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Court setbacks add to Ontario commission's woes

By David Clarke
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OTTAWA — The Ontario Securities Commission is playing catch-up after a slew of embarrassing court decisions that have led to a spate of negative editorials and op-ed articles.

Typical of the press reaction were the comments of Al Rosen, a forensic accountant with Toronto-based independent equity research firm Accountability Research Corp. "It's clear that the OSC simply isn't doing its job," he wrote in the Toronto-based Financial Post on March 15. "Many high-profile investigations are almost a decade old. Some have been a complete flop, and others, it seems, never got off the ground. The glacial speed of procedure at the OSC is downright pathetic."

Among the flops were two prosecution setbacks in one day. On Feb. 27, the Ontario Court of Appeals declined to grant the Toronto-based OSC's request to appeal a court decision that overturned an insider-tipping conviction of Andrew Rankin, formerly an investment banker with RBC Capital Markets, a subsidiary of the Royal Bank of Canada in Toronto.

Later the same day, the OSC asked the court to dismiss the charges against Patrick Gouveia, former chief executive of Atlas Cold Storage Holdings Inc., the operating subsidiary of Toronto-based Atlas Cold Storage Income Trust, who was charged in 2004 with directing his staff to inflate profits. Four weeks into the trial, the OSC said that it had determined that there was "not a reasonable prospect of conviction" and stated: "All charges should be dismissed."

Perhaps leery of more embarrassment, on April 5, the OSC announced that it had moved back to Nov. 12, from June, a hearing in its case against Conrad Black and three former Hollinger International Inc. executives.

The civil suit launched by the OSC claims that Lord Black, his former business associate David Radler, and former Hollinger directors Jack Boulton and Peter Atkinson broke securities laws in Ontario by making misleading statements in regulatory filings. It also names Toronto-based holding company Hollinger Inc. The defendants' lawyers argued that the allegations are similar to criminal charges filed by the U.S. Securities and Exchange Commission.

Enforcement concerns

"We are the magnet for attention when other parts of the enforcement apparatus may not be functioning at a top level, but we get the arrows, and we get the headlines," OSC Chairman David Wilson told the Globe and Mail of Toronto last Monday. "We're a public institution ... and public entities are fair game for a public discussion of their successes and their perceived failures."

Mr. Wilson "is the single most powerful man in Canada in terms of influencing which white-collar securities crime cases get investigated and prosecuted in Canada by any of the provincial securities commissions and the Royal Canadian Mounted

Police," independent consulting analyst Diane Urquhart wrote in an April 1 e-mail to clients which she forwarded to InvestmentNews.

The RCMP set up a special Integrated Markets Enforcement Teams branch in 2003 to focus on securities crimes. But IMET hasn't laid charges in any of the high-profile criminal investigations it has launched.

Now the Mounties themselves are under suspicion. Last month, current and former RCMP officers alleged that the organization has committed fraud and abuse in managing its pension and insurance plans. Former RCMP Commissioner Giuliano Zaccardelli called the allegations "baseless." Still, 42% of those responding to a poll released last Tuesday by Vancouver, British Columbia-based Angus Reid Strategies said that their confidence in the internal operations and leadership of the RCMP had decreased over the previous two years, while only 3% said that it had increased.

"David Wilson is working in the backrooms, purporting to fix the securities crime enforcement system and making specific decisions on ongoing securities crime cases, without any accountability to the Canadian public," wrote Ms. Urquhart, who is based in Mississauga, Ontario. "The securities enforcement solutions need new political forces and new independent, high-integrity decision makers setting the courses of action for cleaning up the RCMP, creating a new, non-corrupt single securities regulator completely separate from the RCMP and eliminating the reliance of the Canadian governments on the self-regulators in the investment industry for protection of investors."

By press time, officials at the OSC had not returned calls seeking comment.

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