

Canada Cannot Afford Third World Securities Enforcement



**CBC News Sunday:
Who is Guarding your Money?, November 23, 2008
Evan Solomon**



**Professor Utpal Bhattacharya - Associate Professor Of Finance
Kelley School Of Business, Indiana University**
Enforcement And Its Impact On Cost Of Equity And Liquidity Of The Market
May 26, 2006



Professor Utpal Bhattacharya
“I Would Not Invest In A Canadian Company
That Is Not Trading in the U.S.”

- U.S. SEC enforcement of securities laws is about 10 times more than the OSC enforcement
- U.S. SEC enforcement of insider trading laws is about 20 times more than the OSC enforcement
- U.S. SEC fines per insider trading cases are about 17 times more than the OSC fines.

Recommendation # 1: Measured against a U.S. benchmark, enforcement of securities laws is weak in Canada.

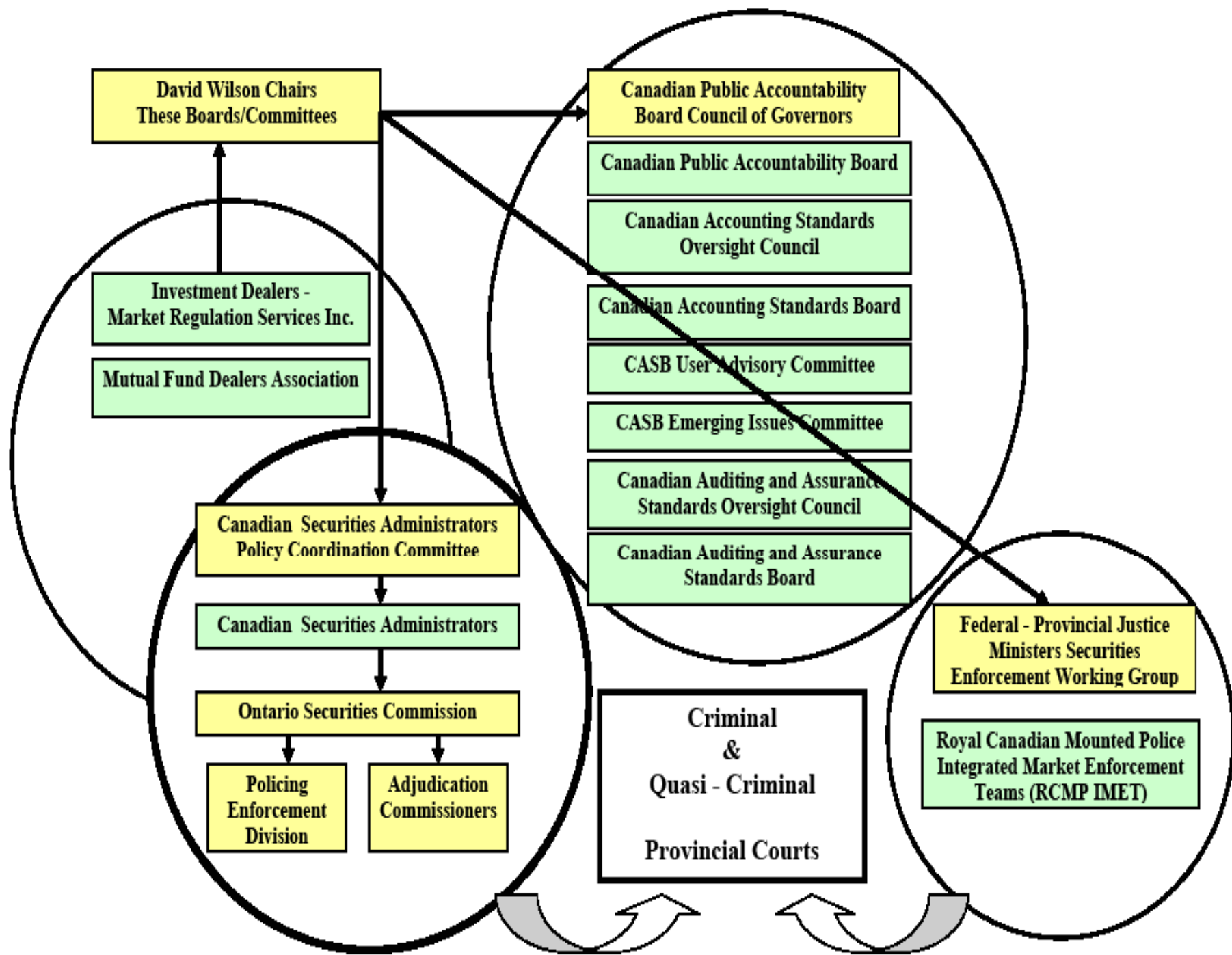
Recommendation # 2: Canada should pay particular emphasis in the enforcement of securities laws that make firms more transparent in their dealings with the Canadian capital markets.

