

Statement read to committee reviewing The Securities Act (Ontario) (August 19, 2004)

My name is Ernest Wotton. I am a lighting designer. I am a Fellow of four professional organisations. I have practiced in Canada, the USA and the UK. I have taught lighting design at leading schools of architecture in Canada and the USA. I am 83.

In July 1999 I wrote to the Hon. 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 Advisor.

Suppose that your Financial Advisor does not invest in line with your instruction and you lose money. You may spend months in fruitless discussion with the advisor 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 my story. It begins when, in February 1995 my wife and I took a bundle of solid securities and cash to a Financial Advisor employed by a leading investment firm. We asked him to manage an account for us.

I know nothing about managing money, but I can read a graph. The mid-1990s were a boom time for investors 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 Advisor if they had any questions. Accordingly I wrote to our advisor 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 advisor left the firm. The particular security became junk. The investment firm wrote that as we had written to our Financial Advisor – in line, you will have noticed, with the firm's instruction – and not to an unknown Manager, it "had no responsibility for (our Financial Advisor's statement) that the portfolio was healthy."

I will not try even to outline my effort to obtain compensation. My correspondence occupies two binders each 3.5 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 shared in that bounty. The President wrote that "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 have 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 elapsed.

I learned that a number of other investors had also complained against our Financial Advisor. I was surprised 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 Ontario Ombudsman told me of the Ombudsman for Banking Services and Investors. 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 now 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 Advisors 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 pensioners, 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 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 that:

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 that you give it your urgent consideration.

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