



September 25, 2008

Mr. Robert Kyle  
2501-60 Pleasant Blvd.  
Toronto ON M4T 1K1

Dear Mr. Kyle,

Re: Our File No. 105756

This is further to my letter dated March 12, 2008 and in response to your current complaint that the Ministry of Finance (the Ministry) did not answer the questions you presented in your January 22, 2007. Our Office will not be reviewing your complaint further for the reasons set out below.

By way of background, you called our Office on August 27, 2007, stating that the Standing Committee on Finance and Economic Affairs of the Legislative Assembly of Ontario had made a number of recommendations in its 2004 Report on the Five Year Review of the *Securities Act*. You advised that you were concerned that one of those recommendations had not been acted on. Specifically, that recommendation was that a task force be established to examine the role of self-regulatory organizations (or SROs). You explained that you had written several letters to the Minister responsible for this issue, the last of which you advised was dated January 22, 2007, and that you had not received a written response.

In my March 12, 2008 letter, I advised you of the actions taken as part of our review of your concerns and I provided you with information we obtained from the Ministry of Government Services and the Ministry of Finance in response to our inquiries. As you are aware, responsibility for the issues you are raising were transferred from the Ministry of Government Services to the Ministry in 2007.

As I explained during our past conversations, the Ombudsman's Office reviews and investigates complaints regarding the administrative conduct of provincial government organizations. People usually attempt to resolve their concerns with provincial government organizations before coming to our office. People generally come to our Office if they have been unsuccessful in their attempts to resolve their concerns with these organizations.

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When we spoke on July 28, 2008 you acknowledged receiving a letter from the Minister of Finance (the Minister) dated July 17, 2008. In that letter the Minister explained that there have been a number of significant developments since the Standing Committee's 2004 report. The Minister outlined those developments and explained that if further action were warranted he would initiate a more intensive review. You complained that the July 17, 2008 letter did not address the questions you had raised in your January 22, 2007 letter.

In your January 22, 2007 letter to the Ministry, you asked why the recommendation regarding the establishment of a task force to examine the role of self-regulatory organizations (or SROs) has not been acted on. The Ministry advised our office that the Minister responded to this question in his July 17, 2008 letter to you. Specifically, the Ministry stated that the Minister advised that since the Standing Committee's 2004 Report, there have been significant developments that respond to the issues that were raised about SROs. The Minister's letter also explained that the regulatory and the trade association functions of the Investment Dealers Association (IDA) have been separated. The letter also stated that the provincial and territorial securities regulators have completed a review of their SRO oversight processes and the operations of the SROs. Ministry staff advised our Office that this information is its response to your question about why the recommendation has not been acted on.

In your January 22, 2007 letter, you asked when the recommendation would be acted on. Ministry staff advised our Office that the Minister responded to this question in his July 17, 2008 letter as well. The Ministry advised that the Minister stated in his letter that if further action is warranted to update the framework for the securities industry SROs, he would not hesitate to initiate a more intensive review. Ministry staff advised our Office that this information was in response to your question about when the Ministry would act on the recommendation. Ministry staff also advised that issues related to securities regulation and SROs are constantly being reviewed and monitored by the Ministry.

You complained that the Ministry has not responded to your questions about when or if it will be acting on the Parliamentary Committee's recommendation to appoint a task force to review the role of SROs in securities regulation. The Ministry has advised our Office that it responded to those questions in its July 17, 2008 letter.

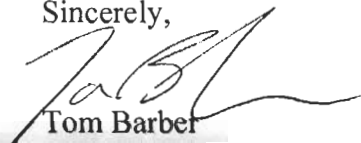


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Based on the information provided, further action will not be taken by our Office and your file is now closed.

Thank you for contacting the Office of the Ontario Ombudsman.

Sincerely,



Tom Barbet  
Investigator



7<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto ON M7A 1Y7  
Telephone: 416 325-0400  
Facsimile: 416 325-0374

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7, Queen's Park Crescent  
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Télécopieur : 416 325-0374

July 17, 2008

Mr. Robert Kyle  
60 Pleasant Blvd #2501  
Toronto, Ontario  
M4T 1K1

Dear Mr. Kyle:

Thank you for your recent inquiries regarding investment industry self-regulatory organizations (SROs).

Since the Standing Committee on Finance and Economic Affairs' (SCFEA) Report on the Five Year Review of the Securities Act, there have been significant developments that respond to the issues with SROs that were raised. The regulatory and trade association functions of the Investment Dealers Association (IDA) have been separated; provincial and territorial securities regulators have completed a review of their SRO oversight processes and the operations of SROs; and, the new Investment Industry Regulatory Organization of Canada, formed by the merger of the IDA with Market Regulation Services Inc. (RS), which oversaw trading on debt and equity exchanges and other marketplaces, has commenced operations.

While Canada's regulatory system operates to a high standard, we are constantly looking for opportunities to improve and strengthen it. If further action is warranted to update the framework for securities industry SROs, I will not hesitate to initiate a more intensive review.

Again, thank you for your interest in this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight Duncan".

Dwight Duncan,  
Minister

April 28, 2008

Mr. Tom Barber  
Investigator  
Ombudsman Ontario  
Bell Trinity Square  
483 Bay Street, 10<sup>th</sup> Floor, S. Tower,  
Toronto, Ontario M5G 2C7  
Via E-Mail

Dear Mr. Tom Barber,

**Re: File# 105-756; complaint opened 27 August 2007**

Further to my correspondence to you of 22Mar08 I would like to update you as to the correspondence I have received from the Ontario Ministry of Finance.

There hasn't been any.

It is now been 8 months since I first contacted you and this file was opened. In that time I have still not received an answer to my question which I have posed for the past three and one half years.

As per your letter to me dated March 12, 2008;

"Our office will follow up with the MOF at the end of April if a response is not received by that time."

It is the end of April and again I request that you raise the stature of this inquiry from an informal one to that of a formal inquiry. I would also be interested to know what criterion is used by the O.O. to decide when a formal inquiry is required.

Obviously an informal inquiry from the Ombudsman Ontario is insufficient.

I look forward to your response.

All the best,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1

March 22, 2008

Mr. Tom Barber  
Investigator  
Ombudsman Ontario  
Bell Trinity Square  
483 Bay Street, 10<sup>th</sup> Floor, S. Tower,  
Toronto, Ontario M5G 2C7  
Via E-Mail

Dear Mr. Tom Barber,

**Re: File# 105-756; complaint opened 27 August 2007**

This letter serves to confirm our telephone conversation on March 18, 2007 regarding my letters to you dated March 12<sup>th</sup> and March 15<sup>th</sup> 2008.

As mentioned in my prior correspondence to you, I asked:

*...as the potential exists for this file to become part of the public record please advise as to whether Mr. André Marin has been fully informed as to the matter at hand and my current course of action."*

In today's conversation I advised that both MPs and MPPs have expressed an interest in this file to which you responded that Mr. Marin has not been notified nor will he be notified about this matter and further, that neither you nor management are interested in meeting me to discuss this matter.

You further advised that senior management at the O.O has refused to contact me on this matter.

Thank you for your time and consideration. I await your next update.

All the best,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1  
416-925-6230

March 15, 2008

Mr. Tom Barber  
Investigator  
Ombudsman Ontario  
Bell Trinity Square  
483 Bay Street, 10<sup>th</sup> Floor, S. Tower,  
Toronto, Ontario M5G 2C7  
Via E-Mail

Dear Mr. Tom Barber,

**Re: File# 105-756; complaint opened 27 August 2007**

Thank you for your letter dated 12 March 2008 which I received the following day.

As the potential exists for this file to become part of the public record please advise as to whether Mr. André Marin has been fully informed as to the matter at hand and my current course of action.

In addition, given the serious nature of this issue, I would appreciate the opportunity to meet with you and your colleagues within the next two weeks to discuss it further and to respond to any questions you and your colleagues may have.

I await your response.

All the best,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1  
416-925-6230



March 12, 2008

Robert Kyle  
2501-60 Pleasant Blvd.  
Toronto, Ontario  
M4T 1K1

Dear Mr. Kyle,

Re: Our File No. 105756

This is in response to your complaint that the Ministry of Government Services (now the Ministry of Government and Consumer Services) has failed to respond in writing to your letter dated January 22, 2007 as well your previous correspondence. When you called our Office on August 27, 2007 you advised that the Standing Committee on Finance and Economic Affairs of the Legislative Assembly of Ontario had made a number of recommendations in its 2004 Report on the Five Year Review of the *Securities Act*. You advised that you were concerned that one of those recommendations had not been acted on. Specifically, that recommendation was that a task force be established to examine the role of self-regulatory organizations (or SROs).

In your letter dated January 22, 2007 you asked the Minister of Government Services why the recommendation had not been acted on, when the recommendation would be acted on and who would be on the task force. Our Office made informal inquiries with the Ministry in early September and the Minister responded to your January 22, 2007 letter in a letter dated September 7, 2007.

