teacher. Our religion taught us to have faith and trust in people. I now know this is false teaching. We failed to do what is called in the trade "due-diligence". At the time, we had not even heard of the term. There are other terms we have since learned: transparency, full-disclosure, reasonable profit, and others."  
A small investor – Jul 2000

"I lost hundreds of thousands of dollars on two speculative mining stocks. The firm lent me the money, I'm finding out now, fifteen years later, that they had a position in the stock."  
A small investor – Oct 2001

"The broker that we moved to turned out to be almost as bad as our original lazy sloth and we had lots of sorting out to do. We have not decided on any action, it is quite a decision as to whether or not to get involved in a lawsuit, or even mediation. The more we find out about the intricacies and dirty dealings, the less we want to become more entangled."  
A small investor – Feb 2001

"Our problem with [Brokerage] and [Bank] has been ongoing since August 1997 and we have our complaint spread throughout [Brokerage], the bank ombudsman and the liaison officer who works on problems between [Bank] and [Brokerage]. Our complaint is also with the IDA who has yet to assign our file to one of their people."  
A small investor – Oct 1998

Letter to Bank Ombudsman -

"I wish to make you aware of unethical and illegal trading activity by a [Brokerage] investment broker, one [RR] in 1990. I am seeking justice in the resolution of an unfortunate situation which was never resolved satisfactorily and was summarily dismissed by [Brokerage]'s lawyers because of the length of time that had elapsed and because [RR] was no longer in the employ of [Brokerage]."  
A small investor – Jan 1999

"Interestingly, in Wednesday's edition of the local news rag, there was an article about another area couple caught in a mi[RR]or image scam to ours out of North Bay. We are not alone. The frauds are very widespread, much more so than we know. Unfortunately, people are very reluctant to admit they have been taken, myself included, and most also do not want to make

public their private lives and financial situations. However, as we progressed through our action, my attitude changed. I became aware that we are in very elite company ... our group includes doctors, lawyers, other financial advisors, etc., all of whom were duped. That revelation allowed us and others in our group to get together, open up and take action."

A small investor – Feb 1999

"I was an excellent housewife and mother but totally ignorant in finance. Since 1998 I have been on my own and couldn't even read my statements. I had, after our home was sold, an investment account plus the RSP. Both of these accounts were managed for a fee by (Brokerage). When we had started with them, they were highly recommended, but as time went by, only one person remained stable. At the time that the press was saying that techs were dangerous, they sold a bunch of stocks at the peak...gave me a huge tax bill (higher than my salary for the year)...and repurchased more tech stocks that promptly dropped. In Sept 2000 this account was at \$532,000. By Sept 2001 this portfolio was worth \$352,700. I became aware of a problem late in 2000 and moved my RSP. I didn't know where to move the investment account, they lost \$180,000.

This is my retirement. I am now 60 yrs old. I was a financial ignorant. I can't take any more lawyers or their costs. I am so exhausted."

A small investor - Dec 2003

"Throughout this whole ordeal at no time did I feel that the Bank was looking after the welfare of the client, nor was I getting proper independent or financial advice. ... My wife and I do not have the further amount of \$14,740 in our RIF account with your bank for our retirement as same was all taken by your bank to retire the RRSP loan. This loan repayment could have been done in an alternate manner without such punitive results to two elderly citizens who believed your firms' advertising that by borrowing to top up your RRSP one could retire more comfortably in the future."

A small investor – Jun 2001

"My wife and I decided about two years ago we should be a little more diversified in our investment goals and decided to have someone else handle some of our investments. We consulted with our local [Bank] and asked for a referral to someone good who could help. We were directed to [RR] at [Brokerage].

After talking to him we thought he would do a good job for us as he had been around a long time in the investment business. Our instructions to him were, we would go along with his recommendations and he would try to make us a good return as well as provide us with an income of \$500.00 a month from our total investment of \$100,000.

Fourteen months after his taking over the account \$100,000 turned into \$45,000 and no cash was available for the monthly payments. We only received four or five payments.

I'm really disappointed in [Brokerage], as you would think with the big commissions there would be some quality of service. I probably don't have any legal right to pursue him but it would be nice if others were warned."

A small investor – Feb 1999

"About 90 persons and two charitable organizations were defrauded of \$2 million by an Ontario Securities Commission registered dealer.

About \$400,000 was held in self-directed RRSPs with [Bank]. The accounts and transfers were set up by [Brokerage], an OSC authorized dealer. The [Brokerage] and the [Bank] had a selling arrangement whereby the "investments" in RRSPs were sold exclusively through the Bank. The investors did not provide anyone with an authorization for the broker nor had they instructed the Bank to purchase the "securities". The Bank will not provide the documentation showing on whose authority our funds were released for the purchase of the debentures."

