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June 10, 2005

Mr. Gerry Salembier
Director, Financial Institutions Branch
Financial Sector Policy Branch
L'Esplanade Laurier
20th Floor, East Tower
140 O'Connor Street
Ottawa, Ontario KIA 0G5

Dear Mr: Salembier:

RE: Annex 6/Submission Regarding Complaint - Handling

Enclosed is my Submission on the subject of complaint - handling mechanisms and procedures that exist in the chartered banks. My comments are restricted to complaints against stockbrokers/investment advisors, and the brokerage arms of the chartered banks.

I appreciate the opportunity to bring these views to your attention. Please be advised that all account documentation is available for examination by the Department of Finance.

Yours truly,

Patricia Cosgrove

Patricia Cosgrove

2006 Review of Financial Institutions Legislation

Comments Submitted By

**Patricia Cosgrove
Toronto, Ontario**

June 2005

CONFIDENTIAL

Introduction

The Department of Finance is to be commended for its recognition of the need to focus on enhancing the interests of consumers of financial products. My comments will address the current state of complaint - handling procedures regarding matters related to securities, or the stock brokerage subsidiaries of the chartered banks. While my personal experience in this area is restricted to one of Canada's major banks, I understand from speaking with many small investors, over the past four years, the procedures and attitudes that I experienced are similar in many of Canada's large financial institutions. The banks have failed to provide individuals who have complaints about securities issues with an adequate complaint-handling mechanism.

In a presentation to the Ontario Legislative Standing Committee on Finance and Economic Affairs, in August 2004, John Hollander, a well known Ottawa litigator, stated that approximately half of the claims he deals with are directed against the brokerage arms of the chartered banks.

It is important to emphasize that the Self Regulatory (SRO) model of investor protection, in this case, the Investment Dealers Association of Canada (IDA), has failed to protect small investors, especially the elderly.

The market timing scandal exposed in December 2004, which involved several of Canada's major banks: Toronto Dominion; RBC Financial, and Bank of Montreal, serves as an illustration of the cavalier attitude this industry has toward investors (restitution and fines levied on these banks amounted to over \$40 million). The *National Post*, recently reported that Royal Bank of Canada's US securities arm, RBC Dain Rauscher Inc., has been fined US\$ 1.7 million, for giving preferential treatment to certain mutual funds in exchange for getting brokerage business from those funds. The ongoing media reporting of industry/stockbroker malfeasance provides numerous examples of the industry's disregard for small investors/consumers in pursuit of profit. These attitudes are reflected in the manner in which consumers of securities products are dismissed when they complain.

I suggest that while the investment advisors/stockbrokers are often at fault, the real problem rests within the senior executive ranks of these organizations. Brokers remain under extreme pressure to generate commissions and fees, even at the expense of the client's financial well being...that is if they want to stay employed. As one broker, employed by a bank-owned brokerage firm said to me: "enough is never enough". No wonder accounts are churned, and clients are sold high fee generating products, such as wrap accounts, and deferred sales charge (DSC), mutual funds. All too often, the elderly, who are the most vulnerable, and perhaps the most trusting, find themselves victimized by greed.

Investors need protection that is not sponsored by the financial services industry.

The Minister of Finance, the Hon. Ralph Goodale, stated in a letter to the Small Investor Protection Association (SIPA), in May 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".

While the Center for the Financial Services OmbudsNetwork (CFSON) plays a valuable role in directing consumers to the appropriate agency to address their disputes, when it comes to securities and stockbroker malfeasance, consumers, in too many cases, end up at a dead end:

Investment Dealers Association (IDA), individual bank ombudsmen, and the Ombudsman for Banking Services and Investments (OBSI), all of which are industry sponsored.

The Canadian economy benefits from the investments made by small investors. The degree of stockbroker malfeasance, causing investors to lose their savings, together with a securities regulatory system that has failed over and over again to enforce its Regulations, when it comes to small investors, does not bode well for securing investor confidence, never mind fairness. Self regulation means no regulation...the fox is guarding the chicken coop!

Federally regulated financial institutions are required to have procedures and personnel in place for complaint-handling. As part of its regular five year Review of the Federal Financial Institutions Statutes, the Department of Finance has invited stakeholders to share their views on a range of issues, prior to the 2006 legislative review. I have chosen to focus on the subject of *complaint-handling*. While my comments are anecdotal, they are based on personal experience regarding the complaint-handling process at one of Canada's banks.