After receiving the Minister's September 7, 2007 you contacted our Office again to complain that the Minister's letter did not address your questions. Our Office made further inquiries in early October and we were advised that consideration would be given to whether or not another response would be sent. However, we were advised that a decision on whether to send another response might take some time because of the ongoing provincial election. Our Office followed up with our informal inquiries in late November and were advised that the responsibility for matters relating to the Ontario Securities Commission were being transferred to the Ministry of Finance (MOF). We were advised that it would be the MOF that would consider whether or not to provide you with another response and that a decision on that issue should be forthcoming in January 2008.





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Our Office followed up with the MOF in January of 2008 and we have made regular inquiries since that time. We have now been advised that the MOF will provide you with a further response. However, we were advised that because of the provincial budget process a response would not be forthcoming until April. Our Office will follow up with the MOF at the end of April if a response is not received by that time.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Barber', written over a faint horizontal line.

Tom Barber  
Investigator

March 12, 2008

Mr. Tom Barber  
Investigator  
Ombudsman Ontario  
Bell Trinity Square  
483 Bay Street, 10<sup>th</sup> Floor, S. Tower,  
Toronto, Ontario M5G 2C7

Dear Mr. Barber,

**Re: File# 105-756; complaint opened 27 August 2007**

Further to my letter dated October 17, 2007 I would like to thank you for the time and effort you have dedicated to this file in your efforts to obtain an answer to my complaint filed almost seven months ago. I am writing you this letter in order that there is a written record of our understanding since I understand it is the policy of the Ontario Ombudsman ("O.O.") not to issue any type of correspondence to a complainant until the file is closed. Perhaps through our joint efforts we can add a dimension of transparency to this file.

Further to our telephone conversation on Monday, March 10, 2008 I would like to confirm the following as per your advice to me:

1. that the Ontario Minister of Finance ("MOF") has only now agreed to respond to your inquiry and produce a letter to me addressing my complaint to be issued "sometime after the Ontario Budget is tabled", (March 25, 2008) and;
2. that the MOF has, over the course of seven months from their letter to me dated 07 September 2007 and on no-less-than four occasions, failed to respond in a timely fashion as to whether they would respond to the O.O.'s inquiry;
3. that although I have made several requests to raise the profile of the O.O.'s "informal" inquiry to that of a "formal inquiry", you have, based on your discussion(s) with Acting Deputy Ombudsman, Ms. Wendy Ray, advised me that the O.O. has elected to maintain the *status quo*;
4. that I have requested you to ask the Acting Deputy Ombudsman to contact me in person with respect to this file, failing this I requested that Mr. André Marin contact me regarding same;
5. that if I should receive a response from the MOF, and if it does not fully address my complaint as per your inquiry, that I am permitted to re-open or initiate a new file on this matter sometime after the Ontario Budget is released;
6. that you have undertaken with a senior member of staff at the O.O., Ms. Mary Elizabeth Nugent, subsequent to my advising you that I will place this file on the public record, to review this file in detail, "either this week or next" and notify me, on or about March 21, 2008, of the O.O.'s position on same;

7. that you advised me that there is a "very likely possibility" that this file will be closed at that time, under s. 17 (1) (b) of the *Ombudsman Act*.

**Ombudsman Act**

R.S.O. 1990, CHAPTER O.6

**Ombudsman may refuse to investigate complaint**

17. (1) If, in the course of the investigation of any complaint within his or her jurisdiction, it appears to the Ombudsman,

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

the Ombudsman may in his or her discretion refuse to investigate the matter further. R.S.O. 1990, c. O.6, s. 17 (1).

As discussed on Monday, March 10, 2008 I share your frustration in trying to obtain a full response from the MOF and thus I remain perplexed as to why the O.O would elect to close a file that has not been resolved.

My documented efforts on this issue date back to 16 March 2004 when I initially requested that the MOF review the 5 Year Review of the Ontario *Securities Act* and so, like you, I am very interested in achieving a resolution to this file. However, if;

*"(t)he Ombudsman intends for his office to be as effective, transparent and open as possible to ensure its accountability and integrity in its dealings with provincial government and the public"*

Procedures under the *Ombudsman Act*, Statement of Principle

then I am not confident that having the O.O. close the file is the correct course of action nor will it assist either of us in holding the Minister accountable in responding to its constituents.

All the best,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1  
416-925-6230



# Legislative Assembly of Ontario

*03-DEC-2007\_L003.htm*

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Monday 3 December 2007 Lundi 3 décembre 2007

SECURITIES INDUSTRY

Mr. Michael Prue: My question is for the Minister of Finance. I'd like to preface my question to the minister with a couple of quotes which were taken directly from Ed Waitzer, the former chair of the Ontario Securities Commission, as reported in this weekend's Toronto Star.

The first quote is very simple: "The [securities] regulators are becoming like the people they're trying to regulate."

Quote number two: "They're spending their time managing reputations instead of getting results. There's not a lot of accountability. They can talk a big game, and the fact is they don't deliver."

To the minister, what concrete action is your ministry going to take to fix what even industry insiders are calling an international embarrassment?

Hon. Dwight Duncan: We continue to work with the OSC. The first concrete measure is, we will continue to support a single securities regulator in this country. I would point out to the member opposite that every other major western capital market has a single security regulator. All the experts—and I've met with a number of them since assuming this portfolio—say that that is, first and foremost, the most important thing that we can do in the context of better enforcement. For instance, in the United States they have one security regulator; in Great Britain they have one security regulator; and in France. All of the individuals that I have spoken with to date have indicated that's a first important step.

In addition, there are a number of other steps that can be taken and we are in the process of looking at those. I would be happy to respond to that in the member's supplementary question.

Mr. Michael Prue: I listened intently to the minister and I didn't hear any specifics on what he can do, not what he wants to do; nothing specific at all about what he can do and will do. So let me help him out a little bit with two recommendations from the last session's finance committee report that looked at securities issues. The all-party committee suggested that the minister could end the conflict of interest at the OSC by separating out its investigative functions from its adjudicative functions. The all-party committee recommended that the minister could end the conflict of interest amongst securities dealers by no longer allowing the dealer trade association to investigate and rule on industry

complaints.

My question is simple: These were two simple recommendations from almost three years ago. When are we going to see action on them?

Hon. Dwight Duncan: I am pleased to report that we have added 16 additional enforcement staff to the OSC's enforcement unit, which will be in place by March 31, 2008, which are part of their staffing plans that were included in budgets that were submitted to you. The Attorney General is also reviewing a report on enhancing the enforcement of capital market offences.

The member opposite knows that there are a number of issues beyond the strict regulatory ones. There's the question of enforcement. There's the question of law enforcement agencies. But again, first and foremost, what is most significant is that this country get a single securities regulator. This government and this Premier will continue to stand up for Ontario investors in trying to ensure that we get that that single securities regulator, which is the most important thing any government can do in terms of securities safety.

17 October 2007

Mr. Tom Barber  
Ombudsman Ontario  
Bell Trinity Square  
483 Bay Street  
10<sup>th</sup> Floor, S. Tower  
Toronto, Ontario  
M5G 2C7

Dear Mr. Barber,

Re: File # 105-756

This letter is to confirm our conversation with respect to your efforts to obtain answers for me from the Hon. Gerry Phillips, Minister of Government Services to the following questions as per my letter to Minister Phillips dated March 16<sup>th</sup>, 2006.

Based on the Finance Committee's recommendation that the government establish a task force to review the role of self-regulatory organizations and in the words of the Finance Committee "whether SROs should be given more powers or, indeed, whether they should have any powers at all";

- Why have you apparently not acted on this all-party recommendation to date?
- When will you act?
- Who will comprise the task force if you proceed with your commitment?
- Will you include consumer/investors on that task force?

As you are aware from our correspondence, this issue dates back to October 2004, at which time the recommendations flowing from the Finance Committee reviewing of the 5 Year Review of the Ontario Securities Act were tabled to the legislative assembly. Now, three years later, after several efforts by both the NDP and PC party Critics to obtain same, all of us have been unsuccessful.

I wish to thank you for your efforts and partial success, which is more than anybody else has achieved, in eliciting a response from Minister Phillip's office which I received and provided to your office on September 10<sup>th</sup>, 2007. As you will recall, Minister Phillip's response failed to answer the questions. Further to our

conversation earlier this month you stated that you would contact Mr. Phillip's office again and request an answer to the questions posed in my letters. I am very appreciative of your efforts and I applaud the Ombudsman Ontario's office for their perseverance in this matter.

I would like your office to be aware that on October 24, 2007 the Ontario Securities Commission will be holding a Forum in which citizens of Ontario are free to ask questions of the securities regulators. In 2005 a Town Hall meeting was held by the OSC in which over 500 Ontarians participated. The result of the Town Hall was, to say the least, very embarrassing for all those regulators that attended. For it was at this Town Hall, as it was at the Finance Committee Hearings in 2004, that our provincial regulators heard the outrage and frustration of those retail investors who have sought the regulators help.

This year the format has changed, and I anticipate that the regulatory authorities will place constraints on the event to quell, or at minimum, fragment the audience to avoid further embarrassment. I highly recommend that someone from your office attend, even if it is not officially, to witness and perhaps understand better the concerns of Ontario citizens in dealing with the Ontario Securities Commission and the other private regulators that the OSC relies heavily upon. I'm sure you will find it informative.

For the record, I have still not received any further correspondence on my matter from Mr. Phillips office subsequent to your last contact with his office. I look forward to speaking with you again on this matter in the near future.

