

**Ms Sandra Gibson:** My name is Sandra Gibson. I am currently engaged in a lawsuit against TD Bank and a broker who did work for them. Having heard other speakers this morning, I recognize that there are those who are far more educated and articulate than I to discuss the problems of accountability and transparency. So I would like, if I may, to tell you about my direct experiences with the OSC and the IDA, in the hope that it might help you to recognize the problems as they currently exist in the system and what appears to me to be a very convoluted, if not incestuous, relationship between the IDA and the OSC, all to the disadvantage of abused investors.

My first experience with these regulatory bodies was when I contacted the OSC in April 2003. That was the time at which my problems with TD Bank crystallized. Because TD Bank did not offer any help to me whatsoever, even though my investments at that time were in a most precarious position, I had to go elsewhere to seek help. I was fortunate to have been recommended by a friend to a small private investment firm that recognized the urgency of my situation and the problem of having to act quickly to protect me from further losses.

The principal of the small firm advised me to contact the OSC and the IDA and to write a letter to TD Bank, with copies to Ed Clark and on down. I followed all three of his suggestions. My first contact was to call the OSC and describe my problem to them. I do not recall the exact wording of the conversation, because it was well more than a year ago, but it was made very clear to me that I should be speaking to the IDA, that my problem was inappropriate for the OSC to be dealing with.

Because I couldn't recall the conversation, I decided, as an exercise, to call the OSC this week. I spoke with a Mr Kamal Khanna and briefly described my problem with TD Bank. Mr Khanna stated to me quite emphatically that all problems concerning members of the IDA had to be referred directly to the IDA for arbitration. I told Mr Khanna that I was aware of the lack of power of the IDA, in terms of the fact that they cannot grant restitution. Mr Khanna spoke, again most emphatically, and said that the OSC cannot order financial restitution.

Well, I don't know if you're familiar with the section of the Securities Act that states very clearly that the OSC can require the court to order restitution to a company or individual. So I would like to ask all of you when Mr Brown or his predecessor made the decision that they wouldn't bother dealing with individuals, and on whose authority did the head of the OSC make that decision? As I'm aware, there has been no amendment to the Securities Act, has there? Can someone answer that question?

**The Chair:** We're here to hear your deputation. I must admit that I'm not aware of a recent change, but that doesn't mean one couldn't have happened. The committee is not prepared to answer questions on behalf of other groups.

**Mr O'Toole:** We could leave that with the committee as an open question.

**The Chair:** Yes. The committee will take that as an open question and seek an answer to it.

**1200**

**Ms Gibson:** Thank you. As it happens, I did have an experience with the OSC at the corporate level. It was, in fact, by accident, but I would like to relate that experience to you as well.

During June of this year, I attended and witnessed a shareholders' meeting of a corporation held here in Toronto. I had been told the OSC was investigating the company, but I had no way of knowing whether that was true or not.

After the meeting, quite by accident, I was introduced, along with several other people, to a man who stated he was an OSC investigator and that he had been looking into the particular company for over a year. He was wearing a T-shirt. During the course of the ensuing conversation, the investigator volunteered the information that he had "only a grade 12 education." He also wondered aloud, in the presence of a number of shareholders, whether perhaps the particular company should not be referred to the police for investigation.

Because I was in some doubt as to the status of this individual, I did call the OSC a few days later—I had his card—and inquire whether, in fact, he was employed there. He is.

I wish you had been present to witness the expressions on the faces of a number of American shareholders who were present at the meeting, because the company I'm referring to is closely affiliated with another corporation which is publicly traded in New York.

You say that I cannot ask questions, Mr Hoy, but perhaps you would consider how it would be possible for someone with a grade 12 education to investigate companies of the complexity I've referred to. So much for the OSC.

I also wrote a formal letter of complaint to the IDA in April 2003. I did receive a response from Mr Popovic. He included the standard brochure from the IDA; I don't know whether you're familiar with it. In my case, he might have saved his paper, because there is nothing offered here that would have helped me in my situation. I think you would have to agree that perhaps the IDA, in terms of settlements or restitution, is a little out of step, a little behind the times. For example, the process of arbitration is available to individuals who have lost \$100,000 or less. If you've had a look, I think you'd discover that many, many individuals have lost a great deal more than that, including myself.

The other option, of course, is to go to OBSI, the provincial ombudsman. Again, that did not suit my purposes. So it was very clear to me very early on that the only option available to me was to initiate civil action. I'm sure you're now aware, having heard other speakers, that this option is available, really, to what must be a small minority of abused investors, because the costs are enormous. One law firm I interviewed informed me that if I settled out of court, the legal costs would be \$50,000; if I proceeded to court, the costs would be between

\$125,000 and \$150,000. I think it's pretty clear, isn't it, that there aren't many of us who are in the position to follow that route.

The other thing I would like to refer to-and to me it's an outstanding situation-is gag orders or confidentiality agreements. The lady from the consumer council has already mentioned it, but I wonder if you would stop and think about the fact that if I bought a new car and the car was defective and the manufacturer replaced the car, would they ask me to sign a gag order? If I bought a new house and it proved to be structurally defective and I sued the builder, would he ask me to sign a gag order? Why is it that the industry gets away with this? The only reason, obviously, is they don't wish the public to be apprised of the extent to which there are misdemeanours occurring within the industry. Yet we consider this the norm, the common practice.

The other item I would like to mention is that it has repeatedly been made clear to me by various members of the legal profession and the investment industry that when I proceed with my lawsuit and either discuss settlement or, I guess, go to court, certainly in the settlement process I will be deemed very lucky if I am offered 50 cents on the dollar. Why should that be? Why would I not be permitted to recoup all the money I have lost?

I really feel that's about all I have to say. If you'd like to ask me questions, I'd be pleased to answer.

**The Chair:** Regrettably, our time has expired. I will have the researcher go over your question with you before you leave, if you wouldn't mind taking a minute for that. The committee thanks you for your presentation this morning.

The committee is recessed until 1 pm.

*The committee recessed from 1205 to 1303.*