



Speech to the 2009 McMaster World Conference

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January 14, 2009

“The Role of Securities Regulation in the Fight Against Economic Crime”

Good afternoon, ladies and gentlemen.

I welcome the opportunity to speak to you today – especially on a topic as pressing as economic crime.

First, I would like to thank Paul Bates, Dean of McMaster’s DeGroot School of Business and, also, an OSC Commissioner, for inviting me to speak today.

As the Chair of the Ontario Securities Commission, I see my role today as providing some of the regulatory perspective on economic crime in the context of securities markets – one part, albeit an important part, of the bigger picture of global economic crime.

That’s because the mandate of the Ontario Securities Commission is twofold:

1. To provide protection to investors from unfair, improper or fraudulent practices, and;
2. To foster fair and efficient capital markets and confidence in capital markets.

Preventing economic crime is necessary to protect investors, and is essential to fostering fair and efficient capital markets.

Therefore, it's central to fulfilling our mandate.

I will focus on three things:

1. First, the need for economic crime prevention in the global capital markets. This is, I hope, obvious to this audience and I don't intend to belabour it.
2. Second, what the OSC can and is doing to prevent securities crime. It will be important here to understand the distinction between administrative law enforcement and criminal law enforcement.
3. And, third, the need for all affected parties, including regulators and law enforcement agencies, to make co-operation a priority in the fight against economic crime.

I want to stress that economic crime truly is crime: serious crime.

What we're talking about today and tomorrow is just as criminal as armed robbery, assault or breaking and entering.

Because no weapons are used and no physical wounds are inflicted, it's seen by some as "victimless" crime. I think we all know this is not true.

Stealing is stealing.

Whether it's by a stick-up man with a gun or through a Ponzi scheme by a Wall Street executive.

And there are victims: Economic crime has significant effects, damaging individuals, corporations, and whole economies.

Economic crime affects everyone in this room.

Mutual funds and similar pooled investment vehicles have made the capital markets easily accessible to the average Canadian and, with the growth of the individual investor population in recent years, virtually every Canadian adult is invested in the capital markets.

More than ever before, Canadians are responsible for managing their own investments, and individual Canadian investors have some \$700 billion invested in these pooled vehicles.

Significantly, our retirement savings – in the form of RRSPs and pension plans – are tied to the capital markets.

We know that attracting more people to the capital markets is a good thing, but it also makes more of us more vulnerable to economic crime.

To the criminal, this increased participation means simply more potential victims.

At the same time, the globalization of the markets has made economic crime an international phenomenon.

It's a cross-border issue that all regulators and law enforcement agencies must recognize and manage.

From boiler rooms and online crime to fraudulent securities offerings, economic crime cannot be effectively countered within a single jurisdiction.

In this environment, communication and co-operation are critical to timely and effective detection and enforcement.

I'll talk more about the necessity of international co-operation shortly.

1. The Need for Economic Crime Prevention

Why do we need to prevent economic crime?

As I mentioned, it's part of our job at the OSC and it's to the benefit of all market participants to foster confidence in the capital markets.

But more than that, it's simply the right thing to do.

The damage to the victims of these crimes is too devastating to be tolerated.

According to a 2007 study conducted on behalf of the Canadian Securities Administrators, the CSA, about one in 20 Canadians said they've been victimized by some form of investment fraud.

A quarter of them reported the fraud to authorities.

The effects of investor fraud are many and severe.

According to the CSA study, beyond financial loss – which victims state has an extreme or significant effect on their personal finances – investment fraud destroys trust in the markets... in investments... and in people in general.

The health of victims can also be affected.

The study found that 60% of victims who lost \$10,000 or more experienced higher stress levels.

Not surprisingly, anger, depression, and isolation were reported by a substantial percentage of victims.

Economic crime is deeply personal and damaging.

It has a significant effect on victims and on the economy, and it's global.

Now let's look at what we can do – and are doing – about it.

2. The OSC's Work in Preventing Securities Crime

As with any kind of crime, the best prevention against securities crime is to stop it before it can occur.

Every crime we prevent by vigilant surveillance and compliance is one less crime perpetrated on hundreds, perhaps thousands, of victims.

There are no statistics for crimes that did not occur – prevented because the criminals did not like the odds of getting caught.

In our case, preventing crime in the capital markets begins with compliance.

Compliance is about making sure the rules are followed so that we don't need to use our enforcement tools as often.

It's day-to-day surveillance by the OSC and its CSA partners.

It's the self-regulatory organizations conducting audits of their members, fielding inquiries and assessing complaints.

Compliance is extremely important. It's labour intensive. And it has proven to be effective in preventing misconduct before investors are harmed.

For us, compliance is at one end of a continuum; enforcement and prosecution are at the other.

As you may know, the OSC recently launched administrative proceedings against the hedge fund operator Sextant Capital Management and other parties.

An OSC hearing on the matter is scheduled for March 16th.

The genesis of that proceeding was a routine compliance review by OSC staff.