Respectfully,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1

**Ministry of  
Government Services**

Office of the Minister

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September 7, 2007

Mr. Robert Kyle  
60 Pleasant Blvd #2501  
Toronto, Ontario  
M4T 1K1

Dear Mr. Kyle:

Thank you for your letter dated January 22, 2007 regarding the Report on the Five Year Review of the Securities Act and its recommendations dealing with SRO's, which was also forwarded to me by Joe Tascona, MPP, Barrie-Simcoe-Bradford.

I share your interest in ensuring that self-regulatory organizations (SROs) are both structured and operated in a manner that ensures the appropriate discharge of their regulatory responsibilities. This issue is monitored on an ongoing basis by staff in my Ministry as well as officials of the Ontario Securities Commission, an agency that reports through me to the Ontario legislature. As a result of input from individuals like you as well as other stakeholder groups, including both government and industry, a number of reforms have taken place or are underway that will enhance the performance of SRO's.

I am pleased to share with you some of the more significant developments since the Standing Committee on Finance and Economic Affairs' Report on the Five Year Review of the Securities Act released its recommendations. I hope you will agree that taken together these initiatives address many of the important issues that you raised in your letter:

- In April 2006, the Investment Dealers Association of Canada (IDA) eliminated its dual mandate — as a self-regulator and as the representative of the securities industry. Going forward, the IDA will limit its focus exclusively to regulating its members. The newly formed Investment Industry Association of Canada (IIAC) will henceforth represent and advocate on behalf of the securities industry.
- On April 26, 2006, the 'refocused' IDA and Market Regulation Services Inc. (RS) announced plans to merge their surveillance/regulation activities into a single SRO. This new SRO, once established, will



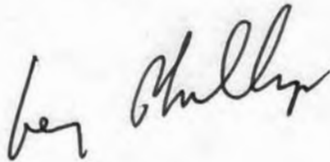
improve regulatory effectiveness by taking advantage of cost saving synergies and eliminating regulatory gaps and overlaps.

- On December 8, 2006, the Canadian Securities Administrators (CSA) published a report by its SRO Oversight Project Committee. The report gives a strong endorsement to Canada's existing SRO structure but does suggest that additional consideration be given to ensuring that current enforcement powers are appropriate.

Each of these SRO initiatives has been pursued in an effort to better serve the public interest by enhancing investor protection, promoting market integrity, and maintaining the efficiency and competitiveness of Canadian capital markets. While Canada's regulatory system operates to a very high standard, we are constantly looking for opportunities to improve and strengthen it. In this regard, we will continue to monitor developments in the SRO sector and to the extent that issues or concerns persist even after recent changes are implemented, I will not hesitate to initiate a more intensive review of the SRO sector.

Again, thank you for writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerry Phillips".

Gerry Phillips  
Minister of Government Services

c.c.: Joe Tascona, MPP  
Barrie-Simcoe-Bradford



Toronto Office:  
Legislative Building  
Room 434  
Queen's Park  
Toronto, Ontario  
M7A 1A8  
Tel. (416) 325-4579  
Fax (416) 325-4620

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**JOE TASCONA, M.P.P.**  
Barrie-Simcoe-Bradford

August 27, 2007

Mr. Robert Kyle  
60 Pleasant Blvd #2501  
Toronto, Ontario  
M4T 1K1

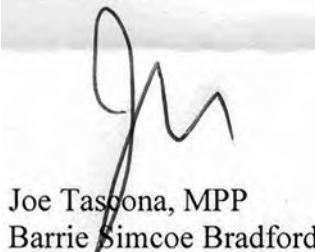
Dear Mr. Kyle,

This will acknowledge your telephone call again this afternoon to my Constituency Office.

As you are aware, I forwarded your concerns directly to the Minister of Government Services, The Hon. Gerry Phillips, last February and again last April, asking for him to respond to you. My staff has also contacted his office via email on your behalf in the past, and again this afternoon.

I am sorry that my efforts have not brought about a satisfactory result; however, there is nothing further I can do at this time.

Sincerely,



Joe Tascona, MPP  
Barrie Simcoe Bradford  
/lm

**Robert Kyle**

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**From:** Robert Kyle [robertkyle@rogers.com]  
**Sent:** July 3, 2007 6:38 PM  
**To:** joe\_tascona@ontla.ola.org  
**Subject:** FW: Your promises following the Ontario Finance Committee hearings

Dear Mr. Tascona,

this is one of many other letters which have been sent to Minister Phillips on the matter which I have addressed with you as Critic to the Ministry of Government Services. Mr. Phillips has clearly chosen to ignore investors. He has also clearly chosen to ignore you, albeit, I look forward to seeing your response as the Critic. In speaking with your office last week, as I have heard nothing from Mr. Phillip's office, I offered some other correspondence on this matter between investors and Gerry Phillips. I trust that this will help you in your efforts to hold the minister accountable.

Regards,

Robert Kyle

-----Original Message-----

From: David Yudelman [mailto:yudelman@rogers.com]  
Sent: March 20, 2006 6:56 PM  
To: gphillips.mpp@liberal.ola.org  
Cc: hhampton-qp@ndp.on.ca; john.tory@pc.ola.org; Flaherty.J@parl.gc.ca; dduncan.mpp@liberal.ola.org; dalton.mcguinty@premier.gov.on.ca  
Subject: Your promises following the Ontario Finance Committee hearings

Mr Phillips:

I made a submission about 18 months ago, along with many others including Robert Kyle (whose recent letter to you is attached below) to the Ontario Finance Committee hearings. Your response to those hearings was very welcome, and you promised to review the role of self-regulatory organizations in the light of the disturbing evidence they were simply not doing their job and are compromised by conflict of interest. You reiterated this promise on the record several times, as Mr Kyle points out, but have not to date kept it.

So I'm writing today to ask you when you propose to act as you have promised to do. I will be forwarding this letter to others as well, not in the hope of putting you on the spot, but to let them know that this issue is ongoing and will not be allowed to die no matter who the current government is, or who the current office-holder or MPP. I'd like to point out, however, that those who act promptly and voluntarily to protect the interests of small investors and seniors (as opposed to those who do so reluctantly and after undue delays) will reap the benefits of their gratitude, and will also get the satisfaction of knowing they have done the right thing.

Sincerely,

Dr David Yudelman

Executive Writing Projects  
2a Dingwall Avenue, Upper Suite  
Toronto, Ontario M4K 1H1  
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Fax: 416 463-5108  
[yudelman@tellitbetter.com](mailto:yudelman@tellitbetter.com)

04/07/2007



LEGISLATIVE ASSEMBLY

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**JOE TASCONA, M.P.P.**  
Barrie-Simcoe-Bradford

April 17, 2007

The Hon. Gerry Phillips  
Minister of Government Services  
4320 – 99 Wellesley St. W.,  
4<sup>th</sup> Floor, Whitney Block  
Toronto, Ontario  
M7A 1W3

Dear Minister,

On February 21<sup>st</sup> I forwarded you a copy of a letter which was originally sent to you by Mr. Robert Kyle on January 22<sup>nd</sup>. I enclose a copy of same for your information.

Mr. Kyle recently contacted me indicating he has not as yet had a response to his letter.

I would appreciate it if you would review this matter and respond directly to Mr. Kyle at your earliest convenience.

Thank you for your assistance in this regard.

Sincerely,

Joe Tascona, MPP  
Barrie Simcoe Bradford

/ap  
Encls

c.c.: Mr. Robert Kyle  
60 Pleasant Blvd #2501  
Toronto, Ontario M4T 1K1



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**JOE TASCONA, M.P.P.**  
Barrie-Simcoe-Bradford

February 21, 2007

The Hon. Gerry Phillips  
Minister of Government Services  
4320 - 99 Wellesley St. W.,  
4<sup>th</sup> Floor, Whitney Block  
Toronto, Ontario M7A 1W3

Dear Minister,

I have recently received a copy of a letter sent to you by Mr. Robert Kyle. I enclose copy of same for your information.

Mr. Kyle states in his letter that it has been more than 2 years since the Standing Committee on Finance and Economic Affairs tabled the Report on the Five Year Review of the Securities Act to the Ontario Legislative Assembly.

I would appreciate it if you would review Mr. Kyle's correspondence and respond directly to him, with a copy to me, at your earliest convenience.

Thank you for your assistance in this regard.