A small investor – Jan 2002

"We suffered a loss of approximately \$15,000 as a result of our advisor failing to use due diligence in ensuring recommendations for our account were appropriate and in keeping with our investment objectives."

A small investor – Jul 2001

"I opened an account on May 1993 and transferred in all my stocks. The amount was \$42,555 worth of stocks. The broker told me my stocks were no good. He sold most of my stocks and bought some other ones. He got in touch with me for some trades but most I only found out when I got the monthly statements or the slips for bought and sold. I had to put more money into the account a few times, because he bought and sold within a few days for a loss. By January 1997 my account balance was \$0.00. I talked to two or three people from [Brokerage] and I got nowhere with them."

A small investor – Oct 1998

"I've finally received the report from the IDA, the details of which are reported in Bulletin No. 2861. Paragraphs 4 and 5 refer to my accounts with [Brokerage]. As you can see [RR] was found in breach of Association Regulation 1300.1(c), which means that he recommended securities that were speculative and not in keeping with my stated risk factors."

A small investor – Sep 2001

Letter to Bank

"On August 29<sup>th</sup> 1990 I invested \$30,000 into a self directed "RRSP" plan with [Bank] as the trustee through (I.A.). These "M.I.C." funds were then transferred through the [Bank] to [Brokerage]. Since then I have continued to receive the Bank's quarterly statements and had no concerns with this arrangement until late 1998 when I received news that [Brokerage] was in financial problems and that the president had disappeared. On July 8<sup>th</sup> 1999 I finally was given an appointment to meet with (two Bank officials) of the [Bank] only to be told they were unable to give me any information nor could they assume any responsibility. I have since learned that the OSC and the Metro Police Fraud Dept are involved in a full investigation into this matter. To date I have continued to pay the annual \$125.00 administration fee and have received my quarterly statements from the [Bank]."

A small investor – Jan 2000

"I spoke to an investigator with the IDA handling the investigation of my complaint against [Brokerage] and [RR]. He informed me that [Brokerage] still had not produced the necessary documents. He also told me that [RR] had been charged with fraud by the police. He also informed me that the compliance officer had left the firm and returned as a consultant. He also informed me that there were two other complaints against ([RR])."

A small investor – Jul 2001

"One big concern about the IDA other than them taking so long to do anything is the way they treat the victims. Updates by telephone calls or letters would be appreciated. All of us have left messages for the investigator but he rarely ever gets back to us. This is a common criticism of the IDA from the group that I am involved in."

A small investor – Sep 2001

Letter to Brokerage

"I am writing to complain about the manner in which my investment account has been handled during my association with [Brokerage]. The nature of my complaint involves the misinformation or lack of information given to me as well as the complete inappropriateness of the investments recommended to me.

In May 1997 I sold my condo and received \$45,000, which I decided to invest. At that time we emphasized that we did not want to risk this money. We lost interest in the stock market and desired an investment that was very low risk. We also wanted something shortterm, for a 5-year horizon as we planned to purchase a house in the near future. We were sold the Polar Hedge Income Trust Fund. [RR] assured us it was low risk. I found out after the fact that it is actually a ten-year investment and Hedge Funds are indeed extremely risky. I lost approximately three quarters of my principal on an investment I feel was completely inappropriate given our explicit instructions.

We have now found a firm and investment advisor who seem more concerned with the interests of their clients rather than recommending those investments that favour the firm with commissions and fees. However, even our attempts to exit are being manipulated by your firm. My husband's account, quite sizeable has been stalled for almost two months."

A small investor – Mar 1999

"I went to the bank and had a cheque made out to [Fund Dealer] in trust for the sum of \$97,000. [RR] came to my house early that afternoon. He presented partly filled out forms with six funds written on it. He said they are good, solid financial companies. [RR] was talking about the global economy in general and assured me that he is an expert who is in business for fourteen years and makes between \$12,000 and \$14,000 a month. ... He wanted me to sign some more blank forms. He assured me these were just for his files, and that once he had drawn up the proper documentation, he would review them with me and explain them before proceeding. ...

He told me that the way mutual funds work is very complicated – that I don't have to understand it all. I just have to trust him. I said to him "that is the truth I don't understand it at all. Whatever you do, I don't want to lose a dime." He told me that he would design the funds in a way that I won't be at risk.