Compliance keeps most market participants on a straight and narrow path – they know someone is looking over their shoulders.

But when that isn't enough, the OSC, along with a variety of partners in securities enforcement, steps in to punish wrongdoers.

Securities enforcement in Canada is complex, and not well understood.

It involves many jurisdictions, and many agencies.

To begin with, there are two main types of securities law enforcement.

These need to be understood and differentiated.

One is administrative law enforcement.

This is what the OSC does – enforcing the *Securities Act* and *Commodity Futures Act*.

Administrative law enforcement is the domain of the commissions, the Canadian Securities Administrators, and the self-regulatory organizations (SROs).

The OSC's enforcement system has three parts: investigation, litigation, and adjudication by Commission tribunals.

The second type of securities law enforcement is criminal law enforcement, which is largely the purview of the police and Crown prosecutors.

Each of these types of enforcement – administrative law and criminal law – involves different members of what has come to be known as the Canadian securities enforcement mosaic.

The OSC is just one part of this mosaic.

It's one of 13 provincial and territorial securities commissions – which comprise the CSA.

The commissions are the administrative law enforcers.

Also part of the mosaic are Canada's two main national self-regulatory organizations: the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada. They're responsible for enforcing compliance with SRO by-laws, regulations and policies by their members and their members' registered employees.

These SROs are overseen by the CSA.

When we move from compliance to enforcement, we add provincial and territorial police forces, and both the Commercial Crime Branch and the Integrated Market Enforcement Teams of the RCMP.

That's for the investigative phase of enforcement.

When it comes to prosecution and adjudication of securities enforcement, add 13 provincial and territorial Crown prosecutors and their corresponding courts.

There are also federal Crown prosecutors and federal courts.

To be effective, this Canadian system must rely heavily on communication, co-operation and collaboration across the entire mosaic.

There's a lot that we at the OSC can do within administrative law and within this mosaic that both deters and penalizes improper conduct.

We're able to seek orders to freeze assets to preserve them for investors who've been wronged.

We can stop people from participating in the markets.

We can stop them from working in a public company as an officer or director.

We can impose fines, and we can order the payback of ill-gotten profits.

The OSC's adjudication calendar is only getting busier.

In 2008, the OSC initiated 24 new proceedings, including those before Commission tribunals and before the courts.

These 24 proceedings were in relation to 85 individuals and 43 corporations.

We have proceedings scheduled in our hearing rooms almost every day over the next six months.

When improper conduct crosses the line into criminal activity, we can and do assist in the investigation.

However, with a few minor exceptions, securities regulators do not typically pursue criminal prosecutions or seek prison terms.

Police forces, the attorney general, and the judiciary system take that on.

The Canadian securities enforcement mosaic has had successes.

Here are two examples from last year:

- The B.C. Securities Commission ordered respondents involved in a Ponzi scheme to pay almost \$17 million to provide partial recovery to investors.
- The Alberta Securities Commission recently ordered two executives of a public company to pay \$1.5 million in administrative penalties and costs for disclosure violations.

There are other examples... but I think that Canadian securities regulators can do better.

In fact, I co-chaired a securities fraud enforcement working group last year that presented recommendations to Canada's justice ministers.

The recommendations offered a number of ways to improve the investigation and prosecution of improper activities – whether they're breaches of regulations or outright criminal activities.

Our four recommendations were directed at better co-operation and communications across Canadian jurisdictions and agencies, and better use and allocation of highly skilled, specialized resources.

We also suggested the ministers consider ways to compel evidence from witnesses to economic crime through the use of an investigative summons – a tool that could be designed to be consistent with Canada’s Charter of Rights and Freedoms.

If implemented, this tool could be similar to the witness-compulsion powers of the U.S. grand jury system, which have contributed to successful prosecutions in the U.S.

More recently, in November 2008, former justice Patrick LeSage – who’s currently an OSC Commissioner – and Professor Michael Code released a report on their review of large and complex criminal case procedures in Ontario.

The review was intended to identify issues and recommend solutions to move large, complex cases through the justice system faster and more efficiently.

The review found a high degree of consensus among participants regarding potential solutions to key impediments.

The LeSage-Code report cited 41 recommendations to increase efficiency, lower costs and improve the quality of justice.

Among these were measures that hold particular interest for the OSC, since securities infractions that are brought to the criminal justice system tend to be large and complex.

Perhaps the most important recommendation is the need to focus more on less. All parties should concentrate on those charges that are most strongly supported by the evidence and that are most likely to deliver a conviction. This, rather than spending years and valuable resources pursuing every secondary and technical aspect of a case.

Having noted the limits on the sanctioning powers of the OSC and its CSA partners, and having acknowledged there's room for improvement in enforcement, I also want to stress that there's a lot Canada's security regulators do accomplish.

- We are active in surveillance of the markets, continuously monitoring trading patterns for unusual activity – sometimes the first sign of economic crime. The OSC, RCMP and IIROC are partners in the Joint Securities Intelligence Unit (JSIU) which helps catch perpetrators and deters others.