Sincerely,

Joe Tascona, MPP  
Barrie Simcoe Bradford

/ap  
Encl

c.c.: Mr. Robert Kyle  
60 Pleasant Blvd #2501  
Toronto, Ontario M4T 1K1

Hon. Gerry Phillips  
Ministry of Government Services  
Suite 4320,  
99 Wellesley Street West,  
Whitney Block  
Toronto ON M7A 1W3

22 January 2007

Via Registered Mail

Dear Mr. Phillips,

On March 13, 2006 I asked several questions in a letter to you and requested your written response. I have attached that letter for your convenience. I received no written response from you addressing my concern. I did, after several failed attempts to speak with you, receive a call from your assistant Perry Chao who stated the following;

*Unfortunately we cannot tell you with any reliability when we will get an answer to you... just that we will try to get an answer for you as soon as possible.*

Mr. Phillips it has now been more than 2 years since the Standing Committee on Finance and Economic Affairs tabled the *Report on the Five Year Review of the Securities Act* to the Ontario Legislative Assembly on October 18, 2004. Here is an excerpt from that Report;

*The testimony received by the Standing Committee revealed a deep-seated skepticism on the part of the investing public. They simply are not confident that complaints will always be handled in an objective manner under a system of self-regulation.*

Further that

*We believe the question of whether SROs should be given more powers or, indeed, whether they should have any powers at all, should be the subject of further review by a task force established to examine this specific issue.*

On November 1<sup>st</sup>, 2004, as minister responsible for the administration of the Ontario *Securities Act*, you stated before the Ontario Legislative Assembly:

*The committee recommended the government establish a task force to review the role of self-regulatory organizations, or SROs, as they are commonly known. That would give us an opportunity to respond to those who appeared before the committee and expressed their concerns with the current SRO system. The task force would work toward improving the current system, and in doing so, would instill greater investor protection and confidence in our capital market.*

Mr. Phillips, other than making promises to the public on this specific recommendation, have you taken any further steps?

Since that time, the Investment Dealers Association of Canada, an SRO, established a *Task Force to Modernize Securities Legislation in Canada* which prepared a report entitled *Canada Steps Up*. Within that report is a Research Paper entitled *Critical Issues in Enforcement* which is authored by The Honourable Mr. Justice Peter deCarteret Cory and Marilyn L. Pilkington. Their credentials are also appended to this letter.

The following is an excerpt from Volume 6 page 242 of that research paper.

*ii. Jurisdiction*

...

*To the extent that SROs are trade associations, it is reasonable that they exercise their powers only with respect to the conduct of their members. However, they have become more than trade associations.*

*Legislation authorizes securities regulators to recognize SROs and to review their by-laws, rules, financial affairs and decisions. In effect, it appears that SROs, subject to the review of regulators, are exercising delegated regulatory authority over the conduct of their members. If they are hampered from doing so effectively by limits on their jurisdiction, the gaps must be addressed.*

*It appears that, if SROs make decisions without access to relevant information, or their decisions cannot be enforced, the problem cannot be corrected on review. Either additional powers must be provided to the SROs or a different system of regulation must be put in place. In light of the importance of the work undertaken by the IDA and other SROs, and the seriousness of the matters they investigate and prosecute, it is important to address and resolve their appropriate role and jurisdiction within the system of securities regulation. Any ambiguity as to whether SROs are exercising statutory powers of decision, and are thus subject to the protections guaranteed by the Canadian Charter of Rights and Freedoms, should also be resolved.*

Thomas I.A. Allen, Q.C., the Chairman of the Task Force, when presenting the paper to the Economic Club of Canada on October 10, 2006 stated that the research paper prepared by Mr. Justice Cory and Professor Pilkington is "with the utmost credibility and should provide very valuable guidance for policymakers in Canada."

The Report excerpt above is strikingly similar to the recommendation put forth by the Finance Committee in October 2004 in order to address the public's concern as well. This recommendation is also echoed in the paper which I presented to the Senate Banking Committee on May 4, 2005.

So there you have it. The public has strongly voiced its concern, the legislative assembly has agreed that a government task force is required and a learned judge of the Supreme Court of Canada has independently established that these same concerns must be addressed.

The unanswered questions in my previous letter to you were as follows:

- Why have you not acted on this all-party recommendation to date?
- When will you act?

- Who will comprise the task force if you proceed with your commitment?
- Will you include consumer/investors on that task force?

It would appear that you have lost sight of your elected role as a representative of Ontarians. There are 12.687 million Ontarians who are at risk should they become victim to a breach of securities law and their only regulatory recourse is the SROs. There are also a great many Ontarians who have already sustained enormous financial losses due to breaches of securities laws who your government has chosen to ignore by not acting.


Furthermore, your lack of action only serves to frustrate and disappoint all those concerned associations and individuals who presented before the Ontario Finance Committee.

One such individual investor, Mr. Ernest Wotton, who at 83 years of age presented to the Committee, spoke of a letter he sent to Mr. McGuinty in 1995 complaining about this very issue. So obviously, 12 years later, this is not a new problem Mr. Phillips. Mr. Wotton is now 86 and is still working.

I have attached Mr. Wotton's presentation for you, as per the Hansard, in order to hopefully keep you mindful of the plight of Ontarians under this current regulatory regime.

I look forward to hearing from you at your earliest convenience.

Regards,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario, M4T 1K1

For further information on this issue please visit:

[http://www.investorvoice.ca/regulators/Reports/SCFEA/SCFEA\\_Index.html](http://www.investorvoice.ca/regulators/Reports/SCFEA/SCFEA_Index.html)

- c. Hon. Dalton McGuinty, Premier of Ontario
- c. Hon. Michael Bryant, Ontario Attorney General
- c. Hon. Greg Sorbara, Ontario Minister of Finance
- c. Hon. Jim Flaherty, Federal Minister of Finance
- c. John Tory, Leader, Official Opposition
- c. Howard Hampton, Leader, Recognized Party
- c. Tim Hudak, Ontario Finance Critic
- c. Joseph Tascona, Ontario Ministry of Government Services Critic
- c. Senator Jerry Grafstein, Chair, Standing Committee on Banking, Trade and Commerce
- c. John Sliter, Superintendent & Director, RCMP IMETs
- c. Gary Logan, Toronto Police Services, Sergeant, Fraud Investigation Unit
- c. Andy Mayo, Detective Staff Sergeant, Ontario Provincial Police, Anti-racketeering Squad



Participating Organizations and Individuals

- c. Consumers Council of Canada
- c. CARP 50PLUS
- c. Small Investor Protection Association
- c. Democracy Watch
- c. Social Investment Organization
- c. Glorianne Stromberg
- c. Al Rosen
- c. Larry Elford
- c. Diane Urquhart
- c. David Yudelman
- c. John Hollander
- c. Bill Weissglas
- c. Joe Killoran
- c. Sandra Gibson
- c. Gloria Hutton
- c. Robert Verdun
- c. Peter Schnobb
- c. J. Edward DeToro
- c. Ernest Wotton
- c. Jocelyne Robidoux
- c. Dr. Joel Fried
- c. Jim Roache
- c. Paul Winkler

2004 SCFEA Members/Substitutes and Critics

- c. Pat Hoy
- c. John O'Toole
- c. Michael Prue
- c. Deborah Matthews
- c. John Milloy
- c. Linda Jeffrey
- c. Bob Delaney
- c. Lorenzo Berardinetti
- c. Laurel Broten
- c. Bruce Crozier
- c. Toby Barrett
- c. Hon. Mike Colle
- c. Phil McNeely
- c. John Wilkinson
- c. Carol Mitchell
- c. Judy Marsales
- c. Wayne Arthurs

## The Honourable Mr. Justice Peter deCarteret Cory

Mr. Justice Cory, B.A., LL.L. Born in Windsor, Ontario, October 25, 1925. Son of Andrew and Mildred (Beresford Howe) Cory. Married to Edith Nash. Children: Christopher, Andrew, Robert. Educated at the University of Western Ontario (Assumption), B.A., 1947, Osgoode Hall Law School, 1950. Pilot in the RCAF. Served overseas with 6th Bomber Group. Called to the Ontario Bar, 1950. Appointed Q.C., 1963. Practised law with Holden, Murdoch. Elected Bencher of the Law Society of Upper Canada, 1971. Past Chairman of the Ontario Civil Liberties Section of the Canadian Bar Association. Past President of the County of York Law Association.

Past National Director of the Canadian Bar Association. Past President of the Advocates' Society. Appointed to the Supreme Court of Ontario High Court, 1974. Appointed to the Ontario Court of Appeal, 1981. Appointed to the Supreme Court of Canada, February 1, 1989. Hon. Colonel, 426 (T) Training Squadron. Justice Cory retired on June 1, 1999.

Excerpt from:

[http://www.scc-csc.gc.ca/aboutcourt/judges/cory/index\\_e.asp](http://www.scc-csc.gc.ca/aboutcourt/judges/cory/index_e.asp)

## Marilyn L. Pilkington

Associate Professor, Osgoode Hall Law School

BA (Hons) (Alberta), LLB (Toronto), Hon LLD (Law Society of Upper Canada), of the Bar of Ontario

Professor Marilyn Pilkington served as Dean of Osgoode Hall Law School from 1993 to 1998, and has been a member of the faculty since 1980. A Bencher of the Law Society of Upper Canada from 1999 to 2003, Professor Pilkington has considerable experience as a member of university policy bodies, provincial advisory bodies, public policy research institutes, law reform projects, human rights tribunals, and boards of not-for-profit organizations. Professor Pilkington – whose research interests include legal education and the legal profession, evidence, constitutional litigation and remedies – recently served on The Task Force to Modernize Securities Legislation in Canada, which published its report in October 2006. She is also currently on the roster of candidates who serve on panels established under chapter 19 of the North American Free Trade Agreement, and is a Governor of the Shaw Festival. Prior to joining Osgoode, Professor Pilkington served as law clerk to The Honourable Mr. Justice Judson, Supreme Court of Canada, and practised civil litigation with Tory Tory DesLauriers & Binnington. She is co-author (with Frank Iacobucci and Robert Prichard) of *Canadian Business Corporations Law* (Canada Law Book 1977), and author of several articles relating to constitutional litigation and legal education.