Given my experience, which began in July 2001, and continues to this day, I believe that the so-called complaint resolution process is frequently one of complaint dismissal not complaint resolution, on matters related to securities.

Canadians have traditionally shown trust in the chartered banks. The bank manager, was and is today, a trusted member of the community. Senior executives of our banks are respected members of the Canadian corporate elite. Bank-owned brokerages run multi million dollar advertising campaigns promoting their products and services, encouraging Canadians to trust them. But if you run into difficulty, as my then 90 year-old Mother did, the response is quite different. For example, the bank-owned brokerage firm claimed that at no time did it act in a fiduciary capacity or have a fiduciary responsibility to my Mother. It is difficult to believe that one of Canada's "most respected" institutions would take such a position.

I believe the banks have not demanded that their brokerage subsidiaries adhere to the same standard of ethics imposed on their other lines of business. Until the banks do so, I hope the federal government will refrain from agreeing to give the banks expanded powers.

Accounts of Norah Cosgrove

My 93 year-old Mother, had an unfortunate experience with a major bank-owned brokerage. She had an account with the firm from 1993-2001 (age 82- 90). Although her former investment advisor/stockbroker is no longer licensed, the firm fully supported the manner in which the account was handled. A list of concerns/allegations, together with the firm's Code of Ethics are attached.

It should be noted that the media interest in this case is perhaps due to the manner in which a major Canadian bank-owned brokerage treated an elderly widow, as opposed to the capital losses of approximately \$61,000.

By way of background, I filed a complaint with the firm in 2001. One the major areas of concern was the fact that there was an overexposure to equities. While the account was with the firm, a review of the account statements shows that the average equity exposure was 70%. Over the latter years, this increased significantly; when my Mother closed her account at the age of 90, her equity exposure was 85%.

In 1997, when my Mother was 85, the broker completed a new Know Your Client form (KYC), that increased the risk component to 75% equities. The KYC form is the most basic and most important document between the broker and the client. The KYC form also contained errors with respect to the amount of fixed assets, total assets, and annual income. My Mother was not informed that her risk exposure had been increased. The KYC form was signed and approved by the broker and the Branch Manager. It was also approved by the firm's Compliance Department.

Common law dictates that an individual cannot be bound by a document he/she did not know anything about. At a Town Hall meeting held in Toronto, May 31st, David Brown, Chair, Ontario Securities Commission (OSC), in response to a question I posed, advised me that there was nothing in the Ontario Securities Act that would permit an investor to be governed by a document he/she did not know anything about. Please refer to my Mother's letter to the IDA, dated October 31, 2001, stating that she did not agree to any increase in risk.

The firm's Compliance Officer, responded to our concerns, in a letter of September 2001. He stated that with respect to the increase in equity exposure and the sale of almost 50% of my Mother's holdings into the Sovereign Investment Program, the firm's high fee generating proprietary product: "It is our understanding that the Sovereign portion of Mrs. Cosgrove's account was designed to meet the growth component of her objectives".

He failed to point out that when the broker recommended Sovereign, in 1997, the account was already invested 70% in equities, well above what is reasonable for an 85 year-old. He also failed to mention the annual fees of 2.5% plus a range of taxes that were charged. You can see how wrap accounts are very profitable for the financial institution, as opposed to the client.

The first KYC form that was completed by the broker, when the account was opened, had an objective of 50% equities. My Mother had never agreed to this, and had never been provided with a copy of this KYC either. As a matter of fact, like many investors, she did not know what a KYC form was. From the list of concerns attached, you will note that this KYC form of 1993, indicated that my Mother had previous experience investing in equities, which was not the case. The IDA had been provided with tax returns to support this fact but chose to ignore this information as did the firm.

In October 2001, I spoke with the firm's Branch Manager, who in my view, was rude and belligerent. He concluded our conversation by saying: "I don't have to tell you anything", and then hung up. Apparently, from speaking with other victims of stockbroker malfeasance, this bullying attitude seems to be standard operating procedure, and is by no means restricted to the firm where my Mother's account was held.

