

OPINION

Fixing Canada's 'Third World' securities crime enforcement

OSC, RCMP, regional and municipal police forces cannot continue to send all persons with complaints of wrongdoing in the investment industry to the investment industry Self-Regulatory Organizations.

By DIANE URQUHART

We have to do a complete overhaul of Canada's process for receiving complaints from the public and whistleblowers about white collar securities crime, since the current approach is failing and is designed to fail.

There have been four advisory reports submitted to the Canadian government with recommendations for restoring the reputation and effectiveness of the RCMP. None of these advisory reports address the fundamental flaw of Canada not having a securities crime complaints intake system managed by police, rather than the investment industry Self-Regulatory Organizations (SRO) and provincial securities commissions.

The Report of the Task Force on RCMP Governance and Cultural Change submitted on Dec. 14, 2007 to Minister of Public Safety Stockwell Day and to President of the Treasury Board Vic Toews, is seeking greater control of policing functions by a new civilian Board of Management.

The Nick Le Pan Report, "Enhancing Integrated Market Enforcement Teams [IMET], Achieving Results in Fighting Capital Markets Crime," submitted on Oct. 25, 2007 to RCMP Commissioner William Elliott, is asking for greater collaboration between the RCMP IMET and the investment industry Self-Regulatory Organizations and provincial securities commissions. The Report of the Standing Committee on Public Accounts, "Restoring The Honour of the RCMP: Addressing Problems in the Administration of the RCMP's Pension And Insurance Plans," submitted by its chairman Liberal MP Shawn Murphy in December 2007 to Parliament, is not addressing the structural change necessary for proper white collar criminal investigations of internal RCMP personnel.

The Federal Provincial Justice Ministers Securities Enforcement Working Group Report submitted to federal Minister of Justice and Attorney General Rob Nicholson and to the provincial justice ministers on about Nov. 13, 2007, is not

being made public. David Wilson, chairman of the Ontario Securities Commission (OSC) and Co-Chair of this Working Group, and the RCMP IMET, were criticized in the Dec. 1-8, 2007 *Toronto Star* series, "Ontario Enforcement Third World."

The OSC, RCMP, regional and municipal police forces cannot continue to send all persons with complaints of wrongdoing in the investment industry to the investment industry Self-Regulatory Organizations—the Investment Dealers Association and the Mutual Fund Dealers Association. These SROs have no legislative authority, nor public accountability mechanisms, to ensure that wrongdoers are properly investigated and prosecuted.

(a) the SROs lack any of the legislative tools necessary to properly investigate and enforce fines on wrongdoers;

(b) the SROs have no authority to lay criminal or quasi-criminal charges involving jail sentence penalties, either directly or by presenting such charges to a court;

(c) the SROs are private sector organizations that are not required to refer cases with evidence of criminal offences to the RCMP or any other regional and municipal police force;

(d) the SROs' interest to protect the reputation of the investment industry usually trumps investor interests and the public interest, particularly when they have no legislative basis to conduct their delegated investor protection functions effectively.

The RCMP regional and municipal police forces cannot continue to send all persons with complaints of wrongdoing in the investment industry and in public corporations to the provincial securities commissions;

(a) the provincial securities commissions have legislative tools to investigate and enforce fines and other remedies, but it cannot conduct proper justice when their investigations and adjudication functions are both done under one roof and under one chairman, who makes all the decisions on who is investigated and prosecuted and who supervises the commissioners that adjudicate all securities law violations;

(b) the provincial securities commissions have authority to lay quasi-criminal charges involving jail sentences, by presenting such charges to a court; however, the provincial securities commissions have no authority to prosecute criminal charges under the federal Criminal Code;

(c) the provincial securities commissions are Crown regulatory agencies, but they are not required to refer cases with evidence of criminal conduct to the RCMP or any other regional and municipal police force;

(d) the provincial securities commissions are Crown regulatory agencies, but their record shows bias to protect the reputation



Photograph by Jake Wright, *The Hill Times*

Time to get down to brass tacks: RCMP Commissioner William Elliott, pictured recently at a Parliamentary committee. Canada needs a complete overhaul of its process for receiving complaints from the public and whistleblowers about white collar securities crime, argues Diane Urquhart.

of the investment industry and Canada's corporate and professional elite rather than to protect investors, due to: their investment industry funding sources; senior executives and commissioners being drawn from the investment banking, corporate accounting and legal communities; and the lack of public accountability mechanisms, such as hearings before standing committees of the provincial legislatures or regular independent audits on the thoroughness and integrity of enforcement activities.

The RCMP IMET and the regional and municipal police forces throughout Canada must establish a new co-ordinated securities criminal complaint intake process. In doing so, the RCMP IMET would eliminate its sole reliance on the investment industry SROs and the provincial securities commissions for the receipt and preliminary assessment of complaints from the public and insider whistleblowers about securities crimes.

(a) A new multi-jurisdiction police co-ordination committee should be established to set the protocols for assignment of securities criminal investigations to the most logical police force to do the job;

(b) The public should be able to make a securities criminal complaint at their local police station, with the knowledge that

their complaint will be properly attended to under the protocols established by the new multi-jurisdiction police co-ordination committee;

(c) The participating RCMP IMET, regional and municipal police force white collar crime units will need higher budgets, more skilled resources and the new legislative tools sought to become effective in white collar crime policing. The provinces should be reallocating budgets away from the securities commissions into the regional and municipal police white collar crime units. These units will play a larger and essential role in receiving securities criminal complaints from the public and in criminal investigations that are best completed at the regional level;

(d) The RCMP IMET, regional and municipal police force white collar crime units, would conduct investigations assigned to them according to the established assignment protocols accepted by all the participating police forces and administered by the new multi-jurisdiction police co-ordination committee.

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