Excerpt from:

[http://www.osgoode.yorku.ca/faculty/Pilkington\\_Marilyn\\_L.html](http://www.osgoode.yorku.ca/faculty/Pilkington_Marilyn_L.html)

Excerpt from Hansard dated Thursday 19 August 2004

ERNEST WOTTON

The Chair: I would call on Ernest Wotton to come forward, please. Good afternoon. You have 10 minutes for your presentation. You may allow time within that 10 minutes for questions, if you wish. I would ask you to state your name for our recording Hansard.

Mr Ernest Wotton: Thank you, Mr Chairman. My name is Ernest Wotton. I know nothing about finance. I am by trade a lighting designer. I'm a fellow of four professional organizations. I have practised in Canada, in the United States and in the UK. I have taught my trade at leading schools of architecture across North America. I am 83.

In July 1999, I wrote to the Honourable Dalton McGuinty, then the Leader of the Opposition, saying:

"Not so long ago when you retired you received your '50 year' pin and a pension. Today you receive neither. Nobody expects to spend a working life with the same employer. Instead, one changes frequently.

"These frequent changes mean that you have to make your own arrangement for a pension. If, like most people, you know little about financial matters, you put the money you have set aside for a pension in the hands of a financial adviser.

"Suppose that your financial adviser does not invest in line with your instruction and you lose money. You may spend months in fruitless discussion with the adviser in an effort to obtain reimbursement."

My letter to Mr McGuinty, written over five years ago, did not end there. I will return to it in a moment. It begins when, in February 1995, my wife and I took a bundle of very solid securities and cash to a financial adviser employed by a leading investment firm. We asked him to manage an account for us.

As I said, I know nothing about managing money, but I can read a graph. The mid-1990s were a boom time for investment, yet a downward slope appeared in the graph of our portfolio. Every monthly statement from the investment firm directed its clients to make contact with their financial adviser if they had any questions. Accordingly, I wrote to our financial adviser and said that the downward trend in the value of our portfolio was a cause for concern. He stated that our portfolio was healthy. He also confirmed specifically that a particular security I named was healthy.

Then three things happened. Our adviser left the firm, the particular security became junk and the investment firm wrote that as we had written to our financial adviser, in line, you will have noticed, with the instructions on the monthly account, it "had no responsibility for" our financial adviser's statement "that the portfolio was healthy."

1330

I will not even try to outline my effort to obtain compensation. My correspondence occupies two binders, each three and a half inches thick. Some of the replies from the investment firm were marked "*sub judice*." I got no reply when I asked what this implied.

I drew to the attention of the president that his firm's newsletter referred to "the superb returns enjoyed over the past few years," and asked why I had not taken part in that bounty. The president wrote, "We remain committed to serving you with the best possible advice [and to] building strong relationships with our clients," but he omitted to send a cheque.

Meanwhile, I scouted for other ways to obtain restitution. I mentioned my letter to Mr McGuinty. He referred me to the Ontario Securities Commission, as did the Ministry of Finance. The OSC referred me to the Investment Dealers Association. From the time I wrote to the OSC, in line with the advice from Queen's Park, until the IDA hearing into what it referred to as "the matter," three years and seven months had passed. I learned that a number of other investors had also complained against our financial adviser. I was surprised, therefore, when IDA concluded that he had been correctly supervised.

At this point in my story my wife and I had been unable to get compensation for the enormous loss in our investment, and we were unable to take part in the arbitration process set up by IDA since our complaint fell outside its terms of reference. But the Ontario Ombudsman told me of the Ombudsman for Banking Services and Investments. Richard Bright of OBSI interviewed me and my wife and subsequently submitted his report to an arbitrator. We were awarded about 60% of our loss. Mr. Bright's report identified a number of examples of investments obviously made without due diligence, yet they had eluded the investment firm.

May I summarize my conclusions arising from this sad recital of facts:

- (1) An investment firm will not conduct a rigorous investigation into a complaint against its staff.
- (2) An investment firm will use its enormous clout, including the use of legal terms in everyday correspondence, to wear down an investor, particularly the vulnerable.
- (3) The provincial government has delegated to OSC its authority to protect investors from unfair or improper practices without ensuring that this authority is being exercised.
- (4) OSC has delegated to IDA its authority to investigate complaints against financial advisers without ensuring that those investigations are swiftly and competently carried out.
- (5) Neither OSC nor IDA has assumed the responsibility for ensuring that investors are compensated for their losses from investments carried out

without due diligence. Instead, both OSC and IDA recommend that the investor take legal advice. OSC has stated that the average fee for legal advice is \$37,500. This is far beyond anything many investors, particularly elderly investors, can afford.

(6) The March 21, 2003, review of the Securities Act of Ontario does not address the above issues.

(7) No investor, particularly the vulnerable, should have to go through the trouble and worry I had to go through, and that extended over eight years, in order to obtain relief.

In April 2002, the OSC mounted an investor education conference. About 100 delegates took part, representing 40 user groups. They broke into spontaneous applause only once: when a journalist member of a discussion panel stated, "The system is very wrong when one has to go to court for restitution. There must be another way. Companies must hold their employees accountable. Clients come first."

I was there. I noted this remark. I ask, Mr. Chair, that you give it your urgent consideration. Thank you for your time.

The Chair: Thank you for your submission today. Regrettably, there is no time left for questions.

[http://www.ontla.on.ca/hansard/committee\\_debates/38\\_parl/session1/finance/F025.htm#P622\\_177498](http://www.ontla.on.ca/hansard/committee_debates/38_parl/session1/finance/F025.htm#P622_177498)

## LEGISLATIVE ASSEMBLY OF ONTARIO

Tuesday 2 May 2006 Mardi 2 mai 2006

### [SECURITIES TRANSFER ACT, 2006 /](#)

*The House met at 1845.*

### SECURITIES TRANSFER ACT, 2006 /

Mr. Michael Prue (Beaches-East York): I understand I may be the only speaker tonight, and I promise to be as brief as possible, given the severity and the difficulty of the situation.

We are here tonight to discuss Bill 41, which in its full title says it all: An Act to create a comprehensive system of rules for the transfer of securities that is consistent with such rules across North America and to make consequential amendments to various Acts.

It is, of course, modelled on the Uniform Securities Act, 2004, which was a joint project of all the provinces of Canada, and we are, not unlike the other provinces in Canada, coming up with a new bill to try to revitalize and reform a system very much in need of revitalization and reform.

The comprehensive rules we have or that are contained within the body of this act are for the transfer of investment securities, whether directly or indirectly held. That may not mean much to most of the population or probably to most of the people in this Legislature, but just to be sure, what it means is: The indirect holding system is the system for transfer of securities where an investor's interest in a security is recorded on the books of an intermediary, i.e., a securities dealer or bank, and that intermediary in turn has his interests recorded on the books of another intermediary through a complex chain of intermediaries that may span multiple jurisdictions. At the top of this chain is the central clearing agency, the only intermediary in the chain with a direct relationship with the issuer. The clearing agency is either recorded as the owner directly or in the issuer's register or has physical possession of the securities certificates.

It's a very complex rule of law. It's a very complex financial distribution and financial holding system that not too many people are aware of. Of course those who trade in commodities, those who trade in stocks, those who frequent Bay Street, Wall Street or any of the legion other trading agencies around the world -- the Japanese Nippon -- will be very familiar with this.

We are attempting, as a government, to try to remedy the problems under the Securities Transfer Act, 2005. As per the briefing notes that the minister so kindly gave to my assistants because I was not able to attend -- and I want to personally thank the minister for making these available -- the Securities Transfer Act, 2005 is, in fact, not a securities law. As his own notes have indicated, and as the minister has stated, the Securities Transfer Act "deals with a very narrow element of the settlement of a typical trade in securities -- the transfer of property and the payment of money that takes place in a transaction involving investment securities. Therefore, the Securities Transfer Act may be properly called commercial law."

New Democrats have no real problem with Bill 41 as far as it goes. The problem we have with the entire initiative of this government is that it does not indeed go far enough.

The standing committee looking into the Ontario Securities Commission met over a number of months and culminated in a report of October 2004. That is some 18 months ago. Members of all parties got together and listened to the various recommendations of lawyers, accountants, forensic accountants, people involved in the Ontario Securities Commission, people who were involved in their structure, and ordinary investors, and we made a number of very real and very strong recommendations to the minister which we fail to see in the body of this report. That is the problem: not so much what is contained in the 72 pages of Bill 41, but what has not been done by this government in the time frame that the government and the government members promised.

We heard, at the time when the all-party members got together in the Legislature, that we had many options available to us. The option we have chosen and the option the government has brought forward is indeed a very timid one.

We heard that the United States, our neighbour to the south, has two committees that oversee the trade in stocks and in the stock market. They have one that is based in the Senate and one that is based in the House of Representatives. Those committees are very strong indeed. I do not have the most up-to-date figures, but going back as far as 2001, they prepared nine complete reports on fraudulent transactions, on what needed to be done to strengthen Wall Street, what needed to be strengthened to help the ordinary investor. We in Ontario are very timid. We don't do any of those things. What we do is Bill 41.