Joseph Groia
Former Head of Ontario Securities Commission Enforcement
**“Canadian Securities Regulatory System is Broken and Has Been
Broken for Many Years,” November 23, 2008**



**David Wilson, Chairman of the Ontario Securities Commission
Makes Most Decisions “To Do or Not Do” all the Major Securities
Regulation and Securities Crime Enforcement Cases**





David Wilson, Chairman of OSC Testimony Before the Ontario Standing Committee of Government Agencies Dec. 2, 2008:

“According to a 2008 report from the World Bank, Canada ranks fifth in the world for investor protection.

Country	Investor Protection Ranking
New Zealand	1
Singapore	2
Hong Kong (China)	3
Malaysia	4
Canada	5
United States	5
Israel	5
Ireland	5

Doing Business measures the strength of minority shareholder protections against directors' misuse of corporate assets for personal gain. The Investor Protection Ranking is based on three criteria:

- transparency of related-party transactions;
- liability for self-dealing;
- shareholders' ability to sue officers and directors for misconduct.

The data come from a survey of corporate lawyers and are based on securities regulations, company laws and court rules of evidence.

An assessment of the Canadian Securities Market was conducted from September 10–21, 2007 as part of the Financial Sector Assessment Program jointly sponsored by the World Bank and the International Monetary Fund

The IMF assessor relied on:

- i. self-assessments carried out by the Ontario Securities Commission and the Autorité des Marchés Financiers;
- ii. the review of relevant laws, regulations issued by both the OSC and the AMF, and other relevant documents including procedures, manuals and guidelines;
- iii. meetings with Board members of the OSC and the president of the AMF, staff of both regulatory agencies, and other public authorities, in particular representatives of Finance Canada and the Bank of Canada;
- iv. meetings with market participants, including issuers, financial intermediaries, market operators and self regulatory organizations.

Conclusion:

“It [Enforcement] is still in need of considerable improvement.”



Report of the Auditor General
on the Alberta Securities
Commission's Enforcement
System

October 2005

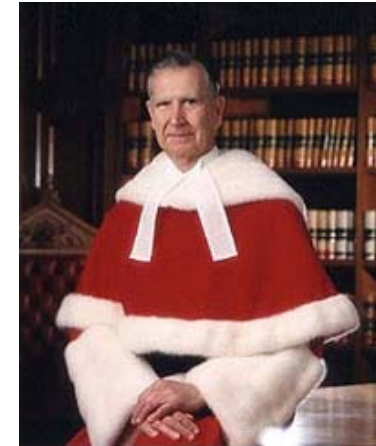
Findings of the 2005 Auditor General of Alberta Audit of the ASC

- The Case Assessment branch has screening criteria to determine whether or not to pursue a complaint. However, we did not see evidence of the screening criteria being used in any of the 82 case files we reviewed.
- The Case Assessment branch's performance objectives require action plans be completed and approved within 30 days of receiving a complaint. We did not find any action plans in our review of the 82 case files.
- We found that information in the files supporting decisions tended to diminish at higher levels; decisions made at the investigator level were generally more often recorded than decisions made at the director level or above. Further, we found the most sensitive or potentially high-profile cases to be the most poorly documented, likely due to more involvement by senior level staff and [Commission] Members... Senior staff and Members tended to provide their views verbally.

Legal Experts Call for IIROC Reform

In light of the importance of the work undertaken by the IDA and other SROs, and the seriousness of the matters they investigate and prosecute, it is important to address and resolve their appropriate role and jurisdiction within the system of securities regulation.

Any ambiguity as to whether SROs are exercising statutory powers of decision, and are thus subject to the protections guaranteed by the *Canadian Charter of Rights and Freedoms*, should also be resolved.



Honourable Peter Cory



Marilyn L. Pilkington.

IIROC – No Jurisdiction for Advisors Who Leave Industry

IDA loses Appeal at the Saskatchewan Court of Appeal



**Saskatchewan
Court of Appeal**

"We accordingly find that the IDA is barred by bylaw 20.7 from proceeding with discipline proceedings against MacBain and Neufeld. Its appeal is dismissed with costs to be taxed."