The IDA reviewed the complaint, but refused to launch a formal investigation, based in part, on my Mother's age. A senior enforcement official told me in the presence of two IDA staff, that my Mother might not be a very good witness as she was 90 years old, and that she could be dead within the year. He then went on to say that Hearings are expensive and that the IDA has to get the best bang for its buck. This matter was mediated by the Ontario Human Rights Commission, and a confidentiality order imposed.

The Ombudsman for Banking Services and Investments (OBSI) supported the firm. When I asked the Ombudsman if, in his view, my Mother had been treated fairly, I was told that my Mother did not need the money she lost, and that seniors don't need much money once they have

paid for their groceries/condo fees. The OBSI supports complainants in matters related to securities in 15-18% of cases.

Bank Ombudsman

The Bank Ombudsman fully supported the broker's handling of the account.

The Department of Finance and Canadians should be concerned about practices where key client account documentation is changed (without the client's knowledge), in this case, the KYC form of 1997, resulting in the client being bound to or governed by such a document. With respect to the 75% equity objective, the Deputy Ombudsman, who reviewed the complaint stated: "It should be noted that the firm holds the view that these percentages reflect your entire portfolio". How can the 1997 KYC be applied if my Mother never knew anything about it? Once again, does this not fly in the face of the common law, not to mention the "smell test"? Not satisfied with the overall response, I wrote a letter raising numerous questions about the adjudication. My correspondence was ignored. It appears, the complainant simply receives a white wash and that is it.

In his closing letter, dated, July 18, 2002, the Deputy Ombudsman also stated: "The Sovereign investment was considered as part of a long term growth allocation". My Mother was 85 when the broker strongly suggested this investment. Why did the firm feel that at this age, long term growth was required? At the time, the life expectancy of a female was 78 (Statistics Canada).

The Department of Finance may wish to speak with representatives from the financial institutions, especially the various bank ombudsmen, to determine if practices, such as changing the account documentation of a client, apply to their other areas of banking, or only to the brokerage subsidiary? The firm refused to provide me with any documentation to indicate that my Mother had agreed to the objectives and information stated on the 1997 KYC form. On May 12, 2005, I wrote to the current Ombudsman, requesting this information. To date, there has been no acknowledgement.

The Department of Finance may also wish to examine the qualifications of bank ombudsmen. Who are these individuals? What knowledge do they have about securities and other lines of business? When dealing with elderly clients, how do they adjudicate the degree of fiduciary responsibility if any? How can they claim to be independent if they are bank employees? Perhaps these questions are irrelevant? Presuming bank ombudsmen were qualified to adjudicate complaints pertaining to securities, their role is to defend the firm, and see to it that the client goes away.

Not only was my Mother over exposed to equities, she was also placed in some higher risk stocks and Sovereign equity pools, specifically the Sovereign Overseas Equity Pool. According to the OSC, every investment recommended for a client must meet the suitability requirements. When I asked the Ombudsman if my Mother had been treated fairly, he responded by stating that: "Fairness is determined by the IA". When I asked if the Sovereign Overseas Equity Pool was appropriate as it is described by its own managers as "volatile", he responded in an email, July 2002, stating: "By putting a fund with short term volatility as part of a portfolio allows the IA to provide diversification in the portfolio. The make-up of individual stocks must be considered as part of the overall strategy". Perhaps this Ombudsman (now retired) did not fully understand the OSC's requirements, or perhaps he was bowing to pressure from the brokerage subsidiary?

When a client asks the Ombudsman to investigate a complaint, both parties sign a confidentiality

agreement. In our case, both parties agreed that no correspondence from the Bank Ombudsman could be used in litigation. When I filed in Small Claims Court, the financial institution put the case in the hands of the Head of Litigation at one of Canada's most prestigious law firms. Included in the statement of defence, was a copy of the Ombudsman's closing letter. This letter had **WITHOUT PREJUDICE** written in large bold caps across the top. One does not require legal training to know the meaning of the term. A letter of apology from the Bank Ombudsman to the President of the Small Investor Protection Association (SIPA) is attached. So much for client confidentiality at this financial institution.

The Office of the Ombudsman was in complete non compliance with the Bank's stated policies.

While bank ombudsman give the appearance that there is a process in place to deliver fair adjudications, such may not be the case when it comes to matters related to the stock brokerage side of the business.