Please understand that I am a simple woman who never invested in mutual funds. I came to Canada in 1984. I live by myself since my husband passed away four years ago. I work evenings from 4pm to 11pm in the housekeeping department. I also worked for Mr. (Senior citizen) who was 79 years old from 8am to 3pm every day on a contract basis."

A small investor – Jun 1998

"Since I started with this [RR] one year ago I have lost over 30% of my account. When I spoke to him initially I advised him that I was unable to work due to the fact that I was losing my vision, my husband was retired and the dollars in our RRSP accounts represented our total

savings. I was reluctant to buy mutual funds and he recommended buying Insured Segregated Funds to alleviate my fears. This fund is down at least 26% and falling

My meeting with the manager and [RR] was the end of August. On that day the manager stated he was sending the complaint to their compliance department. He further advised me that he sent the complaint to the Vice President District Compliance.

After repeated non-productive contacts with the Manager I telephoned the Compliance Department of [Brokerage] on October 12<sup>th</sup> and was advised by the Compliance Officer there was no record of the complaint on the computer. He agreed to accept a fax of my correspondence with the local manager and ensure I received a confirmation. On October 19<sup>th</sup> I telephoned the Compliance Officer who informed me that the file was in Ottawa with the Complex Issues Manager. She advised that she would get back to me within the week. I do not feel I can afford arbitration but I definitely will file a grievance with the Securities Commission. I feel these large companies are aware that on smaller accounts the legal costs for arbitration are prohibitive."

A small investor – Oct 2001

"In the fall of 1994 we realized we were being taken. We tried to contact the OSC without success at that time. Next we tried going through our M.P.P. nothing. Again in 1996 we tried our second M.P.P. his reply was to give us the phone number of Consumer Affairs. They responded that it didn't fall under their responsibilities. We then tried the Investment Dealers Association. Their rude reply was that they don't deal with individual complaints from the public Next was the Investment Funds Institute and they helped as a third party going between ourselves and the fund companies in obtaining copies of our investment transactions Again we contacted the O.S.C. in February 1998 with a letter. The file was passed on to a couple of people. In December 1998 the O.S.C suggested if we want to recover any of our money we should seek legal assistance and that they would provide as much help to our lawyer as they could. We should also contact [Brokerage]'s compliance Officer, which we did. He told us we should have complained while our advisor was still employed with them and they consider the file closed.

I am a city bus driver and earn about \$35,000 a year. My wife works at a store and earns about \$18,000 a year. We are both in our fifties and our dreams of early retirement have been lost along with our faith in the system, whatever the system may be. Who can one trust?

Our question to the O.S.C. is: Does [Brokerage] not have a responsibility to their clients to see that their representatives act in the best interest of their clients? What kind of ethics does [Brokerage] have?"

A small investor – Feb 1999

"I invested a large sum of money, \$125,000 with a broker at [Brokerage] and through mismanagement, inappropriate securities selections, not following directions, and various other infractions, he managed my portfolio in a matter of approximately 14 months down to a value of about \$60,000."

A small investor – Feb 1999

"After gaining my trust, [RR] filled out the client documentation and asked that I sign it. He advised me on the various percentages of allocation and assured me that he would closely monitor the stocks. He promised that if the stocks should fall by 10% he would sell but would hold if they go up. He explained that he personally knew the managers of these companies and

that he made purchases of these stocks himself. He never mentioned that these stocks were very risky and that he was helping to raise capital for these companies. My cash account of approximately \$45,000 with ([Brokerage]) is worth less than \$10,000."

A small investor – Mar 1999

"With my father's limited investment experience (until the above unfolded, he had never invested in mutual funds or the stock market) and limited education (grade 7), I tend to get called upon in times of financial or legal confusion, which is what my father did when he began to suspect that something wasn't quite right. I firmly believe that [Brokerage]'s actions were unprofessional, and very possibly illegal, but I'm frustrated at not knowing where to turn. I've thought about suing them, but neither I nor my father has the time or money to put into a court battle."

A small investor – Feb 1999

Letter to Compliance Officer Mutual Fund Co. -

"This fund was purchased December 18, 1998 for \$150,000 and sold July 9, 1999 for \$99,978.20 ... a loss of more than \$50,000.

As a senior of 78 years I don't feel this was the right type of investment for me, as I cannot afford this type of loss."

A small investor – Nov 1999

"In 1993 I was placed on long term disability. During this time when I was completely disabled a stockbroker from the firm [Brokerage] traded in my account without my authority and my knowledge at all times. When this wrongdoing was discovered by a family member and friend I was shocked to find out what a poor state of affairs my investment account was in.

