

United Church Halton Presbytery Meeting
November 22, 011

I would like to thank Pete Hoyle for inviting me to speak to this meeting on my work for disabled employees and institutional and retail investors, who suffer losses due to financial negligence and fraud.

I would like to start by saying the investments banks control their own rule-making and enforcement of them. Not only have the banks co-opted securities regulators, financial crime policing is also woefully weak. The RCMP Integrated Market Enforcement Teams have effective sole jurisdiction for financial crime policing. Since 2003, the provincial, regional and municipal police service fraud squads have relegated responsibility to the RCMP due to their inadequate funding for financial crime investigations.

The banks are now pushing for a new enforcement regime where financial crime policing is under the supervision of the proposed Canadian Securities Regulatory Authority. After a financial crisis, abetted by securities and commodities regulators, Canada is moving to a system where its national securities regulator will decide who is investigated and who gets prosecuted for criminal fraud. The plan is to remove the separation between administrative justice and criminal justice under the guise of efficiency. Many of us see it for what it is, the banks have a plan to take full control of financial crime policing, so as to protect the most powerful in Canada from prosecution. Toxic investment products will continue to be sold, harming thousands of individual Canadians directly and indirectly through pension funds and government treasuries. The damages are now in the \$10's of billions of dollars per crime, not the \$100's of millions of the past.

Gary Logan, a former Detective Sergeant of the Toronto Police Services Fraud Squad, is here tonight to show his concern for the victims of investment fraud. He is working with Hugh and I to educate our politicians and civilian police boards about the need to separate securities regulatory

enforcement from securities crime policing. We are recommending the creation of a new securities crime unit to investigate complex financial crimes. We need a new unit to co-ordinate the intake and jurisdictional assignment of financial crimes to the existing provincial, regional and municipal police services fraud squads.

Mass market investment products that break down usually end up in class action litigation. The majority of fraud cases end up in the bankruptcy court, where class action litigation is stopped. I have learned through personal experience that Ontario's bankruptcy court does not pursue justice for the public good, unless they are forced to do so by votes of the majority affected, or by sunlight put on the abusive treatment of a minority group.

The bankruptcy court is a closed shop unduly controlled by the Bay Street legal firms representing the large institutional bond owners, large banks, large corporate suppliers, and the court monitor. The court monitor is almost always, Ernst & Young. The bankruptcy court almost always forces the legal release of the corporation's governance committees, third party trustees, and the investment banks involved. The wrongdoings of these powerful players are covered up and ignored within the bankruptcy court's legal proceedings for the sake of expediency. Yet during the bankruptcy process, the executives and bankruptcy lawyers get paid upfront hundreds of millions of dollars of bonuses and legal fees. Often there is no restructuring going on at all, just a wholesale liquidation for the benefit of junk bond owners, the executives and the lawyers.

So we now find there is full life cycle protection in place for systemic negligence, and even fraud, committed by corporate officers and the investment banks. The banks control new regulations, enforcement of regulations and soon the Criminal Code. The ultimate bankruptcy process gives them immunity for their systemic negligence and frauds. The only exceptions to this process come from a vigorous public fight in the court room, legislatures, and through media.

The Canadian public and institutional investors have offered little resistance to the banks' power and influence. Without the threat of significant financial penalties from the regulators and court judges and without jail time, complex investment products are sold to institutions and individuals on business models doomed to fail. Banks make super-profits from their systemic negligence and fraud. The bankers are paid outrageous compensation, without regard to the losses of customers.

This era of irresponsible finance is disrupting world economies and causing social unrest on MainStreet .

Canada is painted to have weathered the financial crisis better than the US and Europe because of more responsible and well-regulated banks. I can tell you from my personal experience as a court appointed expert on Asset Backed Commercial Paper and from my research on toxic investment products that our banks did not suffer as much as their international competitors because our securities regulators and bankruptcy court did not force them to be financially accountable for their wrongdoings. In Canada, bank customers kept the losses, in the rest of the world, toxic investment products were put back onto bank balance sheets. World taxpayers had to bail-out their failed banks. No Canadian banks failed, because the Canadian legal system forced bank customers to absorb their losses and took away the customers' right to sue the banks for remedy of their damages.

The Canadian banks took \$17 billion of write-offs during 2007 to 2009 on US subprime mortgage securities, collateralized debt obligations and credit default swaps. They were spared \$54 billion of losses on income trusts and Non Bank Asset Backed Commercial Paper, two Canadian products involving their negligence and fraud.

The Canadian banks did not have to pay for \$24 billion of write-offs on Non Bank Asset Backed Commercial Paper in 2008 because they were not held accountable for the losses of institutional customers on this toxic money

market product. By contrast, banks in the US and Europe were forced to take back the ABCP onto their own balance sheets.