It may be useful to note that the tone in dealing with the Ombudsman is frequently adversarial, no doubt intended to intimidate complainants. In a conversation I had with the then Deputy Ombudsman (about a complaint regarding my account, not my Mother's), I raised a matter regarding his refusal to deal with the fact that my signature appeared on a document I did not sign. I was told in a very belligerent tone that if I continued to raise that issue, he would terminate the conversation!

To illustrate my concerns about the failure of the Bank Ombudsman to deliver a fair and independent adjudication, I have attached a copy of my recent exchange of correspondence with the current Bank Ombudsman. Note the four-line response to my letter of March 30th...complete dismissal of my request, and a failure to respond to the questions I posed.

It should also be emphasized that when approaching bank ombudsmen, aggrieved investors are at a considerable disadvantage, as they do not necessarily have the information, knowledge and confidence to launch a well documented complaint. In most scenarios, if the client had been knowledgeable, he/she might not have had a problem in the first place. As an example, when I approached the bank ombudsman, I was unaware of the DSC feature/penalty that many mutual funds carry. Needless to say, the client's lack of knowledge and in some cases confidence, is used to the bank's advantage.

Senior Bank Executives

I wrote to the Chairman of the Board of Directors in November 2004; there has been no acknowledgement. On May 2, 2005, I contacted the office of the Chief Operating Officer. There has been no communication other than to tell me, (in response to a follow-up with the COO's office), that my concerns had been forwarded back to the Ombudsman. It appears that senior executives will not acknowledge client concerns. Such matters are left with a toothless ombudsman, whose job is to defend the firm/bank, and make the complainant go away.

Ombudsman for Banking Services and Investments (OBSI)

The Department of Finance may have erred when it endorsed the model of a financial services industry funded body adjudicating complaints. As an industry sponsored group, the OBSI, cannot be independent. While the OBSI has done some good work, all too often, its decisions support the financial institutions, not the investors as only 15%- 18% of complaints against stockbrokers are supported by the OBSI.

The Ombudsman has attributed this low figure, in part, to the fact that the financial institutions are doing a better job. The eight institutions involved in the market timing scandal (December 2004), that settled for over \$200 million, provide evidence that the situation may be getting worse not better.

John Hollander stated in his presentation to the Ontario Standing Committee on Finance and Economic Affairs, that approximately half of his clients submitted complaints to the IDA or the OBSI, and in all cases, the IDA and OBSI repeated the response from the brokerage house, taking the financial advisor's word as the truth.

Of the five industry directors who sit on the Board of Directors of the OBSI, two represent firms that were disciplined over the market timing issue: Investors Group and TD Waterhouse.

Although RBC Dominion Securities does not sit on the OBSI Board, its role in the market timing scandal, as reported in the media, cost the firm over \$17 million; BMO Nesbitt Burns' role cost the firm over \$3.5 million.

The Ombudsman also states that once a complaint finds its way to the OBSI, it has already been through several dispute resolution processes, including the individual bank ombudsmen, and the IDA. As previously stated, bank ombudsmen are bank employees, who are not independent. The continuous criticism and ridicule of the IDA's failure to enforce its Regulations is well documented. The IDA is not a statutory authority, but a private industry association.

It may be useful to point out that in agreeing to set up the OBSI as an industry-sponsored organization, perhaps at the time, no one understood the level of wrongdoing that was taking place in many of the financial services firms, so much of which continues to be exposed.

I urge the Department of Finance to review the operations of the OBSI, with a view to setting up a government sponsored adjudicative body, funded by the industry.

For over two years, I have raised questions with the OBSI about what I consider to have been a flawed adjudication, only to be told the file is closed.

In a presentation to the Ontario Legislative Committee on Finance and Economic Affairs, August 24, 2004, John Hollander, offered some insightful comments about the IDA and OBSI. Mr. Hollander said:

"The IDA and OBSI routinely provide legal advice with substantial consequences to the investor and without accountability to the investor for the accuracy of the advice given. They tell clients there is no validity to the claim. The IDA and OBSI provide legal advice, with neither the safeguards nor the accountability that apply to my profession. They tell clients their claims are ill-founded. My settlements and experts prove these opinions were wrong. Simply put, the IDA and OBSI are practicing law without a license".