Sherstobitoff J.A. (for the Court)

20 June 2007



**Saskatchewan Financial Services
Commission**

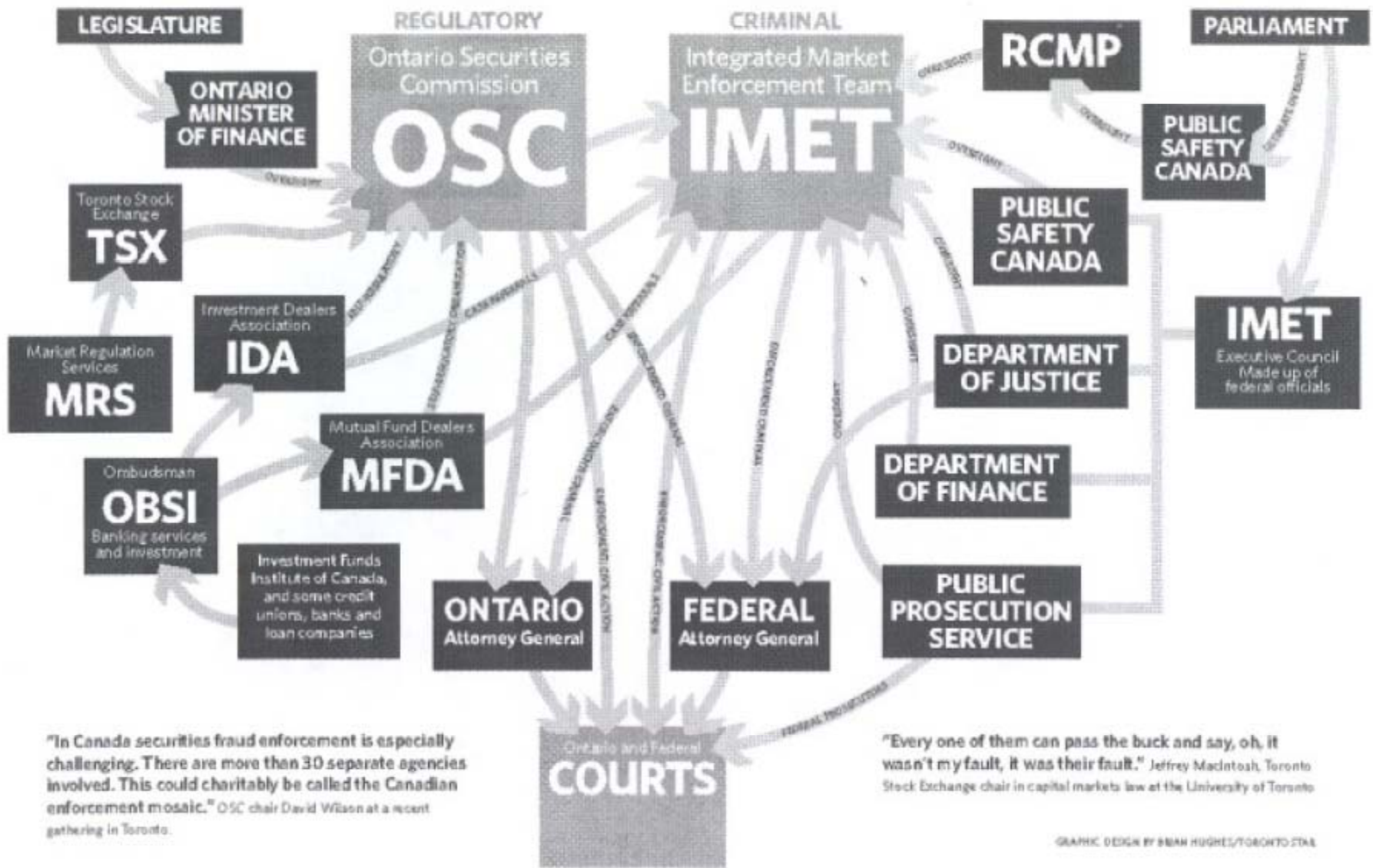
"Since the IDA has no authority to regulate former members or former approved persons either under its bylaws or in contract, it has no jurisdiction."