I want to tell you as well that we heard the Senate and House of Representatives committees have complete oversight. They have a formula whereby those committees are given a great deal of money by the General Accounting Office -- called the GAO -- of the United States government, and that money is used to do prosecutions, investigations, oversight and generally make sure that when you do business on Wall Street, you are very carefully monitored, and if you transgress, you are fined and/or you go to jail. In Ontario, we don't do anything of the sort. We have Bill 41.

One of the people who appeared before our committee was Glorianne Stromberg. She made some very strong and very good recommendations about where we should be heading as a government with the bills related to the Ontario Securities Commission, and none of those have been followed.

I listened while I was in the chair the other day -- you hear much more in the chair than if you are otherwise occupied in this chamber, because you have to make sure you're fully aware of what each speaker is saying lest they step beyond the bounds, so that you know exactly when to call the appropriate motions or the appropriate procedure or rules. I listened very carefully to what the minister had to say on that date, and he said that the other bills are coming. The other bills will be companion pieces in the future. But with the greatest of respect to the minister, I believe he has missed the mark, because the recommendations made to the minister by the all-party committee, which form the basis of Bill 41, contained much stronger resolutions than have been brought forward.

We recommended, in light of what Glorianne Stromberg had to tell us, that there be a five-year rotating committee, and although the five years have not elapsed, that's the only thing for which this government cannot be faulted. She recommended as well that there be effectiveness to the security laws. Those have not yet been enacted, and people in the Ontario Securities Commission and those who trade on Bay Street do not have the same security. They do not have the same laws. They do not have the same force of prosecution should someone transgress the laws.

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): Break them.

Mr. Prue: Break them. Make them easy, eh? Break those laws.

She recommended an effectiveness security, and we do not have that in this bill. She recommended that there be an operations commission; no such operations commission has been set up. She recommended that financial services be brought under the control of the committee; that has not been done. She recommended that a government office

be set up similar to the American GAO, and in fact that has not been set up. What has been put together in this bill is very timid indeed.

Other people came before our committee, and they talked about the role of the prosecutor-adjudicator. Ontario is the only jurisdiction of which I am aware -- and there may be others, but the only one certainly which has any major trading capacity in this country or in the world -- where the prosecutor and adjudicator roles are combined in one individual. It is impossible, I would suggest, for that institution to survive. It is impossible for them to be fair, because it cannot legally or morally be said that justice is done -- not only done but seen to be done -- when you have one person who acts as both the prosecutor and the adjudicator. The change to the rules in the Ontario Securities Commission that allows the new power of this person or this body to impose administrative penalties of up to \$1 million on those who are in violation of the acts simply makes it impossible to have a prosecutor and an adjudicator role.

I go back to my time before I was a politician. I go back to the 20 years I spent in the immigration department. I remember a time in that department when we had people who were called special inquiry officers, and I was one. I was both the prosecutor and the adjudicator at the same time. It was called two-cornered justice. I was in front of whoever was seeking to come into Canada, who may or may not have had someone defending them who was legally trained, or indeed someone at all, and the decision to both prosecute and to adjudicate rested upon me. I will tell you that the people who reframed the Immigration Act in the late 1970s, in 1978, saw that this was not a good system. It was not fair because it was indeed very near impossible for one to be both a prosecutor and an adjudicator.

In fact, the immigration department changed it to have two separate roles, one called the case presenting officer and the other the adjudicator, so that the justice was much more clearly articulated. A person coming before the adjudicator knew that that person was independent, and the person also knew that the civil servant who was acting in the role of case presenting officer was there to represent the crown, and that person had the right to represent themselves or be represented by a lawyer. It was called three-cornered justice. There was a remarkable difference that took place within that department with that one mere change to the law, going from two-cornered justice to three cornered justice.

I don't understand the great difficulty here. I do not understand at all why there is a reluctance on the part of this government or why there was reluctance on the part Mr. Brown, who was then the OSC chair -- to sit on Coulter Osborne's report for over a year without doing anything about it. That is the reality. People are very reluctant to move from a system which they understand, and in fact which they control, to a system which is fair to all parties.

I would like to quote Coulter Osborne. We all know him. We all know him as our Integrity Commissioner. But he is also a person who made, I think, probably the single greatest recommendation to the all-party committee looking at the Ontario Securities Commission.

Mr. Tascona: Read it.

Mr. Prue: Yes, I am. I'm going to read just a little tiny part of what he had to say. The Osborne committee summed up the arguments in favour of the separation of these two bodies as follows, and I quote it in its full context: "The nature of the apprehension of bias has become sufficiently acute as to not only undermine the commission's adjudicative process, but also the integrity of the commission as a whole among the many constituencies that we interviewed. Matters of institutional loyalty, the involvement of the chair in the major cases, the increased penalties, the sense that 'the cards are stacked against them,' the home court advantage, the lengthy criminal law-like trials, and the commission's aggressive enforcement stance, which will likely only increase over time, all combine to make a compelling case for a separate adjudicative body."

I remember quite clearly the member from Perth-Middlesex moving a motion in committee that was adopted by all the parties and which I believe is binding upon this government, that within one year, if the government of Ontario



was not successful in combining or having one legislative body for all of Canada, this government would move on this process. More than a year -- 18 months -- has now gone by. I don't see us any closer to having one legislative body for all of Canada, and yet nothing has been done to separate the adjudicative function from the enforcement function. That's a major failing, and I would suggest the member from Perth-Middlesex is hearing me. He knows he made the motion. He absolutely knows he made it.

1900

Interjection: He was there.

Mr. Prue: He was there, and we voted for it. That was probably the deal-breaker that got all of the parties together, and it has not happened. That's a major failure. Whether it should be in this legislation or in a companion piece, I leave to government, but without the companion piece, all I can say is that this bill is extremely timid in its approach.

We also talked during the committee --

Mr. Tascona: It's tepid.

Mr. Prue: Tepid? No, I don't think so. That's lukewarm. I don't like that. I think it's timid.

We also talked during all of those days with the committee about the self-regulating organizations, or SROs. The committee believed that this was an absolutely pressing issue that needed to be dealt with. All three parties voted that something had to be done with the SROs. We talked, and they talked and all of the deputants talked that they had a huge conflict of interest. They were both a trade advocacy group and a self-regulation group; they combined the two. The committee and every single deputant recommended that they be split. There was a lawyer, and unfortunately I cannot find his or her name but I remember the quote. The body, which they call the IDA, "gives the appearance of being expert and impartial when, in fact, it is neither." That was the quote before the committee. It's true. The IDA is not expert, it is not impartial and it exists because the member agencies pay them. They have evolved along a line where they are nothing more than a trade advocate. Every single major decision, they merely -- up until that time and, I'm sure, until today -- parrot what their member agencies have to say. They merely repeat it. They repeat the line from the brokerage firm. That's what they do. That's what they're paid for. That's where they get their mandate. That's where they get their money. They parrot the brokerage firms. They also give legal advice to the alleged transgressors.

Has this government moved at all on this major recommendation? No, they have not. What we have is 72 pages of timidity.

Mr. Tascona: Tepid.

Mr. Prue: And my friend here thinks it's tepid.

Other governments have acted much more strongly. We certainly know the United States has a very strong system. But we also know that in 2001, the United Kingdom didn't come forward with the equivalent of Bill 41. They came forward with a complete revamping of the system as it related to SROs. They changed all of the existing SROs, which were merely mouthpieces for their organizations, which were simply trade advocacy groups, the same as in Ontario, into a single regulator. That single regulator looks after financial services, banking, insurance and the very supervision of the firms for which they were once the advocacy group. I will tell you, the problems in England are minuscule in comparison to the problems we are facing here in Ontario, trying to regulate and to police and to enforce the many infractions that take place under Ontario's current laws, the people who are trying to rip off, very simply and very expertly, the system of bonds and trading that takes place on Bay Street.

The committee asked that a task force be set up to review everything about the SROs. If there was not a single regulator in Canada within one year, one of the recommendations was that a task force be set up to review the continued existence of the SROs with the role of changing them, of modifying them, of moving them, of developing a system either like the United States or the United Kingdom. A year has come and gone, 18 months have come and gone, and the government has chosen to do nothing. We have instead Bill 41.

Mr. Tascona: Tepid.

Mr. Prue: Tepid. My friend likes this.

There's the whole issue of restitution. I want to read a direct quote from the standing committee about restitution. The standing committee recommended "that the government work with the Ontario Securities Commission to establish a workable mechanism that would allow investors to pursue restitution in a timely and affordable manner, and that government report on its progress in this regard within 12 months." We're 18 months into it and nothing has been done in this regard. It does not contain anything within a single sentence of Bill 41, which has to be a major failing.

You might ask why I'm talking about all of this stuff -- what's not in the bill. It's only because I am so severely disappointed. Back in October 2004, there was an all-party agreement and, I believed, a real opportunity to move this province forward, a real opportunity to make sure that people who go down to Bay Street and try to fiddle, people who steal money, people who rob pensioners, pension funds and other people of their hard-earned money in order to line their pockets would face the same consequences that they would in the United Kingdom, Switzerland, Germany, on Wall Street and in literally every other country on the face of this planet. It has not happened.

