

2008/07/10  
Gary Logan

### **Expert Panel on Securities Regulation**

I will briefly describe an effective management system that I have worked on and developed over the past years. I draw from my years of experience, expertise, knowledge and in depth understanding of police and the industry. I speak to this from the position of a seasoned lead investigator and corporate fraud manager. I believe my Securities Intake and Review Panel warrants serious consideration. I see it as a reasonable and necessary process in addressing community safety and quality of life and effective police management. This is a management tool which will take a leading role in coordinating efforts and resource management between police services and victims of crime. It is a system intended to improve the ability of police to respond, investigate, prosecute, educate and reduce criminal activity within the area of securities / market related crimes.

### **Unified Canadian System to Assess and Investigate Securities Crimes (Current Regulator / Police Relationships)**

Police Services must remain stand alone, independent of any regulatory involvement, influence or oversight where a criminal investigation is being considered or conducted based on complaints received from victims or witnesses as to alleged securities criminal offences.

No regulatory body or oversight agency shall become involved at any stage beyond the initial assessment of a matter in making a reasonable determination that there may be a criminal component to any investigation or complaint received. It is when that determination has been made that these matters or complainants shall be referred to the police forthwith. These matters are exclusive to the local police service to investigate and make the final determination based on all available evidence, in sight of a reasonable expectation of conviction. I would not support nor condone police service members assessing, investigating and taking enforcement action in areas dealing on regulatory matters.

The investigative path, particularly for matters pertaining to allegations of criminal conduct becomes murky and contentious where there is a blending of police and regulators. These relationships by design although well intended have a tendency to compromise or corrupt lawful due process, source of evidence, Charter of Rights and Freedoms, for future application supporting any criminal investigation or prosecution. This is always a concern in any criminal investigation however more so in this type of relationship, possessing a greater risk of no further action on the part of the police or prosecutors.

I am not advocating that police and regulators not work together, quite the contrary. There will be many occasions over the course of any criminal investigation where there will be contact and the appropriate exchange of information between agencies. What I am saying is that they must maintain independence and avoid inappropriate transfer of information, knowledge or evidence over the course of the criminal investigation. Work on totally different parallels, maintaining the Wall of China approach.

**Jurisdictional Authority**  
**(Securities Crime Complaints Intake and Review Panel)**

In 2003, concerns were tabled by representatives from police services within the GTA specific to addressing issues surrounding the timely reporting, management and criteria of jurisdictional authority to investigate matters relating to criminal fraud (all general fraud including securities).

I saw this as a tremendous opportunity to develop a system or process which would be implemented to effectively manage and improve crime management and addressing the concerns of the individual victim and overall community this new system would strengthen the intelligence sharing and working relationships between police services, provide timely response to reporting and ensure appropriate assessment and assignment of criminal fraud occurrence to the appropriate jurisdictional authority to investigate. There would be a quicker turn around time on criminal securities fraud investigations.

This simple process eliminates lost time through early establishment of a substantive criminal securities offence, gives basic comprehension of the parameters and nature of the initial investigation based on the complaint, establishes jurisdictional authority based on set criteria, offers common base line that each police service buys into expedites investigative assignment and response times.

## **Securities Crime Complaints Intake and Review Panel**

### **Mandate**

***To ensure that adequate and effective policing services are provided to the public to protect the public interest and enhance public confidence and maintain integrity in the national securities industry.***

The Panel shall receive all complaints from the public, matters involving the securities industry, where there is a belief or allegations that they have been victimized as a result of fraud or other criminal conduct.

The intake review panel that I am proposing would be comprised of 2-3 full-time members, per Province, all of whom, possess, an extensive policing background in criminal investigation, case management, specific knowledge in corporate – securities fraud, evidence management, court procedure, criminal law and legal process. As part of the selection process no 2 members on the Panel could have served with the same police service.

The purpose of the panel is not to eliminate, the current intake and assessment role of any police service as it relates to general fraud investigations. The role of the Securities Intake and Review Panel is specifically for the assessment and management of securities related complaints as it applies to;

- Category classification - (criminal- police / non-criminal- referral),
- Vetting of documents (file integrity- prior to dissemination),
- Determining jurisdictional authority,
- Preparing initial police service complaint package,
- Forward complete copy of investigative package- Police Service,
- Management Complainant, investigative report status, review and record retention.

In making a determination as to classification the panel will apply the same assessment process as currently recognized and utilized by police services within the GTA, which would be fundamentally in line with any other Police Service nationally.

Prior to any complaint being considered for assignment to any police service, there shall be a reasonable requirement to meet a threshold of sufficient evidence presented which would support a criminal investigation and there is a reasonable expectation of obtaining a conviction. The victims are willing to cooperate with and assist the police over the course of the investigation and attend court as required.

The benefit realized to the Police Service will be the cost savings on time and resource management. Current time spent by Police on front end assessment, determining jurisdictional authority – (which is not always consistently applied between service jurisdictions), investigative package vetting, (vetting was not always considered at the initial stages of the criminal investigation which when not managed properly has the potential to compromise an investigation) and of course preparation of the investigative package. This initial assessment process will now be managed and completed by the Securities Intake and Review Panel.