Working with lawyer Henry Juroviesky, a Toronto class action lawyer, we were successful in achieving the largest retail investor settlement in history at \$188 million in the ABCP case. This was after a vigorous 18 month fight against Canada's most powerful banks and law firms. It took all the deep expertise and tenacity of Henry and myself to get financial justice for the retail owners. Henry is a cross-border US/Canada lawyer, educated as a public accountant also. The victims were pastors, farmers, doctors, entrepreneurs, professional botanists, environmentalists, engineers, nurses, and in fact all walks of life. We lost one bus driver to suicide. Many ABCP owners are still mentally ill today from the traumatic experience of having their life saving taken away and no enforcement authority arriving to take their complaint. Not even the people who had ABCP put into their account without their knowledge and consent could get a police officer's attention. The ABCP owners went to the banks, credit unions and investment banks to buy GICs or Treasury Bills and they were sold ABCP. They were told it was just as safe at AAA. The interest on ABCP was not higher than the traditional savings products and so they had no reason to suspect there was risk.

In the end, Henry and I were able to convince the Investment Industry Regulatory Organization of Canada, Ontario Securities Commission and Autorité des Marchés Financiers in Quebec to complete enforcement actions against 9 investment banks. 7 of the majors entered a settlement for a cumulative total of \$139 million. These banks dumped billions of dollars of ABCP onto the market after they knew its value was impaired by US subprime mortgage delinquencies and pending margin calls on credit default swaps.

Coventree, who packaged and wholesaled close to 50% of the failed ABCP, refused to settle. The Ontario Securities Commission found this investment bank to be guilty of misrepresentations, but its sanctions show the buddy system between the OSC Commissioners and Bay Street

corporate lawyers is alive and will. The OSC Commissioners reduced the staff recommended fine from \$16.5 million to \$2.25 million. The top two executives had their fines reduced to \$500,000. The fines may be paid by the company. The two investment bank executives have a one year ban on being an officer or director in the investment industry. This is a slap on the wrist for causing \$24 billion of losses in 2008, which are still at the level of \$10 billion today.

The Canadian banks have also borne no accountability for over \$30 billion of losses in business income trusts, sold mostly to seniors. Income trusts were leveraged sell-outs for business owners at values that were inflated by deceptive cash yields. The cash yields contained substantial undisclosed return of capital. The banks took massive debt restructuring fees, above normal underwriting fees and in many cases tens of millions of dollars profit from their own private equity deals. Banks bought businesses, packaged them into income trusts and resold them for more than double what they were worth.

I conducted research with Dr. Al Rosen and Mark Rosen and was one of four experts bringing expert testimony on the income trust abuses at the House of Commons Finance Committee. (Others were Andrew Teasdale and Professor Ramy Elitzur.) The National Pensioners and Senior Citizens Federation and United Senior Citizens of Ontario prepared resolutions to shut down income trusts and attended Ottawa hearings with me. These seniors associations requested a criminal investigation.

We got the income trust product shut down, but have had no success in getting regulatory or criminal investigations. We had a high level meeting with the RCMP IMET and Toronto Police Services Fraud Squad on widespread income trust fraud. At this meeting, the RCMP Toronto IMET head told me he had only as much time for the meeting as the time left on his parking meter where he had parked his car downtown. The RCMP suggested we bring our complaint to the Investment Industry Regulatory Organization of Canada, controlled by the industry executives we considered responsible for the fraud. Income trusts sold on the same basis

in the US attracted a criminal fraud prosecution and a restitution order against Prudential Securities in 1995. Prudential had to pay \$2 billion of damages to its customers and a \$40 million fine.

The United Church and its pension plan must be very careful not to be unduly influenced by investment bankers' mentality to get involved in complex investment products because everyone's doing it. I recommended to the Investment Committee for the United Church Pension Plan that we should set a general restriction on ownership of income trusts due to their widespread accounting and selling abuses. My proposal for a general restriction of income trusts was rejected by all other Investment committee members on the premise that it was up to each money manager to decide whether income trusts would be bought in a combined equities and income trust portfolio. I prefer to be a defensive driver rather than suffer the damage of car accidents that aren't my fault.

Morrison Williams, a United Church Pension Plan money manager at the time, was recommending that 10% of the Canadian equities portfolio be in income trusts. Morrison Williams had just sold 80% of its money management business to an income trust, Newport Partners. Newport Partners subsequently went into financial difficulty, causing over \$300 million of losses for seniors. But the Morrison Williams' owners got their 80% sale proceeds in cash up-front. Fortunately, Morrison Williams did not put income trusts into the church's pension plan portfolio. It may have been their fear that I would hold them to account for income trust losses.

I became aware of the United Church General Funds being invested in income trusts in 2006 and I spoke to the CFO to encourage the sale of this portfolio based on our detailed research concluding there was excessive valuation in the market and prospects for distribution cuts. I was not informed about whether my advice was heeded as this position is not under the jurisdiction of the Investment Committee for the UCPP. My current inquiries about 2008 Church investment losses are outstanding. I am also discussing my concerns about the current Investment Policy of the

Church permitting money managers to purchase risky and illiquid investments.