We can see what happens in the United States. We can see what happens to a company like Enron when it goes afoul. The prosecution has come down hard. We can see the court cases. We can see the people literally -- I'll use the vernacular of the streets -- spilling their guts to make sure they don't go away for a long time, turning each other in, with the multiple scams that took place around the Enron fiasco. We can see what happened, some would say, to poor Martha Stewart, who tried to fiddle the market, got caught and went to jail, in a time when we would still be investigating. We would still be wondering what she did. We would still be trying to piece things together and seeing whether a deal could be made. The United States, with all due respect to them -- and I'm not the greatest apologist for that country, but with respect --

Mr. Tascona: He's running for governor now.

Mr. Prue: Who? Martha Stewart?

Mr. Tascona: Spitzer.

Mr. Prue: Okay, Spitzer is running for governor. Maybe Martha Stewart should run for governor too; I don't know. But Martha Stewart has already been prosecuted, has done her time, is already out and the appeals have been dealt with.

That event happened after we had our committee hearings. Nothing like that ever happens in Ontario. You can look at the whole range of the United States, from Arthur Andersen to Conrad Black. Conrad Black, who did a lot of his alleged transgressions in this country and in this province, has never been prosecuted once. He's never even been touched. He's never even been named. In the United States, in Chicago, you can watch him daily or weekly on the news, going down to the courts, because they are taking action, because they have a prosecution body that actually works. You can look at WorldCom, you can look at Adelphia, you can look at a thousand things that happen in that country and then you can contrast them with Ontario.

Just today, in section C3 of the Toronto Star, there was a whole article about the Royal Group. I think some people here are familiar with that. There it is on page C3 that they are still being investigated by the Ontario Securities Commission a year and a half after the fact. They are still being investigated by the RCMP. They are still being defended by the various SROs. No actions have been taken whatsoever. According to the article, they are not required to file any documents of their financial holdings or their financial transactions between 2001 and 2003, but if and when they are required to, the article went on to say, there may be some financial implications for their bottom line next year. That's the same as what happened with Philip Services, with Livent, with Nortel, with the 100 other groups that have, maybe or maybe not, been investigated.

People in this province are looking to this government to be less than timid. We're looking for something better than Bill 41.

I think David Brown said it best --

Mr. Tascona: You're wearing yourself out.

Mr. Prue: No, no.

I think the government has followed what the former chair of the OSC had to say before the committee back in October 2004. This government seems to be playing exactly the same card. David Brown, the recently departed chairman of the Ontario Securities Commission, believed that his organization's mandate, "was not to bring lawbreakers to justice," but rather "to promote the integrity of the capital markets and foster confidence in them." That's what this bill does.

1910

We know that literally tens of thousands of people have lost fortunes on the stock market in Ontario. If it were purely a speculative practice where you put the money down and you think that a company -- Barrick, as an example -- is going to find gold somewhere and they don't find gold and you lose your money, I guess that's like a horse race: You take your chances and there it is. But if you lose your money when someone has fiddled the books, if you lose your money when someone has cheated the system, if you lose your money when the Ontario Securities Commission and the regulating body hasn't caught the transgressor, then you would indeed be very angry. There are tens of thousands of people in this province and many, many funds that they are very angry at because they believe they have been cheated, and our system certainly does not work for them.

Mr. Speaker, I want to talk finally -- and I'm going to finish, as I promised you, in about half an hour -- about what Al Rosen had to say about this.

Mr. Tascona: He's a suit manufacturer.

Mr. Prue: No, no. Al Rosen is considered Canada's leading forensic accountant when it comes to all of this.

He said that, as politicians, we need to do three things to take the appropriate action, three important steps. First, we need to change the traditional power structures. We have to eliminate them, and Canada's accounting and auditing practitioners have to be "separated from the rule-setters, to keep them from setting deliberately weak investor protection hurdles."

We have the same weak protection hurdles today that we had back in October 2004, when the all-party committee met and agreed that something major had to be done. When the minister came before the committee and congratulated us for having made very strong, very pertinent recommendations to literally change the system to protect investors, to protect the public and to make sure that Ontario did not lag behind every other trading company and every other trading floor in the world, he said, "Congratulations. We will implement it."

But Bill 41 doesn't do any of those. There is no companion piece. There is no time frame set out for the companion piece. The government is at least six months late on the recommendations made by the committee. That's the first thing. Mr. Rosen said it, and we as a Legislature have not done it.

The second thing he said is that "an independent Canada-wide enforcement (not regulatory) agency has to be set up to initiate proceedings against corporate scam artists. Simply put, the crooks are light years ahead of the provincial commissions in carrying out financial fleecings." We know that that is correct. We heard evidence, back in 2004, about the year before, when there were about 300 transgressions investigated under the Ontario Securities Commission in Ontario at Bay Street. That's about one per day. Once a day somebody is coming in there with a wonderful little scam to siphon money out of the market.

I would suggest that anybody who has any money in the market, either directly invested by them or if they have the money invested through a pension fund, should be extremely worried about the level of scams taking place in Ontario. Certainly, if they are caught in Ontario, virtually nothing happens to them. If they are caught in the United States, though, you can rest assured that they will be going to jail for a long time. And you can rest assured that if it happens in another country, be it Britain, the United States, Switzerland, France, Germany or anywhere else, there is an enforcement agency with teeth out there looking for them. In Ontario, we continue to follow Mr. Brown's advice that we are not out there to do enforcement action but simply to give a good image about investing in Ontario.

Lastly, Mr. Rosen talked about how the penalties for abusers have to be stiff enough to change behaviour. Many of the current penalties handed out are routinely treated as a mere cost of doing business.

If you look back at what happened before the Ontario Securities Commission when investigations have taken place, usually only two things happen. There is a requirement that there be some form of restitution, be it minor. They have to give back some of the money they pilfered. Oftentimes, those who have pilfered it are forbidden to trade in stocks on the floor of the Toronto Stock Exchange for anywhere from a month to a year or two years, and occasionally even life -- but rarely life. It's usually a month or a year or two years that they're not allowed to trade in stocks because, you see, they have been caught and they've been tainted and, supposedly, after a month or a year or two years, they can come back and be forgiven and go on with their nefarious activities, knowing full well that even though they were caught, they're not likely to be caught again.

We have before us tonight a very timid bill. What is it going to accomplish, these 72 pages? It says it right in the bill on the first page: "The rules contained in the bill address both securities that are directly held ... and those that are indirectly held," and that it was put together, and the recommendations were made, by the very groups that are contained within the Bay Street establishment. They all sat down and thought, "What's going to make this work better for us?" not "What is going to make it better for the consumer?" not "What is going to make it better for the investor?" not "What is going to make it better for the province of Ontario?" not "What is going to make it better for law enforcement?" but "What is going to make it better for us?" I'm sure this bill will accomplish everything that the drafters expected it to do. Unfortunately, it's going to do nothing for those people who have come to the province of Ontario seeking protection, for those people who have their life savings invested in the stock market, for those people who believe in the honesty of the free market system -- and there are still many people who do.

We have an obligation to do so much more. If the minister is going to introduce a companion piece, let him do it immediately. Let him take the appropriate action, which is not the timidity of this bill. Let him take the action that is actually going to help people in Ontario.

Those would be my comments. Thank you very much for your attention

Hon. Gerry Phillips  
Minister of Government Services  
12th Floor, Ferguson Block  
77 Wellesley Street West  
Toronto, Ontario  
M7A 1N3

13 March 2006

Registered Mail

Dear Mr. Phillips,

As you are aware, I have contacted your office on a number of occasions since you last agreed to create a task force to perform a government review of the Investment Dealers Association of Canada ("IDA"). As you may recall, this was a strong and unanimous recommendation from the Standing Committee on Finance and Economic Affairs and is found at page 21, paragraph 26 of the *Report on the Five Year Review of the Securities Act*.

The actual wording in the report is as follows:

*The testimony received by the Standing Committee revealed a deep-seated skepticism on the part of the investing public. They simply are not confident that complaints will always be handled in an objective manner under a system of self-regulation.*

Further that

*We believe the question of whether SROs should be given more powers or, indeed, whether they should have any powers at all, should be the subject of further review by a task force established to examine this specific issue.*

On November 1<sup>st</sup>, 2004, as minister responsible for the administration of the Ontario *Securities Act*, you stated before the Ontario Legislative Assembly:

*The committee recommended the government establish a task force to review the role of self-regulatory organizations, or SROs, as they are commonly known. That would give us an opportunity to respond to those who appeared before the committee and expressed their concerns with the current SRO system. The task force would work toward improving the current system, and in doing so, would instill greater investor protection and confidence in our capital market.*

Later on February 24<sup>th</sup>, 2005 again you stated before the Ontario Legislature:

*The committee also recommended that the government establish a task force to review the role of self-regulatory organizations. We have begun the necessary background work and will be moving forward on this recommendation later this year.*

With respect to the many letters I have sent your office, in order to bring critical investor protection issues involving SROs to your attention, I only received one written response dated April 21<sup>st</sup>, 2005. I have attached that letter for your convenience.

Therein you again state,

*We will be moving on this recommendation later this year.*

Mr. Phillips it has now been more than 17 months since the recommendations were first tabled to the Ontario Legislative Assembly on October 18, 2004.

