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Purdy Crawford: Doing it all

Cover Story

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He hails from Five Islands, a small community overlooking the Bay of Fundy on the coast of Nova Scotia; an idyllic setting where most of the town's 300 or so residents lead a relatively simple life. Yet Purdy Crawford, fueled with drive and ambition, early on in his career decidedly ensured his life would be anything but simple.

After graduating from Mount Allison University and then Dalhousie Law School in 1955, he took his new bride, Beatrice, to Cambridge, Mass., where he attended Harvard University to get his masters in law. He was just 24.

At Harvard, Crawford was taken under wing by the late Archibald Cox, who would go on to earn a reputation as an advocate of the public interest after serving five months as Watergate special prosecutor — a position from which he was ultimately fired in 1973 by then-president Richard Nixon in what came

to be known as the Saturday Night Massacre.

Following graduation, Crawford opted to launch his career in Toronto. "When we came to Toronto, we didn't know anybody." But that would quickly change. He had articulated under the direction of fellow Nova Scotian, Roland Ritchie, who was appointed to the Supreme Court of Canada in 1959, and landed a job as an associate at what is now Osler Hoskin & Harcourt LLP shortly before Dalhousie schoolmate Bertha Wilson joined the firm. During his first 10 years at Oslers, he would receive tutelage from head of the firm — and a descendent of its founding family — Hal Mockridge. "In those days, we didn't refer to people as mentors but looking back, it's obvious he fit that category," remembers Crawford. "He was not a business lawyer, but just a really good lawyer. We were generalists then. But he was understanding of my weaknesses and pointed them out to me from time to time and later, I became the beneficiary of a lot of his clients."



Purdy Crawford

And so an esteemed, if controversial, career had begun. With his beginnings in the profession rooted in corporate and business law, Crawford set out to establish more practical expertise by studying investing and getting into the market. He also would get involved at a governance level to attain first-hand experience by sitting on numerous corporate boards — even on companies he represented as a lawyer, which was an acceptable practice 30 years ago.

By 1962, Crawford became a partner at Oslers and in 1970, he achieved senior partnership. He was also a guest lecturer or instructor at Toronto's esteemed post-secondary institutions including Osgoode Hall Law School, York University, and the University of Toronto, and was becoming known to various levels of government, agencies, and organizations for his willingness to participate on committees responsible for reviewing legislation, such as developing Ontario's Securities Act in the 1960s.

That experience would eventually lead to his overseeing of the recent restructuring effort of \$35 billion worth of asset-backed commercial paper (ABCP) that froze up on the market in Canada two years ago, leaving thousands of investors, many of them elderly, empty-handed. Since, he has been commissioned by the federal government to oversee a proposal for establishing a single securities regulator in Canada, and has been called on by the province of Ontario to head a mandated review of the Ontario Securities Commission.

But back when he was still making his name, the cumulative number of obligations, from boards of directorships to charitable organizations to government committees, that Crawford had taken on would likely make many lawyers shudder. At home, he had six young children to dedicate time to along with his growing list of activities outside of his practice.

In 1985, he made a critical move, initiating a bid to become president and chief operating officer of Imasco Ltd., where he would inevitably ascend to chief executive officer through succession. Having been on Imasco's board of directors for 11 years, he knew the company well, and its CEO at the time, Paul Paré, had plans to retire. "Every lawyer who understands anything about business would never have left to run an in-house legal department," says Crawford of his decision. And while he admits it "wasn't an easy leave" from Oslers, his responsibilities mushroomed upon his arrival. In 1986, Imasco acquired Canadian building materials company, Genstar Corp. and its Canada Trustco Mortgage Co. "Almost immediately I led the acquisition of Genstar to get Canada Trust and right away, we had a lot of Genstar assets to get rid of," he says. Under Crawford's direction, Imasco unloaded Genstar divisions including waste management, cement, and real estate companies in order to increase the value of Canada Trustco. He also recruited Ed Clark, who's now head of the TD bank, to the trust company.

Smoke and mirrors?