I was advised to inform the manager of this brokerage firm what had happened; and when I did he said he would settle things. To date this has not occurred. Then I was advised to contact the Ontario Securities Commission and all they did was forward my letter of complaint to the Investment Dealers Association. The initial investigator indicated to me that there were problems with my account. My file is now in the hands of another investigator and nothing is being done.

This has left me at my weakest, most vulnerable and depressing time of my life without proper funds. The Ontario Securities Commission and the Investment Dealers Association could not help which has further deepened my depression. When I tried to resolve this problem I was in pain, sick, low in funds and saw no way out. Suicide seemed to be my only solution. ..

As it stand now the brokerage firm and its agent denies all responsibility and admits to no wrongdoing saying the trading in my account while I was in and out of hospital and clinics was proper."

A small investor – Jun 2000

"My wife and I own a medium to small sized business and have contributed to our RRSP portfolio for many years as a means to look after our retirement needs. Since the beginning of the 90's we began to entrust a financial advisor to look after our portfolio. Many times we stressed the importance of low to medium risk in the choice of investments. This can be verified by the "know your client form" which we completed each year. Contrary to these investment objectives we believe that extremely high-risk investments were chosen on our behalf. Within a short time most of the investment money was lost."

A small investor – Mar 1999

"I have been advised that [Brokerage] has a terrible history of just keeping things in court until the victim's can't afford it anymore. I have been told that our complaint is almost exactly the same as the other victims. One of the main differences is that I am 41 and apparently a lot younger than the majority of [RR]'s targets. It appears the majority of the victims are well over 70 years old and one may be in his 90's!

My mother's and my Know Your Client forms were jokes. He had wrong information on the forms; he changed our objectives from long term growth to high risk my mother is a 71 year old widow living on a small pension, and increased both our net worth's by \$200,000 to \$300,000. My sister-in-law, who is also a complainant, had the wrong places of employment for her and her husband on two successive KYC forms and their assets over stated by about \$300,000."

A small investor – Mar 2001

"They told me to get lost and get a lawyer. And then made the crack that they doubted any of the law firms would take them on because the law firms depended on them for business. I went through their ombudsman – a joke. I went through the IDA. I have an exchange of correspondence that is comical; I end up reciting the IDA By-laws to their staff because they don't understand the significance. Then they admit there is a problem, but refuse to deal with it."

A small investor – Nov 1998

"It (the financial loss) has caused much stress because of the way it has forced us to live both from the enjoyment of retirement plus ability to pay our bills. There is the constant mistrust of people with whom we deal, most of whom are probably honest and hard working but ... I have always been cynical of government but my cynicism is now much more widespread and deep. We have developed a healthy total disrespect for lawyers and our legal/judicial system. I consider them leeches on society.

I consider any financial investment or advisory agency totally incompetent, dishonest and self serving. I consider any regulatory agency all of the above plus ineffective and toothless parasites – a total waste of money. Their very existence constitutes a false sense of security to investors."

A small investor – Jun 1999

"My wife and I have suffered a 37% loss over one year from mutual fund investments managed by [RR] of [Mutual Fund Dealer]. The money invested represents a major portion of our assets. They were supposed to be conservatively chosen to accept moderate risk and provide capital gain. But 5 of the six funds are seriously under performing their group averages. My wife and I have seen him about it over the year and each time he maintains they will perform in the longer term. He has done nothing to avoid further loss."

A small investor – Aug 2001

"Small investor letter to Parliamentary Assistant to the Minister of Finance  
In October 1998 I reported to the OSC that [Brokerage] had managed the portfolio neither prudently nor diligently and, consequently its value had been much reduced.  
Eight months later in June 1999, the IDA told me they were investigating my complaint against [RR] but not apparently against [Brokerage]. Subsequently my wife and I were interviewed by

IDA. Since then, and a further two years later and despite letter after letter from me enquiring about progress in its enquiry, I have heard nothing from IDA, except once. About three months ago a man who identified himself as a former RCMP inspector called and said he was working as an investigator for IDA and that he would call me within a week to tell me how IDA intended to handle my complaint. I heard nothing."

A small investor – Jul 2001

"As a result of the activities of this broker, I not only lost my entire life savings, I lost the savings of my company and I found myself in debt to the tune \$1.8 million. I can tell you there was the day when I stood on the deck of my boat with a 50 pound weight tied around my waist because I had to put an end to ...(unintelligible) ... and it is only because of the intervention of my wife, a very timely intervention, and the subsequent support of my two children that I am here before you today."

