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Preserving the Integrity of Financial Markets in North America - Introduction

J. Michael Robinson

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PRESERVING THE INTEGRITY OF FINANCIAL MARKETS IN NORTH AMERICA

J. Michael Robinson

Introduction

I am Michael Robinson. I am Counsel at the Fasken, Martineau, DuMoulin firm in Toronto. Counsel just means you are an old guy that has been put out to pasture. I am also an Adjunct Professor at Osgood Hall Law School, which gives me some credibility among you academics, but not a great deal.

I want to do a quick postscript to a session last year that we did on electricity, because there has been some very interesting follow-up developments in Canada that some of you may want to hear about. David Manning, who spoke for the U.S. last year on privatization of electricity. Last year Ontario was half pregnant. We were not sure what we were going to do. Well, the child was stillborn. We have now gone back against privatization about 100 percent. We did not privatize with what would have been the biggest IPO in Canada, what we call wires, which was one-third of it.

We had huge imports of expensive electricity last year during the hot summer. Then the government responded brilliantly by protecting the consumer from the real price of electricity, which is in Ontario, a minimum about six and one-half cents by putting a cap on the price of electricity for consumers at four and three-tenths cents. All those who were going to come in and build power plants for the privatized market that had not already run screaming, left. There are no new generation projects in Ontario whatsoever, except one that is half built by Trans Alta. They are going to finish, because it is too expensive to shut it down.

All we have left is a whole bunch of Cabinet Ministers praying that Queens Park, that the nukes in Ontario, namely Pickering and Bruce, will come back on-stream this summer before we have to buy power from the U.S. if we can get it at anywhere from 18 to 35 cents a kilowatt. So, that is the sad story about what happened in Ontario. David, if they had listened to you a little more closely, then we would not be in such a bad spot. Okay, that is the postscript to last year's energy session.

This year I have the pleasure of presiding over the financial services section. It was an area in which I used to work. I am going to introduce our two extremely well-qualified presenters in a minute. But first, let me just give you a little bit of background in the area of cross border securities legislation. I am sure Michael will talk a bit about this, but a real precursor to

international cooperation was something called the MJDS, the Multi Jurisdictional Disclosure System. Michael and his colleague, Linda Quinn, then at the SEC, were drivers of this in trying to recognize the significant similarities between securities regulation on each side of the border and permit Canadians to issue securities in the U.S. with essentially a wraparound U.S. front page on a Canadian disclosure document, and vice versa. The MJDS may be hanging on by its fingernails right now depending on what Canada, and particularly Ontario, does to implement the Canadian version of SOX, which is what we securities guys call your Sarbanes-Oxley Act.

On the lending side, John is a specialist in bank risk analysis. He is going to talk about how Canada has coped with inadequacies of disclosure in our little microcosm. It may not be as high profile as Enron and World Com, but we have had a few little sneakers, too. Just by way of background there, it is fascinating to note that the 1967 revisions to the Bank Act, the year after I started to practice law, were the first time Canadian banks had ever done term lending. Before that, you always signed a note with the interest rate maximum set at six percent. If you have a good relationship with your banker and take him to lunch over at the Toronto Club regularly, you can keep the money. Otherwise, you had to give it back.

I remember, and John may too, that all the lawyers in Toronto who were desperate to try and keep the business of the banks. We acted for the TD at the time, all called their counterparts in New York and said what the hell is a term loan agreement. We all got in a plane and we went down there to borrow as many precedents as we could, then we all raced back to Canada. That is how we all learned to do term lending. A lot has happened since then, but John will tell you more about what differences there may be between the U.S. and Canadian approach.

On the securities side, let me bring you right up to date with something I heard this week. I got a call from a new client in New York, who said, "Somebody said you guys could do an international deal or international advisor registration for me. I work in the U.S. and I have a lot of Canadian clients." I said, "Oh, sure, you know, we fill out the forms, no problem." Then we got to chatting a bit, because we had a mutual friend. He informed me that most people in New York who were advising Canadian clients were getting out of the business because they could not go through all the hassle of complying with either the Homeland Security Act or the Patriot Act. Their Canadian clients have to be identified as to where they live, their telephone number, where they were born, their citizenship in order for a U.S. securities dealer to do business with a Canadian. If it is a corporate person all the shareholders of that corporation have to be disclosed. So, he said they are just not servicing Canadians anymore. Anyway, that is the story and as I said earlier John is going to say even though we have not been outed yet by our Enrons, we are in that league.

Now, for introductions. I am going to introduce Michael first. I gave him something that I accidentally discovered in the file just as I was coming down here just to show how the Canada-U.S. Law Institute is relevant. A letter I wrote to him on June 1, 1987, “Mr. Michael D. Mann, Chief, Office of International Legal Assistance, Division of Enforcement, Securities and Exchange Commission.

Dear Michael: I read with great interest your article entitled “International Legal Assistance in Securities Law Enforcement: Status and Perspectives” in the first issue of *Review of International Business Law*. One of our bright young juniors, Selma Lussenburg, is the Assistant Managing Editor of this new publication. My friend, Earl Mendez, from the University of Western Ontario, is the Editor in Chief.

His positions at the SEC have been extremely impressive. He was the first Director in the Office of International Affairs. This position, which was not mentioned in your bio, but I think you should be proud of it, Chief Office of International Legal Assistance, otherwise go offshore as a cop. He was also Associate Director in the SEC’s Division of Enforcement where he received the Manny Cohen Award. Manny Cohen was a hugely impressive SEC Chair way back when. He received a B.A. from Hampshire College and a J.D. from Antioch School of Law. His paper will be mainly about cross border securities regulation, cooperation, how it has worked, and how it may and may not work from here on forward as Canada tries to decide what to do with SOX.

John’s background is different. That is why this is a good panel. John is our Canadian. Until very recently, he was Senior Executive Vice President for Credit and Risk Management at one of our larger banks, the Bank of Nova Scotia. Indeed, the one that is probably the most active internationally of all the Canadian banks. Now, he has just retired from that position and was immediately appointed Adjunct Professor of Economics at University of Toronto. His background is economics, although, there has been a lot of hard number crunching.

After he took his Ph.D. in economics from LSE at University of London, his career has been almost entirely with the Bank of Nova Scotia. Now he is going back to his first love, academics and economics. We are going to let John go first, then Michael will follow.