The activities of Imasco, at the time of Crawford's tenure leading the company from 1985 to 1995, would later come under the scrutiny of federal authorities during investigations of smuggling schemes allegedly orchestrated by Canadian cigarette makers to avoid rising sales taxes put in place to deter Canadians from smoking. Imasco, a holding company, owned Imperial Tobacco Canada.

During the 1990s, cigarette makers in Canada increasingly exported their products to the U.S. and facilitated their re-importation back into the domestic market. Technically, the practice was illegal and police ultimately arrested former JTI-MacDonald Corp. (formerly RJR-MacDonald Inc.) president Edward Lang on charges of fraud in the spring of 2007. The charges against Lang and six other JTI executives were initially dropped but reinstated by the Ontario Superior Court in February 2008. Two former RJR MacDonal executives, Les Thompson and Stan Smith, pled guilty to smuggling and fraud charges. They are expected to testify at trial against their former company and president.

No other tobacco executives were charged criminally and ultimately in 2008, Imperial Tobacco Canada and Rothmans Benson & Hedges collectively agreed to pay \$1.15 billion in criminal and civil fines relating to allegations of smuggling between 1991 and 1996.

According to a former Imasco executive, the company was deeply involved in the smuggling of product to ensure it kept its Canadian smokers inexpensively supplied and also recouping value for shareholders. Paul Finlayson, who has been vocal as a sort of 'whistleblower,' says his role was as a strategic planner within Imasco's hierarchy, drafting mathematical scenarios of the cost and profitability to export product to the U.S., pay minimum royalties, then have the bulk of the product smuggled back into Canada via reserves such as the Akwesasne Mohawk Nation bordering Quebec, Ontario, and the U.S. "Imperial Tobacco engaged in the distribution of tailor-made cigarettes on a smuggling basis," Finlayson told *Canadian Lawyer*. "This filled the hole in Imperial's earnings and in 1993, Imperial had a banner year because it shipped unlimited quantities across the border."

While Crawford is reluctant to discuss any aspect of his dealings with Imperial during his leadership of Imasco, Finlayson says he met with his CEO regularly during that time to brief him on his projections.

Finlayson still harbours some bitterness about the way he was forced in January 1994 to leave his job at Imasco after 16 years. During his free time, Finlayson had been instrumental in establishing an addiction centre on the Akwesasne reserve and says the company asked him to use this access to identify the people involved on the front lines of the reserve's tobacco smuggling operations and provide a report on amounts, products, and prices. He refused on principle and was told by the CFO at the time not to report back to work. He then requested a meeting with Crawford. "A week went by and I didn't hear anything, so I knew what the answer was," says Finlayson.

It wasn't until the fall of 2004 that the RCMP obtained evidence to initiate a search of Imperial Tobacco's Montreal office. Police seized documents related to Imperial's smuggling activities including a letter written in 1993 by Imperial's president and CEO Don Brown, addressed to the managing director of the company's parent, British American Tobacco. Brown wrote: "Although we agreed to support the federal government's effort to reduce smuggling by limiting our exports to the U.S.A., our competitors did not. Subsequently, we have decided to remove the limits on our exports to regain our share of Canadian smokers. . . . Until the smuggling issue is resolved, an increasing volume of our domestic sales in Canada will be exported, then smuggled back for sale here." Following the release of the court documents that led to the search of Imperial's headquarters, a spokesperson for Imperial Tobacco told media that while Imperial knew about the contraband activity, the company did not collaborate with criminals.

The tobacco business is not something that piques Crawford's interest for discussion. Instead, he recalls the opportunity to learn the operations of some of Imasco's holdings he worked hard to diversify, such as Shoppers Drug Mart and Hardee's fast-food restaurants. "It was great fun visiting the branches," he says, "so it was quite an experience." Imasco's market capitalization grew from \$131 million in 1970 to \$18 billion in 1999, much of its growth attributed to Crawford's leadership over his 10 years. Crawford left Imasco in 1995, recruiting fellow Oslers partner, Brian Levitt, who stayed on as CEO until 2000.

