

Investigations getting results, says RCMP

By JEFF BUCKSTEIN

The Royal Canadian Mounted Police and provincial securities commissions in Ontario and Quebec say stepped up joint efforts to investigate and lay charges in white-collar crime cases have produced tangible results. But experts also point to what they perceive as flaws in the system, including the lack of a national regulator to spearhead this fight.

"We have a lot of fragmentation in Canada in a lot of areas, for example, in financial markets, whether it's insurance, in pensions, in securities, we have over 30 regulatory bodies," said Howard Wetston, former chairman of the Ontario Securities Commission in Toronto.

A national securities regulator in Canada would help police and securities officials combat white-collar crime, which is complex and crosses international borders, more efficiently. It would bring together the expertise of litigators, accountants and forensic experts within the securities commissions, who could combine their real-time data and insight into how the market works, with the national policing skills of the RCMP, Wetston said.

"Investor protection is really important, and you want to be able to demonstrate globally that you have effective law enforcement and deter, as much as possible, the desire of criminals to want to use Canada's capital markets for their illegal purposes," he stressed.

Craig Hannaford, a former RCMP officer who once headed up the force's Integrated Market Enforcement Teams (IMET) in Toronto — special units established across Canada to detect, investigate and deter capital markets fraud, doesn't believe that having a national regulator in place of 13 provincial and territorial regulators would necessarily make IMET's job easier.

"The Ontario Securities Commission is the biggest regulator. I'm not minimizing the role of other securities regulators, but reality is reality. Ontario is where it's sort of happening in terms of securities regulation. So I don't think this is a really big issue," said Hannaford, a chartered professional accountant who heads his own consulting firm dealing with clients' security-related issues.

"During my career in law enforcement, I've been asked, 'would a national regulator be better?' And my answer to that has always been, 'I'm going to work within what's been legislated or what exists today,'" said Todd Shean, an assistant commissioner with the RCMP in Ottawa.

"So if the provinces get together with the federal government and there's a decision on a national regulator, then we would work within that realm," Shean added.



WETSTON

Although a full-scale national securities regulator has not materialized, the decision of the federal government, along with Ontario, British Columbia, Saskatchewan, New Brunswick, Prince Edward Island and Yukon to collectively engage in a Cooperative Capital Markets Regulatory System under a common regulator, the Cooperative Capital Markets Regulatory Authority (CCMRA), is a positive step along that path, said Wetston.



SHEAN

"There's a lot of very diligent work being done by the provinces as well as the federal government to create the CCMRA," said Wetston, who noted that legislation for the CCMRA to become operational has not yet been introduced in either Parliament or the participating jurisdictions' legislatures.

Wetston stressed the need to get it right.

"There's a lot of interest at stake here. We have been regionalized for a very long time. The regional interests need to be understood and reflected in the model. If it takes a bit longer to achieve that, then I think that's a positive, not a negative necessarily," he said.

While Hannaford is not concerned about the lack of a national regulator, he does see a problem with RCMP officers on the IMET securities team sometimes having

to get pulled off when other pressing responsibilities, such as national security, arise.

"There's got to be more of a sort of career path for police investigators to stay within the securities commission for a good length of time," said Hannaford.

"I think if you really want to have a dedicated and effective sort of criminal law enforcement in the securities world, it probably has to be led by the securities commissions — the big one would be Ontario. Also, the ... investigative resources have to be controlled by the main body that is responsible — the securities regulators, so you don't have the situation where RCMP who are attached to these groups are siphoned off slowly over a period of years to do other things."

Shean disagreed that this was a liability, though he acknowledged that "there are always priorities within every organization and at



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times, a priority may become [so] pressing that we have to shift our investigational responsibility."

The RCMP's federal policing program is designed so that officers are able to respond in multiple areas, such as fighting corporate crime or dealing with national security issues. The force has the flexibility to shift resources to meet the most urgent needs as they arise, but they also ensure resources remain to address white-collar crimes, and its IMET teams work well with provincial authorities in the fight against white-collar crime, said Shean.

For example, the Montreal unit of IMET, established in 2007, has always worked closely with the Autorité des marchés financiers (AMF), Quebec's regulatory body, as well as the Sureté du Québec (SQ) provincial police force, he noted.

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Howard Wetston, former chair, OSC

AMF spokesperson Sylvain Theberge said the mandate of the AMF-IMET partnership is to investigate major cases of financial fraud that could strongly shake or discredit the confidence of investors in Canadian financial markets.

"In Montreal, IMET is composed of many full-time resources including RCMP investigators, federal Crown prosecutors and AMF investigators. The investigations conducted by IMET are criminal investigations," he added, noting that joint AMF, IMET and SQ efforts have resulted in charges in several high profile white-collar crimes, as well as convictions and prison sentences.

The IMET team in Toronto modelled the approach taken in Montreal to work collaboratively with the Ontario Securities Commission. And IMET teams in Alberta and British Columbia have initiated discussions with

in Canada has proven to be a tough endeavour, the OSC's approach of working collaboratively with both its RCMP and OPP partners has generated positive results, with JSOT having executed over 125 search warrants and laid both criminal and quasi-criminal charges [violations of Ontario's Securities Act] in more than 20 matters since May 2013.

"In order to investigate a criminal or quasi-criminal case you need to do what I think is colloquially called good old-fashioned police work — getting search warrants, executing production orders and speaking to people. So the fact that we've executed over 125 search warrants in that period of time, I think has proved that it's a busy, diligent, focused, productive unit," Manarin added.

Experts say that multiple synergies result from having their respective professionals work side by side, leveraging each other's unique skills to investigate complex matters.

The police have certain tools available to them that aren't available to securities regulators. They can, for example, conduct wiretap surveillance and are familiar with various other investigative techniques that securities regulators aren't authorized to do. Police are also used to dealing with criminals, said Hannaford.

For their part, commission staff offer expertise on complex securities related matters in a rapidly evolving field. "It's changed at lightning speed in the last 10 years. This isn't an area that you can develop an expertise in very quickly," said Manarin.

Canadian securities commissions have often been criticized for laying too few charges under their respective provincial and territorial securities acts.

"I agree that the conviction rates are low," Hannaford said. "I think the big problem with that is not so much the quality and the calibre of the investigations and the people doing the investigations. I believe it is difficulties and problems with the judicial system. Getting cases into court and the whole prosecution process — it's just very, very difficult, and time consuming, and it's expensive to take these cases through criminal proceedings."

"So it's a problem much broader than just looking at the investigative approach. I think it's simplistic to say that if we just make a change as to where the agency is, or if we get more resources, that's going to solve the problem. That's not going to happen," he added.



MANARIN

their respective securities commissions to secure a working relationship model that is appropriate for each of those jurisdictions, said Shean.

Karen Manarin, deputy director of enforcement at the Ontario Securities Commission in Toronto, said the OSC and IMET have evolved their relationship, most prevalently when the two organizations teamed to establish the Joint Serious Offences Team (JSOT) in 2013.

Since May 2013, two RCMP officers and one Ontario Provincial Police officer have been embedded in JSOT, said Manarin, who also noted that since January 2015 the Toronto IMET of the RCMP's Greater Toronto Area Financial Crime Program has been based in the same building as the OSC offices.

Manarin said that while enforcement of white-collar crime