Mr Hollander further stated: **" It would appear that the IDA sees as its mandate the rejection of claims to reduce the liabilities of its members at the expense of the public".**

National Investor Protection Agency

Canadian investors need a National Investor Protection Agency. While the regulation of securities is an area of provincial responsibility, banks are federally regulated; consumer protection is a national issue. Small investors contribute millions of dollars by investing in Canadian companies, and in too many instances, find themselves "ripped off" by their respective investment advisors/stockbrokers.

Conclusion

Canada's financial services sector is a key driver of economic growth, especially in Ontario, in terms of employment and GDP. The brokerage subsidiaries of the chartered banks contribute significantly to the banks overall profit picture. Canadians need a brokerage industry that treats those who place their trust in the industry with decency and fairness. The problems in the brokerage industry are systemic, not just a question of a few rogue brokers. Pressure is coming from the highest levels of these institutions to generate profit. The greed is out of control.

The regulatory system for securities, across Canada, has failed to protect small investors. The industry is not prepared to make change on its own accord. Without action at the political level, nothing will change, and investors will continue to be abused.

I believe that complaint handling mechanism within the bank I dealt with is nothing more than window dressing, designed to give government and the public the impression that an independent process of adjudication exists. It does not. Given the contribution to the overall bottom line that brokerage make, it may be naïve to believe that taking a complaint to an ombudsman would have a favorable result. These individuals have proven over and over again that they are no match for the powerful brokerage operations.

I appreciate the opportunity to bring these matters to your attention. Please be advised that all documentation including account statements and correspondence care available for examination.



OSC slams door on swindled senior

The December installment of the OSC ineptitude sweepstakes has got it all. A greedy stock broker living in opulent Rockliffe Park, a greedier brokerage house called RBC Dominion Securities, an octogenarian victim and, of course, our beloved bumbling keystone cops at the Ontario Securities Commission.

Our tale of woe starts in 1993 when a certain Norah Cosgrove, 83, falls into the claws of Nancy Kemball, domiciled on Tony Mackinnon Road right next to Frank's favorite Michael Cowpland.

Nancy, a shrewd investor if I ever saw one, puts Norah into stocks - lots of 'em. In fact, half of Norah's retirement funds are in stocks. But that's not enough for the Kemball or RBC's avaricious boiler room supremos. So four years later, without telling their client, they up the portfolio to 75 per cent stocks, and "long-term" (ie, risky) ones at that, despite the fact that Norah, at this point a sprightly 87, is hardly long term herself. They're nice enough to fill out all the required paper-

work without telling her, though. And they're especially brilliant on stock funds that pay them a lot of fees regardless of what happens elsewhere.

Eventually, Norah, with help from her daughter, wises up and yanks her money out, but not before suffering a sizeable loss. Complaints fly, Kemball gets the heave-ho, but no money is reimbursed.

Enter the IDA, Bay St. apologist extraordinaire. Paul Bourque, senior veep of "member regulation," has his hackeys give Norah and daughter the brushoff, pausing just long enough to tell them the old bat's too ancient to bother with and that, in the sensitive words of head cop Alex Popovic, she might be dead in a year, hearings are expensive blah blah de blah.

So Norah trudges off to see our old friends at the taxpayer-funded OSC to complain. Our fearless investigators, roused from their slumber spring furiously into action and don't rest until they've crafted an excuse to do nothing. No, says Senior Inquiries Officer Joan Chambers,

there's nothing amiss here, and forget about the fact that you didn't actually sign off on changes to your investments. A little speculation is just the thing for a 90 year old, what what.

Much to-ing and fro-ing ensue, which takes us to the kicker in the story. Ultimately, poor Norah's file ends up in the ham hands of good old Charlie Macfarlane, executive director of the OSC and right hand man to chief holt David Brown.

Long an expert on how to expedite cases, Macfarlane cooks up a brilliant defence when Norah's dogged daughter sends him a letter demanding long-awaited answers: Given all the time you've already taken up, our hero says between yawns, "I have refrained from answering the questions."

At \$350k per annum, Macfarlane is clearly earning his keep, and for all he's done, Frank hereby bestows upon him the order of the F.U.B. May he wear it with pride.

*Frank Magaziner
see 103*