An artful compromise

Crawford emerged from the Imasco experience with his reputation unblemished. Most recently, he was called upon to parlay his expertise as the head of the Pan-Canadian Investors Committee for Third-Party Structured Asset-Backed Commercial Paper, charged with finding a solution for the thousands of investors in Canada who lost significant money through their purchase of ABCP.

When the sub-prime market south of the border imploded in 2007, investors here holding \$32 billion in ABCP found their investments frozen. Financial institutions and major market players met for what became known as the Montreal Accord Agreement, which set out terms and mandated a committee to resolve the gravity of losses. Crawford was selected as its chairman. He says he was keen to find an expeditious resolution. "I had great disappointment that we didn't achieve a deal in December of 2007 or even March of '08, but the reality is with Lehman Brothers going under and all that had happened after that, the deal we would have made and the new paper we would have issued would have been under water, it would have blown up," he says. "Could we have done a better deal? As I said in my affidavit filed with the court and which the court accepted, doing these deals is the art of the possible."

Following the Montreal meeting, the committee embarked on about 80 meetings with investors across the country. "I had not realized at the beginning that we had so many small investors," says Crawford. "Some had taken their niece's money and invested it, there were school teachers who'd retired. They were upset and angry, and justifiably so." He acknowledges that tension was thick during the first few meetings although he finally found a conciliatory voice during an event in British Columbia. "In Vancouver, I think we did a pretty good job of convincing [investors] that we were there to help them, that we were not the perpetrators of the problem. I started to respond to their e-mails and sometimes called them," he says. Most of the investors invited to the meetings hosted by the committee were those who had lost under \$1 million; for a group of retailers who had invested more than that in ABCP through their businesses, no resolution had yet been considered.

"Basically, the retail public was not informed prior to the filing for bankruptcy protection, so we had 1,800 families who read in the paper that this paper they were told was a short-term problem was seeking bankruptcy protection in court," says Diane Urquhart, an independent investment adviser who represented retail investors at the hearings. She says many of her clients were rocked by the revelation they might not qualify under the restructuring plan. "We had a number of individuals who were on suicide watch. We communicated this to Mr. Crawford and asked him to communicate with the people on suicide watch and eventually he wrote an e-mail that there was going to be significant impaired value."

The resolution determined by Crawford's committee and approved by investors enabled parties affected to exchange short-term notes for securities that will appreciate over about nine years. In return, investors forfeited their right to sue. Investors were asked to approve the resolution although many retail investors had either given up or had found private settlements; those who were left represented only a minority. So while they were unsatisfied with the resolution, they were unable to influence the vote.

One of the investors affected by the problems did follow through and end his life. "They say the linchpin of the success of the deal was to get the foreign banks to co-operate, but they gave them just about everything that they wanted including immunity," says Urquhart. "So there were 36 families who owned more than \$1 million who become collateral damage." Urquhart points out that Canada is one of the few countries that has allowed investors to shoulder most of the losses related to ABCP. She says of Crawford, "He didn't finish the job. Here we are almost two years later and there's no settlement."

The retail investors, with Urquhart's assistance, are continuing to seek an alternative resolution at the federal level along with accountability from institutions that sold the notes in the first place.

Crawford says he has no regrets. "With so many groups, corporations, pension funds, and banks having different interests, and with the paper being so complex and integrated into all kinds of institutions, when I look back, to me it was a wonder we got it done, never mind could we have done it better. I'm rather proud of it to be frank."

Yet along with the retail investors' continuing efforts, the fallout continues; the City of Hamilton filed a statement of claim in Ontario Superior Court in September alleging it was misled by Deutsche Bank about the risk involved in its purchase of \$10 million worth of ABCP. Its purchase of ABCP did not fall under Crawford's arranged agreement so the city had not waived its right to sue.

Esteem and awards

So after all that excitement in his career, why hasn't Crawford officially retired? At 78, he continues to go to work at Oslers, although he's no longer practising law. He begins his day early; rising before 6 a.m. and often gets to the office around 7 a.m. He attests he is still in good health and continues to sit on the boards of several large public companies and actively fundraises for charitable organizations.

