

# Speech to the Canadian Club of Toronto

Minister Gerry Phillips

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- Check Against Delivery

Thank you for that kind introduction.

Good afternoon, ladies and gentlemen.

I'm pleased to be here today.

I don't think I can overstate the importance of vibrant capital markets - not just for Ontario - but for the entire country.

Well-regulated capital markets underpin economic growth. They must be attractive both to companies seeking to raise capital and to the domestic and international investors that provide the capital.

That means providing high standards of protection to investors without imposing undue burdens on businesses.

Just about everyone in Canada has a real interest in the success of our capital markets. Through the Canada Pension Plan, RRSPs, pensions plans and personal investments, every person in this country has a stake in the market.

We in the Ontario government are working with our colleagues across Canada to ensure that our capital markets continue to be attractive to investors and businesses; that investors are well protected and that Ontario and Canada remain great places to invest and to raise capital.

As Rod mentioned, I will be talking about the Crawford Panel's Report - which we are hopeful will serve as a roadmap for discussions on moving to a common securities regulator for Canada.

I'm also going to talk about what we're doing to modernize business and securities law to enhance Ontario's competitiveness as well as actions we've taken to enhance investor protection.

As you know, the *Securities Act* provides for regular legislative review. A committee chaired by Mr. Purdy Crawford conducted the initial five-year review.

That review report was tabled and referred to the legislature's Finance Committee, which held hearings in August of last year.

Based on its findings, the committee issued a unanimous all-party report with 14 recommendations to the government.

In many ways, Purdy Crawford and his committee's five-year review has provided a good deal of guidance for the activity undertaken by the ministry over the last year.

As you can see, we have kept Purdy busy. Very busy indeed. And Purdy, I thank you for that.

We have proposed a number of changes that respond directly to many of the Standing Committee's recommendations through the *Budget Measures Act, 2005*.

The Act was introduced last month and is scheduled for Third Reading today, I believe.

Among other things the Act proposes a new mechanism to strengthen the Legislature's oversight of the Ontario Securities Commission by having its annual reports referred to a legislative committee.

Other amendments to the Act will, if passed:

- Give the OSC broader rule-making authority over corporate governance matters.
- Allow the OSC to make rules to give shareholders more flexibility to communicate with each other during a takeover bid; and
- Give the OSC authority to make rules to require an investment fund, such as a mutual fund, to establish an independent governance body.

In last year's budget bill we amended the *Securities Act* so that the next review committee will begin its work in May 2007 and subsequent reviews will take place every four years.

We've also made changes to the *Commodity Futures Act* and have struck a panel tasked with reviewing this Act as well.

This panel is chaired by Carol Pennycook. I understand they are making good progress on their important work and I look forward to their interim report.

Ontario's commodity futures market has evolved dramatically due to the introduction of new products and innovations in technology. The derivatives area is one of the most rapidly expanding components of global markets.

Another committee recommendation called for the government to introduce updated securities transfer legislation.

A couple of weeks ago, thanks to the hard work of the ministry and many stakeholders, I introduced a bill to modernize securities transfer legislation.

The *Securities Transfer Act* represents the first of three phases in the modernization of Ontario's commercial and corporate laws.

Phase 2 is under way and will focus on making changes to the Business Corporations Act and the Personal Property Security Act.

Phase 3 will modernize the laws and reduce the cumbersome regulatory burdens on charities and not-for-profit corporations.

These changes are needed because Ontario business laws have fallen behind other jurisdictions' laws in responding to rapidly changing business conditions.

The *Securities Transfer Act*, if passed by the Legislature, will update Ontario's laws to reflect the way modern markets work by recognizing that securities can be held in electronic form, not just through paper certificates.

This will bring Ontario up to date with the current business realities of today's securities markets and ensure that our markets are in a stronger position to compete with markets in New York, London and around the world.

Industry sources tell us the savings could be more than \$100 million.

Ontario officials have been working closely with their counterparts in other provinces. Other jurisdictions are studying the legislation as they move to develop and introduce similar laws of their own.

As you know we recently introduced Civil Liability provisions which make Ontario the first Canadian jurisdiction to give secondary market investors a statutory right to sue public companies for misleading disclosure or failure to make timely disclosure.

These provisions give average investors the legal tools to protect themselves against misrepresentations while at the same time providing safeguards against frivolous lawsuits.

My understanding is that a number of other provinces are planning to follow suit.

Working together across the country is critical if we are to make headway on significant improvements to our securities regulatory system – which leads to my next subject.

As you know, earlier this year, I asked a panel of respected individuals, once again headed by Purdy Crawford, to come up with a detailed proposal on the design of a common securities regulator.

Specifically, we sought advice on the legal and administrative elements of a model that would be workable and would address concerns raised by other provinces.

