

REBUILDING CONFIDENCE

THE MARKETS ARE IN THE TANK AND CLIENT COMPLAINTS

CONTINUE TO RISE. BUT THE PROBLEM LIES WITH

THE SYSTEM—NOT THE ADVISORS.

The following is an excerpt of the lunchtime keynote speech made at the Advisor's Edge 5th Anniversary Symposium by Ellen J. Bessner, a Toronto-based compliance lawyer at Gowling, Lafleur, Henderson. The topic was winning back investors' confidence.

There's always

talk about how we can rebuild investors' confidence. But the question is: Did we ever have investors' confidence in the first place?

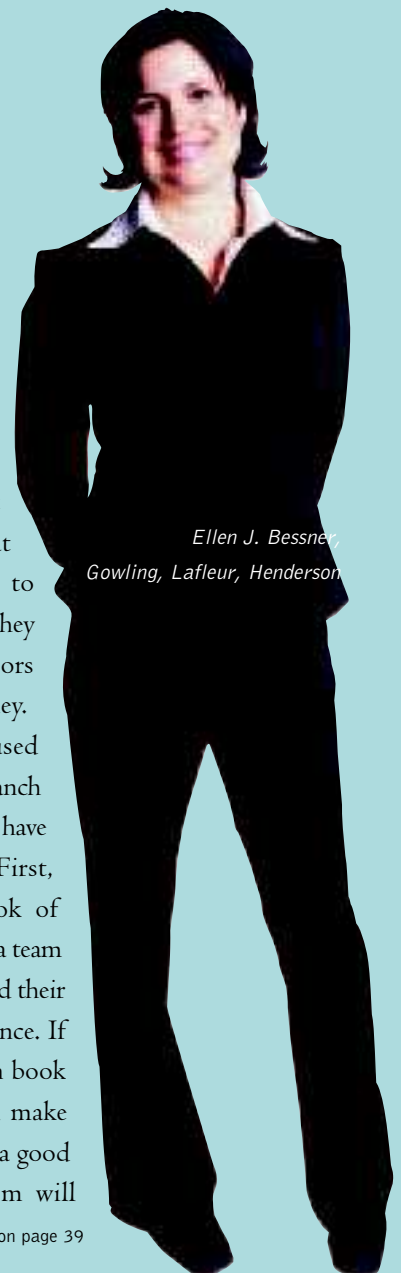
We have the advent of some wonderful efforts. For example, there's a big push toward investor education. We've all seen the Web sites and the fancy brochures. But the emphasis on investor education doesn't necessarily increase the confidence clients have in the markets. Investor education is not just about what products are out there, it's about making clients more aware of how to sue their advisor. And when a client complains the Ontario Securities Commission doesn't send out a letter. It sends out a glossy brochure that explains the process on how to sue a broker for the least amount of money in the shortest amount of time.

If you put a random group of advisors in a room—planners, investment advisors, financial advisors—is the group of advisors less ethical than a group of clients? I don't think the clients are more honest than the advisors. We're all capable of lying. So why are advisors often pegged with being dishonest? Because people say clients

want honesty and integrity. Do you know what? I don't buy it. Do you know what clients want? They want to make a lot of money. And they try to pin it on their advisors when they don't make money.

The firms are also focused on making money. Take branch managers, for example, who have three roles in their job. First, most have their own book of business. Second, they have a team of advisors to supervise. And their last responsibility: compliance. If they're managing their own book of business, the firm will make more money. If they build a good team of advisors, the firm will

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*Ellen J. Bessner,
Gowling, Lafleur, Henderson*

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make more money. But if they do a good job at compliance... they'll make less money. So, of course, that's where they want to spend the least amount of their time.

The difficulty is that the rules are broadly written and the obligations are wide. And that's because the regulators don't want to say what the regulations really are. If regulators are specific about all the things the advisor can't do and the advisor manages to find a loophole, it won't help them keep these advisors in good order.

When you read the statutes, they're hard to understand. It says, "you need to know your clients." Of course you need to know them. But regulators don't tell advisors how. And they don't



tell them why. The IDA and MFDA both have these regulations called minimum standards for supervision. *Minimum*. What does that mean? It means you have to do this low standard, but even if you do above the standard, if you miss someone, you're dead. So what's the point of calling it a minimum standard?

The firms are charged with setting out what's above the minimum. Now the problem is it's a double-edged sword. Because in a Scotia Capital case recently, it came out that the firm didn't have good enough branch manager supervision policies, so there's a penalty. But what happens if you get sued by a client and go to court—what's the judge going to look at to determine if you fulfilled your duty? He'll look at the regulations. And he'll look at the firm's internal policies. But you cannot establish the standard through a manual a firm drafts because that manual is not drafted for the purposes of legislation and setting that standard.

So getting back to my topic... how do we increase client confidence in the market? One client at a time. You can't climb a mountain with one step. Pick up your phone and call your clients. It's a bear market—you've got nothing to do anyway. So educate your clients. Learn about them. It's not going to be a bear market forever. It will turn around and in the meantime, you've established a better relationship with your clients. It's all a question of getting into good habits. **AE**

Ellen J. Bessner is a lawyer with Gowling, Lafleur, Henderson. She practises in the area of brokers' liability and offers compliance training to brokerage firms. The above is intended for a general audience and should not be considered legal advice.

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