- Why have you apparently not acted on this all-party recommendation to date?
- When will you act?
- Who will comprise the task force if you proceed with your commitment?
- Will you include consumer/investors on that task force?

Not to act on it would not only be irresponsible, it would also be disrespectful to all Associations and individuals who participated by appearing before the Finance Committee. I do not feel that those organizations, Ontario investors, advisors, or voters will appreciate a failure to follow through – if that is what we have here.

Further, many stakeholders have intimated that they perceive the relationship between the IDA and the Ontario Securities Commission as a major stumbling block in achieving agreement on a single national regulator.

For now, a progress report and timeline to completion of the SRO review is the minimum entitlement of all stakeholders. I have copied the stakeholders listed below.

I look forward to hearing from you at your earliest convenience.

Regards,



Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1

For further information please see:

[http://www.investorvoice.ca/regulators/Reports/SCFEA/SCFEA\\_Index.html](http://www.investorvoice.ca/regulators/Reports/SCFEA/SCFEA_Index.html)

- c. Hon. Dalton McGuinty, Premier of Ontario
- c. Hon. Dwight Duncan, Ontario Minister of Finance
- c. Hon. Jim Flaherty, Federal Minister of Finance
- c. John Tory, Leader, Official Opposition
- c. Howard Hampton, Leader, Recognized Party

Participating Organizations and Individuals

- c. Consumers Council of Canada
- c. CARP 50PLUS
- c. Small Investor Protection Association
- c. Democracy Watch
- c. Social Investment Organization
- c. Glorianne Stromberg
- c. Al Rosen
- c. Larry Elford
- c. Diane Urquhart
- c. David Yudelman
- c. John Hollander
- c. Bill Weissglas
- c. Joe Killoran
- c. Sandra Gibson
- c. Gloria Hutton
- c. Robert Verdun
- c. Peter Schnobb
- c. J. Edward DeToro
- c. Ernest Wotton
- c. Jocelyne Robidoux
- c. Dr. Joel Fried
- c. Jim Roache
- c. Paul Winkler

2004 SCFEA Members/Substitutes  
and Critics

- c. Pat Hoy
- c. John O'Toole
- c. Michael Prue
- c. Deborah Matthews
- c. John Milloy
- c. Linda Jeffrey
- c. Bob Delaney
- c. Lorenzo Berardinetti
- c. Laurel Broten
- c. Bruce Crozier
- c. Toby Barrett
- c. Hon. Mike Colle
- c. Phil McNeely
- c. John Wilkinson
- c. Carol Mitchell
- c. Judy Marsales
- c. Wayne Arthurs
- c. Joseph Tascona
- c. Peter Kormos
- Media
- c. Advisor.ca
- c. Toronto Star
- c. Globe and Mail
- c. National Post
- c. Investment Executive

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Télécopieur : 416 327-3790



**APR 21 2005**

Mr. Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1

Dear Mr. Kyle:

Thank you for your letter enclosing the November 2004 Investment Executive article "Fair-dealing model placed on a faster track."

As you note, one of the recommendations of the Standing Committee on Finance And Economic Affairs Report on the Five Year Review of the *Securities Act* is that the government establish a taskforce to review the role of self-regulatory organizations (SROs). We will be moving on this recommendation later this year.

Thank you again for taking the time to write.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerry Phillips".

Gerry Phillips  
Chair  
Management Board of Cabinet



November 24, 2004

Honourable Gerry Phillips, MPP  
Chair, Management Board of Cabinet  
Management Board Secretariat  
77 Wellesley St W, 12th Floor,  
Ferguson Block  
Toronto ON., M7A 1N3

By Fax: (416) 327-3790

Dear Mr. Phillips,

I would like to draw your attention to the following article entitled "[Fair-dealing model placed on a faster track](#)", Investment Executive, November 2004. The following is an excerpt from the attached article.

Under its aggressive new timetable, fair-dealing principles will begin showing up as rule changes delivered through the SROs, the Investment Dealers Association of Canada and the Mutual Fund Dealers Association.

This strategy offers a couple of major benefits: rules can be implemented nationally; and because they will be shaped by the self-regulators, which have industry expertise, the rules won't become overly burdensome or inappropriate to the marketplace.

Over time, a body of constitutional, statutory and common law has emerged, designed to ensure fairness and justice in the administration of laws, policies and programs by governments. These laws provide important limitations on the exercise of power by the state in a democratic society.

The Ontario Securities Commission's (OSC) rule-making process would normally necessitate the need for approval, or non disapproval, of either the Lieutenant Governor in Council or the Minister of Finance. The unorthodox route described in the article eliminates the requirement for those safeguards.

In this particular circumstance the IDA's by-laws become disguised forms of regulatory instruments. The only apparent constraint is the OSC's oversight function, about which, investors, academics, lawyers and government have raised serious concerns.

In addition to the differences in the political and administrative accountability framework for the IDA relative to traditional provincial agencies, the establishment of the IDA gives rise to an important set of questions around the legal accountability of non-governmental organizations to which government functions are "delegated".

The legislature has permitted this to occur. This style of regulation is a cause for great concern. Statutory bodies, such as the Commission and their delegates, must exercise their powers to regulate in accordance with the principles of public law. However, the IDA purports to exercise its authority over its "members" in accordance

with the principles of private law. This structure has resulted in a significant loss of accountability relative to a conventional government agency.

Was this the intent of the legislative?

This type of private law delivery mechanism was used in Walkerton, Ontario.

Please consider this carefully when the Task Force addresses the authority of the self-regulatory organizations. Again, I would be pleased to assist.

I look forward to hearing from you and best of luck on Bill 149.

Regards,

A handwritten signature in black ink, appearing to read 'R. Kyle', written in a cursive style.

Robert Kyle  
60 Pleasant Blvd. #2501  
Toronto, Ontario  
M4T 1K1

416-925-6230

cc. MPP Michael Prue, Management Board Critic  
cc. MPP John Yakabuski, Management Board Critic

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May 19, 2004

Mr. Robert Kyle  
Executive Director  
Small Investor Protection Association  
7791 Ninth Line  
Markham Ontario  
L6B 1A8

Dear Mr. Kyle:

Thank you for your letter dated March 16, 2004, regarding the timing of the legislative committee appointed to review the *Five Year Review Committee Final Report: Reviewing the Securities Act (Ontario)*.

We are currently working towards the referral of the Five Year Review Committee's Final Report to a committee of the Legislative Assembly. Once the report is referred, the legislative committee will review the report, hear interested parties, and make recommendations to the Legislative Assembly on amendments to the *Securities Act*.

Once the report has been referred to a committee, I will be pleased to advise the Committee Chair of your organization's interest in this matter.

Again, thank you for writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerry Phillips".

Gerry Phillips  
Chair  
Management Board of Cabinet



**SIPA**

SMALL INVESTOR PROTECTION ASSOCIATION

16 March 2004

Honourable Gerry Phillips  
Chair, Management Board of Cabinet  
Management Board Secretariat  
77 Wellesley St W, 12th Floor, Ferguson Block  
Toronto ON  
M7A 1N3

Registered Mail

Dear Mr. Phillips,

I am writing you on behalf of The Small Investor Protection Association (SIPA Inc.). SIPA was incorporated in 1999 as a national non-profit voluntary organization. SIPA is the voice of over 450 small investors across Canada.

Our Mission Statement (in part) is as follows:

- to aid public awareness of how the investment industry operates;
- to provide guidance to those who have a complaint about investments with a bank, broker, financial advisor, or other sellers of financial products; and
- to pursue improvement of industry regulation and enforcement.

It has come to our attention that since the *5 Year Review of the Ontario Securities Act* was tabled in the legislature in the spring of 2003 there has not been a select committee of the Legislative Assembly struck to review the report.

The *Ontario Securities Act* requires the following:

#### Review by committee

143.12 (5) Upon the report being tabled, a select or standing committee of the Legislative Assembly shall be appointed to review the report, hear the opinions of interested persons or companies and make recommendations to the Legislative Assembly regarding amendments to this Act. 1994, c. 33, s. 8.



# SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

Please advise SIPA as to the date that this committee of the Legislative Assembly is to be appointed, when hearings will begin, when the opinions of interested persons or companies can be heard, and the composition of that committee.

The voice of the small investor, I am sure you would agree, is required to better shape policy and securities regulation in order to address the concerns of the investing public.

I look forward to hearing from you.

Kind regards,

Robert Kyle  
Executive Director

Small Investor Protection Association  
7791 Ninth Line, Markham, Ontario L6B 1A8  
Tel: Robert Kyle 416-925-6230  
Office: 905-471-2911

- c. Honourable Michael J. Bryant, Attorney General
- c. Hon. Ernie Eves, Leader, Official Opposition
- c. Gerald Butts, Deputy Principal Secretary
- c. Pat Hoy, Chair, Standing Committee on Finance and Economic Affairs
- c. Mike Colle, Member, Standing Committee on Finance and Economic Affairs
- c. John O'Toole, Member, Standing Committee on Finance and Economic Affairs
- c. Michael Prue, Member, Committee on Finance and Economic Affairs
- c. Howard Hampton, New Democratic Party of Ontario