Jurisdictional Authority can be a contentious and tenuous subject given the process that is applied on complex matters involving multiple jurisdictions, suspects and offence locations. The offence location is the determining factor as to which police service has jurisdiction and responsibility to conduct an investigation. I recognized quickly that this was continuing to present a problem with both files and complainants being bounced back and forth between police services based on a matrix of explanations and justifications. Complainants were becoming frustrated, cases were delayed in proceeding to the investigative stage - delays resulted in bringing forward charter motions, cases were slipping off the rails. These situations are all preventable through a properly managed independent system.

In 2003, I collaborated with a member from Waterloo Police Service to craft and finally established a Jurisdictional Authority Protocol for the GTA Service, for all types of criminal fraud and related offences, which for the most part works well. On occasion I was contacted by members of other police services looking to me to make a final determination as to jurisdictional authority based on the assignment of an investigation.

The field of securities investigations remained a concern with many police services given the uniqueness of the overall process, type and nature of documentation (or lack thereof), offence classification, many involving more than one police jurisdiction given the potential for multiple victims spread over many jurisdictions. There was no clear process in having to address or deal with this type of investigation. For most police services it had the potential of being beyond their resources to investigate. Then there were some who started down the investigative road not fully understanding the scope and 6 months later found themselves in a position where the victim base or investigation became too large for the service to manage. As a result having to back out, taking on a fraction of the overall investigation turning away the rest, requesting assistance which was not always there or doing nothing further.

There were also other localized jurisdictional occurrences involving individuals being investigated by authorities, other than police. Upon review of some of these concluded investigations it was determined that the occurrence was clearly criminal from the onset. The victims in these occurrences at no time were ever informed the occurrence was a criminal act, referred to or advised to contact the police. Police were unaware of these occurrences as they were never reported. In some situations the serious act(s) were investigated but reduced, things were made right with the victim and business as usual.

The securities intake and assessment process is a one step assessment process, with the additional requirement that the assessor possess an extensive policing background in criminal investigation, case management, specific knowledge in corporate – securities fraud, evidence management, court procedure, criminal law and legal process.

Members of the Panel will be dealing directly with the complainant through interview and documents presented. There is however no investigation conducted into the substance of the allegations by any of the members. The specific purpose of the Panel member is to make a determination based on the balance of facts as to classification of the complaint at an assessment stage. Based on that determination or classification the appropriate next steps will be taken by the member to appropriately assist the complainant to the next step in the process.

There is always the chance the member may be required to attend court, in my years of professional experience this rarely if ever occurred. Given that this is not an investigative step or process it is an assessment – intake, collection of initial information, facts and documentation in a prescribed format. This information is then prepared and forward to the appropriate police service for assignment and investigation.

I see this as a real opportunity to introduce a major component that is missing from the current reporting and investigative process. We must provide a level of service to properly address public safety and security within the area of securities investigation and enforcement. There must be a direct process created which will facilitate and provide the public access and opportunity to report potential criminal activity where they have been victimized. The complainant needs to know that the information they are providing will be investigated or acted on by police in a timely and appropriate manner. There is a need to restore confidence in the market, and the police. The police working on securities crime investigations need a system that is both compatible and functional within a time of reduced operating budgets. The system has to allow police to perform their sworn duties in serving and protecting the public, bringing criminals to justice and working with regulators, ensuring that there is a definitive line between criminal and regulatory investigative authority.

All securities related complaints will be received through the Securities Intake and review Panel. ***All initial complaints received shall be in writing*** articulating the circumstances surrounding the allegations. Upon review of the initial letter of complaint the complainant will be contacted by a Panel member, notified as to date and time to attend, with ***copies*** of any and all supporting documentation for the purpose of an interview with respect to the allegations. *(Where there are multiple victims no more than 2 representatives, those possessing the best knowledge as to the circumstances surrounding the allegations shall attend with their documentation and records at the initial assessment meeting with the panel.)*

In certain circumstances given the age, medical condition and or geographical location of the complainant where travel would cause undue hardship for the complainant to travel for the purpose of reporting. A member of the panel may, based on consideration of all circumstances attend the location of the complainant to take such report.

The Panel member may after considering the allegations and having consideration for all other circumstances request that the complainant (with copies of their documentation) attend their local police service, bureau or detachment for the purpose of filing a report.

Where a complainant has been directed to attend their local police service bureau or detachment for the purpose of filing such report, prior to making any disposition or assignment the officer in charge shall provide a copy of the report along with the complainant's documentation to the Securities Crime Intake and Review Panel for assessment. The Panel will make the final determination as to classification and or assignment of the complainants file.

Upon conclusion of the initial meeting with the complainant(s) and the Panel having completed an assessment of all necessary statements and documentation, shall inform the complainant(s) by mail within **14 business days as to the Panel's decision on next steps**.