A small investor – Nov 1999

"THE REGULATORY BODIES DO NOT PROTECT THE INVESTOR."

- A small investor - Nov 2003

"I took action by reporting the broker to the Chambre de la Securite Financiere. There were 10 charges. The broker lost his license for two consecutive months. Was expected to return to 'school', complete and pass the test. Had to pay all cost, on a monthly basis, to La Chambre. He had four fines, \$800, \$2000, \$3000 and \$1000. He had four reprimands.

The broker forged my name - took my RRSP from one company had the cheque sent to his office, removed the documents and deposited the money with the bank where I was holding a leverage loan. I had received three notices from the bank re margin call.

Upon my retirement I had a leverage loan at the bank on the recommendation of the broker - take out RRSP and the leverage loan would offset the withdrawal. As we all know the market dropped.

To cover himself, the broker moved all cash into high tech - fortunately I spotted this - moved my account to another firm. Lucky for me as within the next four months the bottom dropped out of the tech market - if I had not found this my house would have been sold to take care of the leverage loan.

I sent to all the companies and got the histories of my accounts, a nightmare. The accounts were churned to the point that an expert could not figure all of it out. In French they called it taking soft corners.

It really gets much more involved - the documentation I received from La Chambre is in French and I do not speak the language.

There is another case pending against this broker with La Chambre."

A small investor - Nov 2003

"The Ombudsman's Office seems to have sided with the I.A. on all matters. Regarding all the forged initials on my Application/Agreement, they say the I.A. said I signed them. Although I know the Assistant Ombudsman really knows they are not my initials, he is still saying "Prove it!" They seem to want me to go to a lawyer and they say it will be up to the I.A. to pay the damages if I win in court if the initials are proved to be forgeries.

I just got off the phone. I am in shock that the Ombudsman/Bank will not listen to me or let me prove it to them. They are just concerned that the I.A. is working within the Rule Book of the IDA.

I now need a "hand writing expert". I am supposed to be going to the Toronto Police to get them to look at the documents."

A small investor – Nov 2003

"(Small investor) is disabled and is 59 years old. She lives on \$1,000 a month in an apartment with her brother. She says she received about \$120,000 as a result of her accident and invested with an investment advisor with (bog Bank) who came to her home. She told him that this was all she had and needed it to be secure. When she saw her investments declining she expressed concern and eventually cashed out.

She made a complaint and ended up at the IDA but was unable to resolve the problem.

She says she does not recall signing anything and still has the application marked with X's where she was to sign."

Telephone call from small investor – Nov 2003

"The pressure and the losses and uncertainty of the future were too much for us at the time ... The irrational and probably illegal handling of my portfolio has cost myself and my wife great damage financially and psychologically. I hope this can be taken into account somehow. ... Unfortunately his irrational and illegal trading has pretty well ruined my life savings. I am now almost 46, basically unemployed with serious back problems. This is a very unfortunate circumstance that should never have happened. ...

I attempted to solve this problem by meeting with the firm. To say I was laughed out of the office would not be an over exaggeration. I realized at that time that I had been taken in and a large percentage of my life savings were gone for good. ...

The law is there to protect these people from doing this. It is small people like me who work and save and then are led to trust and believe that these pros will work to invest our savings for our best interests, not theirs. My wife and I have been through a terrible three years and have serious doubts about our future now."

A small investor – Nov 2003

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Letter from Counsel to Bank President and Chairman of Brokerage-

"My clients met with [RR] in early 1998. Mr. (Bank Manager) stressed to [RR] that the (small investor) family were very conservative investors and they were not interested in being involved in any financial vehicles where there was any risk. In fact Mr. (small investor) had explained to [RR] that he had had a bad experience with another [Brokerage] a number of years before; did not want that to ever happen again; did not want to deal with brokerage houses in general and only wanted to do conservative investment. ...

What gets more interesting hereafter are incidences of breach of [Bank]'s own policy and the effect it had on such people as (small investor)'s minor children. ...

What I find interesting is that [RR]'s disregard for the future of these children, resulted in trusts which had been built for 15 years to be destroyed in a matter of months. ...

There is absolutely no doubt that the losses outlined in the attached schedule are as a direct result of the inactions and actions of both [Bank] and [RR]. You are in breach of the agreement between the parties. You are in breach of common decency and quite frankly, these damages are without equivocation resultant from the activities of your [RR] and yourselves



I find it extremely distressing that the bank's customers have been so shabbily treated and so badly considered when they are both significant and have had such a long-term relationship with your institution."

Counsel for a small investor – Dec 2003