- The OSC has a special boiler-room unit to find and close improper, unlicensed brokerage operations. Over the past 18 months, it has secured eight cease-trade orders – shut-downs – against 22 firms and 48 individuals.

- We've recently created a specialized insider trading unit to identify those who use non-public information to their own advantage – in clear violation of the key disclosure principle of equal and timely access to material information. This unit is able to act quickly, to investigate and to help prosecute cases of misconduct.
- In the 2008 fiscal year, the OSC Enforcement Branch went to the Superior Court in Ontario and obtained freeze orders totaling more than \$23 million in order to prevent the dissipation of investor funds by apparent fraudsters.
- And last Friday, Biovail Corporation agreed to pay a \$5-million penalty as part of a settlement agreement with the OSC after admitting to misleading investors in its financial disclosure. This was the largest fine ever imposed on a corporation by the OSC.

The OSC is working hard to prevent misconduct and protect investors from securities crime. This is fundamental to our mandate.

But we have to recognize that enforcement is only part of what we do, that our enforcement activities are only part of the larger nation-wide enforcement effort. And that, even with the best co-operation across the Canadian securities mosaic, enforcement in Canada alone is not going to stop securities crime.

It's a global problem calling for a focused global solution.

3. The Importance of Co-operation in the Fight Against Economic Crime

The OSC is committed to co-operating with other securities regulators and law enforcement agencies to fight securities crime.

In Canada, the OSC coordinates its efforts with the CSA, the JSIU, the RCMP IMETs and the SROs.

Beyond Canada's borders, we work with foreign securities regulators like the SEC in the United States and the FSA in the United Kingdom, and with IOSCO – the International Organization of Securities Commissions.

Let me provide you with two examples of the OSC's participation in international investigations.

Last year, the OSC provided assistance to the SEC in an initiative to protect investors from potentially fraudulent spam e-mails hyping stocks.

The SEC campaign – codenamed "Operation Spamalot" – resulted in the suspension of trading in the securities of 35 companies.

The second example involves the OSC's work last year in helping disrupt an alleged boiler room that targeted investors in the United Kingdom for the sale of suspicious gold-mining stocks.

Enforcement staff obtained an order to freeze a bank account in Ontario which held money raised from the sale of these stocks.

Eventually, about \$2.5 million was returned to investors – primarily in the U.K.

These are all positive developments.

But none of us should be under the impression that it'll be easy to turn the tide against securities crime.

The perpetrators of these crimes are highly organized, focused and knowledgeable about the workings of the capital markets and regulators... technologically savvy... and have deep pockets to hire highly-skilled defence lawyers when they need them.

The forces arrayed against economic crime are indeed fragmented.

One obvious advance would be to reduce the fragmentation of our own securities enforcement mosaic.

That means we need a common Canadian securities regulator.

Many of you know that the Expert Panel on Securities Regulation released its report on Monday.

One of its key recommendations was the creation of a Canadian Securities Commission that would be accountable to Parliament – and a significant step toward improving administrative enforcement.

Ontario's Minister of Finance says he's pleased that the Expert Panel endorsed a single regulator.

The OSC supports the Minister on this issue and is studying the report closely.

Meanwhile, within the current structure, the OSC is doing everything in its power to prevent securities crime and to take swift and appropriate action against offenders.

Prevention as well as enforcement and the threat of prosecution are vital to the efficient working of the capital markets.

Securities regulation is important and necessary work.

Particularly in the current economic and market conditions.

Many people appear to have had their confidence shaken in achieving an honest return on their investment.

Providing comfort to investors that they're protected from being cheated, is a valuable contribution to the capital markets.

And, in turn, that's vital to the functioning of the economy.

Securities regulation is important and rewarding work.

For those of you here who are students, I encourage you to explore careers in securities regulation.

As stewards of the capital markets system, securities regulators are central to our economic well-being.

And it is challenging work.

And it will be as long as the economic criminals try to find new victims.

To stop the criminals and to protect the investing public, we must communicate, coordinate and collaborate with our partners here in Canada, and around the world.

And we must move to new structures and adopt new tools.

We are making progress:

- Through our own enforcement improvements such as the boiler-room and insider trading units.
- Through enhanced coordination with our partners in the CSA and the SROs.
- Through our work with criminal law enforcement agencies and prosecutors.
- Through enhanced disclosure requirements that protect the public.
- Through recommendations for legislative changes that would give us new and better tools.
- And through co-operation with our international counterparts such as the SEC.

Ladies and gentlemen, at no time before in our history have the economies of the world been so closely linked – as the current global economic crisis has clearly demonstrated.

At no time before has the criminal element been so global.

And at no time before in our history has it been so critical to pull together to maintain the integrity of the capital markets, and maintain the trust of investors, large and small.

Preventing securities crime is vital to providing protection to investors and to fostering fair and efficient capital markets.

That's the mandate of the Ontario Securities Commission.

We take that mandate very seriously indeed – and we are making life tougher for those who violate Ontario's securities laws.

Thank you.