A determination shall be based on all information and or supporting documentation provided, received and assessed by the Panel. If in the opinion of the panel no evidence was brought forward or presented which would support a criminal investigation, however does or may fall into one of the other identified categories (regulatory, civil or unclassified) the complainant(s) will be notified in writing within **14 business days** and provided with the necessary support and contact information for the appropriate agency.

If at some point through the regulatory, civil or unclassified process additional new information or new evidence is obtained and presented which would be considered in support of a criminal investigation, the matter shall be referred back to the Panel for reassessment based on receiving written notice that new additional information or evidence is to be introduced for consideration.

In those matters deemed to be criminal in nature the complainant(s) shall be notified in writing within 14 business days as to the name of the police service assigned the investigation along with the appropriate contact information for that Police Service. All intake complaints received (criminal, regulatory, civil or unclassified) by the Securities Intake and Review Panel shall be assigned a file number. Any and all correspondence received or sent by the Panel will be referenced by the specific assigned intake file number.

With respect to criminal allegations, upon determination of the jurisdictional authority to investigate the Panel shall forward their preliminary investigative package to the jurisdictional police service having authority. The receiving police service shall ensure that a supervisor in charge of the criminal investigative section receives, reviews and records the complaint on the appropriate internal occurrence and assigns the investigation to a competent investigator.

The Panel will assess and consider the appropriate police service(s) to task with any investigation. In extenuating circumstances further consultation between the Panel and

involved police jurisdictions may be required to facilitate the appropriate assignment of investigations. *(Complex investigations involving multiple complainants over multiple jurisdictions meeting the set criteria will be reviewed and managed on a case by case basis which may involve cross sharing of resources in a task force approach).*

Based on additional information presented to the panel, it may consider reassignment of an investigation, or determine that the impact realized based on the additional information will not create undue hardship to the service currently assigned the investigation, in which case the decision stands. There always remains the opportunity for further consultation as may be required between involved police services and the Panel pertaining to any investigative assignment(s).

The receiving police service criminal investigations supervisor responsible for the assignment of investigations shall ensure that the assigned investigator contacts the complainant and provides his / her name, contact information and approximate time to commencement of the assigned investigation.

The assigning supervisor shall also be responsible to contact the Panel in writing providing the case file number, date investigation received, date assigned to an investigator, name and contact information for the assigned Investigator date complainant contacted and investigative commencement date.

Where an investigation has been cleared or concluded by an arrest the Panel is to be notified in writing provided with the date the investigation was concluded, name of the person(s) charged and charges.

Where a complainant attends or notifies (other than to file a report as directed by the Securities Crime Complaints Intake and Review Panel) a police service for the purpose of reporting what appears to be alleged securities criminal conduct, the receiving police member / service shall provide the complainant with the proper contact information for the Securities Crime Complaints Intake and Review Panel, when the complaint is within the prescribed mandate of the Securities Crime Complaints Intake and Review Panel. This will ensure that the prescribed process is not circumvented and that the complainant receives the assistance of the Panel in properly assessing and referring the matter to the appropriate investigative agency. This reduces any additional delays and causes minimal undue hardship or inconvenience to the complainant.

There must also be a requirement for regulatory and self regulatory bodies, receiving or investigating a complaint, with an allegation of, or suspected criminal conduct, to notify the victim and provide the victim with the appropriate contact information, to the Securities Crime Complaints Intake and Review Panel.

The intended purpose of the Panel is not to make the task so over whelming that it bogs down police, and the courts and so cost prohibitive to which we never see or realize any successes, quite the contrary. It is intended to assist police in the initial assessment process stages by managing the initial point of contact with the complainant(s). Then based on facts presented provide police with an initial investigative report package. The

receiving police service would then be in the position to basically hit the floor running. It provides the appropriate service and leaves the complainant(s) with the understanding that something is being done by police.

The police at that point should now be working with the complainant(s) in developing a strategy to investigate those matters that they are readily able to investigate, that are prosecutable, in other words addressing those areas in the allegations that can be investigated within a reasonable time and resources that will obtain the desired results in court.

There is nothing to be gained in protracting an investigation that will bring on nothing but complaints, frustration, to say nothing to costs through the inappropriate allocation of time and resources, to an investigation that will never see the light of day in court. This approach does nothing but foster resistance or disinterest in future investigations.

A regulator shall not conduct a criminal investigation, or attempt to reduce any alleged criminal conduct to that of an offence under the regulations. Regulators are not criminal investigators and shall not make any determination other than informing and referring all matters they suspect as being criminal to the Securities Intake and Review Panel.

The panel will also have the authority to follow up with any service assigned an investigation for the purpose of a progress or status report to ensure investigations are moving forward. As well as a point of contact, maintaining lines of communication between police, victim(s) and community. The Panel is also a resource and should be utilized by police, provided the information sought is not for opinion or investigative advice as it directly relates to an assigned file.

The panel will maintain records and files pertaining to any complaint received, initial review, investigative assignment, decisions rendered or investigative status report requests and responses to them.

To take the proposed securities intake and assessment model from a Provincial to a National level would prove to be an effective management tool specific to appropriate assignment, management, investigation and reporting requirements.