In June of this year, Sino-Forest was alleged to have committed accounting irregularities and fraud causing \$ 6 billion of investment losses. The United Church and the Board of Trustees for the Pension Plan were invited to become a lead plaintiff in a class action against Sino-Forest , its executives, auditors and investment banks. This is an opportunity for the United Church to be a symbolic leader within the court room of its willingness to execute its mandate of Responsible Investing. Participation as a class action lead plaintiff shows the Church's intolerance for the alleged offences, and shoddy due diligence by the auditors and investment banks. The added opportunity is to expose the abuse of Chinese farmers by the Sino-Forest executives and their corrupt relationships with forestry regulators in China. This is consistent with other positions taken by the Church on mining company abuses, such as Goldcorp's mistreatment of aboriginal people in Guatemala.

Lead plaintiff roles in class actions are without cost, without liability for cost awards if the case is lost, and without an obligation for significant staff work. In the Sino-Forest class action, I volunteered to act as the liaison between the law firm syndicate and the Church. I was not going to be paid by anyone on this work, and am willing to do it due to my deep concern about the systemic negligence and fraud in the investment markets and the massive damages this is causing to individuals, pension plans and treasuries, including yours.

The United Church Investment Committee and Pension Board members unanimously rejected the proposal to be a lead plaintiff in the Sino-Forest case for the following reasons:

- (1) they do not have the time to supervise the class action lawyers due to their review of an asset liability study being done by consultants for the pension plan,
- (2) Diane's freebee and the Church's presence on this legal case will not be as effective as other large institutional investors would be,

(3) why would we want to disclose a \$1.3 million loss to the Church ministers and members, and

(4) we fear the unknown.

Needless to say I strongly disagree with all of these reasons. High integrity experts and grass roots organizations, like the National Pensioners and Senior Citizens Federation, and the eclectic ABCP retail owners, fought the most powerful and won.

I want to leave you on a final note about how low the law firms, bankruptcy court, governments and banks are prepared to go to serve corporate interests. 360 Nortel disabled former employees and their 160 dependent children are left to suffer poverty for the rest of their lives and, for many, premature death, due to the wrongdoings of Nortel, Sun Life and Northern Trust. There is an estimated \$10 billion in the Nortel global bankruptcy estate and yet the court players refuse to support a \$75 million priority payment to fully settle the disability insurance claim.

Nortel supplied its own disability insurance to its employees, whose terms and conditions are to pay income to its disabled employees until they reach 65, die or recover from their disability and are able to return to work. Nortel paid for the first 50% of their pre-disability income and employees could buy additional disability insurance to raise their coverage from 50% to 70% of their pre-disability income. There has not been fundamental justice of informed consent for a settlement agreed to by a single disabled person given the authority by the court to bind all the disabled to an interim settlement that paid for just 9 months of income and medical benefits. This settlement includes a legal release of Nortel's governance committees, Northern Trust and Sun Life. These were the gatekeepers who failed to tell the truth about the disability insurance sold by Nortel to its employees and who failed to do their fiduciary duties to protect the interests of the disabled. Once you are disabled and unable to work, the failure of your disability insurance is catastrophic. All the court players did not use the legal tools of constructive trust and breach of trust and various statutes available to protect this vulnerable group.

My presentation tonight is supported by detailed research and thirty years of experience in the investment and insurance fields.

What can the United Church do to join the fight for financial justice? My suggestion has been for the Church and its Pension Plan to join the group of Sino-Forest Class Action lead plaintiffs (Northwest & Ethical Investments L.P., Comite Syndical National de Retraite Batirente, Trustees of Labourers' Pension Fund of Central and Eastern Canada, trustees of the International Union of Operating Engineers Local 793 Pension Plan for Operating Engineers in Ontario.) This is a non-controversial platform for which the Church has justifiable participation as an investor with losses. It shows the Church's symbolic support for the movement to bring back responsible financing by the investment industry.

Also, the United Church would be a significant force arguing against the new Canadian Securities Regulatory Authority taking control of securities crime policing. There can be no social justice when the perpetrators of financial crimes are not investigated or get slaps on the wrist, while Canadians are losing their jobs and seniors are losing their pensions and retirement savings due to negligence and fraud.

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Links to Related Research

[Ending Lives of Canadian Disabled Video June 2011](#)

[New Securities Crime Unit Videos](#)

[Systemic Failure of Employer Sponsored Disability Insurance Updated September 2011](#)

[Another Made-In-Canada Defective Investment Product - ABCP Dec. 17, 2007](#)

[Income Trusts Heads I Win Tails You Lose Oct. 12, 2006](#)

[Worst is Yet to Come - \\$20 Billion Deception Dwarfs Tax Debate Nov. 16, 2005](#)