The panel included Claude Lamoureux, President and CEO of the Ontario Teacher's Pension Plan Board, John MacNaughton, now a corporate director and former President and CEO of the Canada Pension Plan Investment Board; Brian A. Canfield, Chair, TELUS Corporation; Jacques Ménard Q.C., Chairman, BMO Nesbitt Burns and President BMO Financial Group, Quebec; Gwyn Morgan, President and CEO, EnCana Corporation as well as John Watson, EnCana's EVP and CFO who also made a significant contribution and Dawn Russell, Associate Professor, and former Dean, Dalhousie Law School.

The contributions of panel members from across the country who brought a broad mix of perspectives added different dimensions to this report and significantly improved the final result.

The work the panel has produced – "A Blueprint for a New Model" – contains innovative ideas that will require a thorough review by each and every province and territory.

The report proposes that:

- One participating province pass a new single Securities Act. Other participating jurisdictions would repeal their existing acts and incorporate the new single securities act by reference.

- The new regulator would administer the single Securities Act.
- The model is flexible enough to accommodate a decision by some jurisdictions not to participate.
- A "Council of Ministers" would select board members and adjudicators from names put forward by an independent nominating committee, review new rules, and approve changes to the Memorandum of Understanding that sets out various structural matters relating to the single regulator.
- A Board of Directors would:
  - Select a Chief Commissioner who would act as CEO
  - Approve rule proposals developed by staff of the Commission
  - Set the Commission's annual budget, and
  - Report to the Council of Ministers on the operation of the Commission.

The Chief Commissioner would be the only executive on the Board and the Board would have a non-executive Chair.

- The report calls for the one jurisdiction-one vote concept which ensures any participating jurisdiction can be overruled, but also removes any fear that one province would dominate. In practise, I would expect consensus decisions on most of these issues.
- It also calls for a separate administrative tribunal of independent 'adjudicators' for hearings of enforcement matters.
- There would be vice commissioners who would each run a regional office. The locations of the regional offices are obviously something that would be discussed during the consultation period.

The panel has identified what they see as legitimate concerns of other jurisdictions that need to be addressed and they have given us some bold recommendations on how to address them.

It is important that Ontario listen – that the Ontario government and the Ontario business community listen - to what the panel has said.

During the panel's consultation phase it is going to be important for all of you to participate.

Contribute your ideas. Contribute your thoughts.

I look forward to discussing the model with Canada's other responsible ministers over the coming weeks.

I am keenly interested in their views and in the views of interested stakeholders.

The panel's discussion paper is a basis for productive discussion.

We are committed to working cooperatively with other jurisdictions to ensure the utmost efficiency in Canada's securities regulatory system and capital markets.

You may have read, either in the media or in the report itself, that the panel does not recommend a particular location for a head office.

I've been asked if Ontario could really go along with a model for a common regulator if it means a head office location outside Ontario.

Or, if Ontario could really accept a model for a common regulator if it means one jurisdiction-one vote, a partnership among equals without weighting for market share or capitalization.

My response is quite simple. Ontario has three requirements, and three requirements only: that there be an effective common securities regulator, a common body of securities law and a single fee structure.

At the end of the day that provides a lot of flexibility to set up a new framework in a way that will make sense to us, and in a way that will make sense to other governments.

Wherever the head office is located, the new common regulator will need to be staffed to provide excellent regulatory service to all Canadian market participants regardless of their size, industry sector or geographic location.

We are flexible on specifics regarding all matters that could contribute to a model for a common securities regulator that best serves the needs of investors and businesses, no matter where they are located in Canada.

In the meantime Ontario will continue to work with the other jurisdictions on harmonized rules and reform projects.

Ontario government officials continue to participate in the Provincial/Territorial Securities Task Force even though Ontario did not sign the passport MOU.

And the OSC will continue to play a leadership role in the Canadian Securities Administrators' group and the important work of harmonizing securities law across the country.

Before closing, I'd like to welcome Mr. David Wilson, the new Chair of the Ontario Securities Commission, who is with us today. David's term began this past November 1.

We are looking forward to David's contribution to ensuring Ontario's capital markets are strong and healthy and have the confidence of investors and publicly-traded companies alike.

Mr. Wilson's predecessor, David Brown, left an excellent legacy upon which he can build.

To find his successor I received advice from a committee of very accomplished individuals. Mr. Wilson emerged from that process as the strong first choice for the position.

David is an outstanding individual and we are pleased that he has agreed to lend his talent and expertise to this important role.

Thank you David.

In closing, I'd like to say once again that this government is committed to ensuring that our capital markets continue to thrive - and that investors are protected.

We appreciate all your contributions to date and look forward to your continuing participation in helping us ensure that Canada – and Ontario – remain great places to invest.

Thank you.