Over the course of his career, Crawford has been the recipient of numerous awards, including Officer of the Order of Canada, and he maintains a high degree of respect amongst fellow lawyers. David Jackson, a partner in the securities group at Blake Cassels & Graydon LLP, has known Crawford for years. "I remember with particular fondness my first exposure to his kindness and thoughtfulness. I was a relatively junior lawyer who had been engaged to make an argument before the Ontario Securities Commission for a new client for whom Blakes had not previously acted. The argument was based on an opinion provided by a senior partner of another major Toronto law firm that was, to put it kindly, rather sketchy at best. I made the argument as best I could. Purdy was acting for an interested party who was not totally sympathetic to our new client's position. He stood up after I had finished, and gently but thoroughly destroyed the effect of my presentation," says Jackson. "Some days later, I received a handwritten note from Purdy, apologizing. He said that he had not known that the argument had been imposed on me by others and had he been aware, he would never have dealt with it in the way he had. I don't know which I appreciated more, the unnecessary apology or the fact that a very senior practitioner had taken the time to write it."

At Oslers, Crawford serves as a mentor to the next generation of lawyers while also helping to facilitate business for a handful of government clients and continuing his work for charities. Dale Ponder, managing partner at Oslers' Toronto office provided the following statement about Crawford's current role as counsel at the firm: "We have been very fortunate to draw upon Purdy's legal talents and business acumen during periods when he was an Osler partner and leader of the firm — and also during more recent times when he has filled more of an advisory role to a new generation of our lawyers.

"Mentorship and leadership development have been hallmarks of Purdy's career and a long list of Osler partners have benefited from his passion to see succeeding generations successfully rise to leadership."

Ponder continues: "I personally marvel at Purdy's continuing commitment and drive to making a difference. He continues to pursue his business interests, but also makes time for numerous charitable causes of importance to him. Along with this, he is periodically called upon for special mandates of national significance, such as the recent ABCP crises. He has had a major impact on the Canadian business scene throughout his career and this is just one recent example."

Currently, Crawford spends his time helping with the mandate of the Muriel McQueen Fergusson Centre for Family Violence Research at the University of New Brunswick, and his principal charity is the Mount Allison University where he's been bestowed the title of chancellor emeritus. He still accepts speaking engagements, most recently addressing the Montreal Board of Trade about the value of leadership in the context of risk and corporate governance. "I'm not quite as busy as I used to be," he says almost regrettably, but adds, "I do have the luxury of being able to do these things without being paid."

When he's not working, he is an avid follower of the sports pursuits of his 15 grandchildren and spending time with his family at his country home in Caledon, Ont. Will he ever fully retire? "I guess I will when I just can't do it anymore." But for the time being he figures at Oslers, "I think they just like to have my name around."

Additional Info

Comments

Donald G. J. Cormier 2009-11-23 13:28 0
 I attended University of Toronto Law School in the early 1970's and had the distinct pleasure of having been taught by Mr. Crawford in securities law.
 He was always very informative, and very much a gentleman who took the time to speak with the law students and answer any of my questions.
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Nice tribute but... — **Bob Sacamano** 2009-11-26 14:28 0
 Obviously Purdy is a well respected lawyer and clearly a great Canadian. I take issue though with the role he played in the "resolution" of the ABCP situation.
 Purdy was a pawn of the banks and bank-related interest groups in ramming through a solution that benefits the banks and the lawyers that earned fees from the bankruptcy process. By doing so he saw to it that Canadians (both individuals and corporates) lost their legal rights to pursue legal recourse relating to the sale of ABCP. He did this with no regret which I find troubling in light of his long and illustrious legal career.
 Now we have a situation where those same institutions that sold the ABCP are now trying to solicit the purchase of the paper at prices of 55 cents on the dollar.
 These banks and brokers made money selling this crap and now look to profit from buying it back. Yes Purdy nothing to be ashamed off. After all its better than running a company that made a profit from selling cigarettes.
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