- William F. Ready, Q.C., Commissioner

06 February 2008

FINANCIAL REGULATORS > AN INVESTIGATION

Worried about stock fraud? Here's who's in charge



CANADIAN BUSINESS

WHO'S GOT
THE MOST STAR
POWER? **P. 38** >



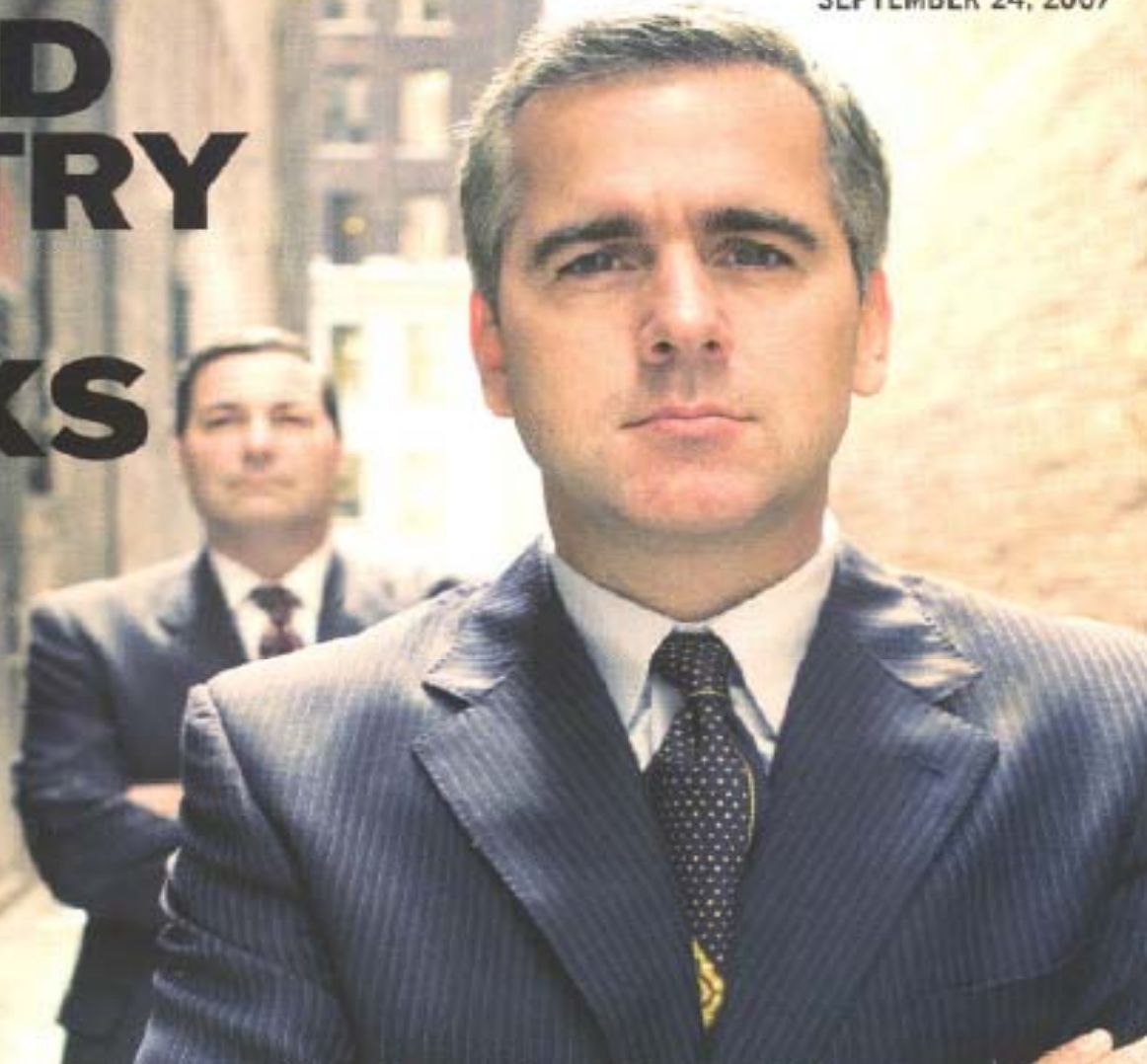
CONRAD'S FALL: THE
FINAL CHAPTER **P. 58**

SEPTEMBER 24, 2007

A GOOD COUNTRY FOR CROOKS

If you suspect
Canada is soft
on white-collar
crime, these
ex-Mounties
have news for
you: it's worse
than you think

P. 24



US Authorities Put Conrad Black and David Radler into Jail – Dec. 10, 2007



Special Prosecutions Section
United States Attorney's Office
for the Northern District of Illinois





W-FIVE: Going for Broke

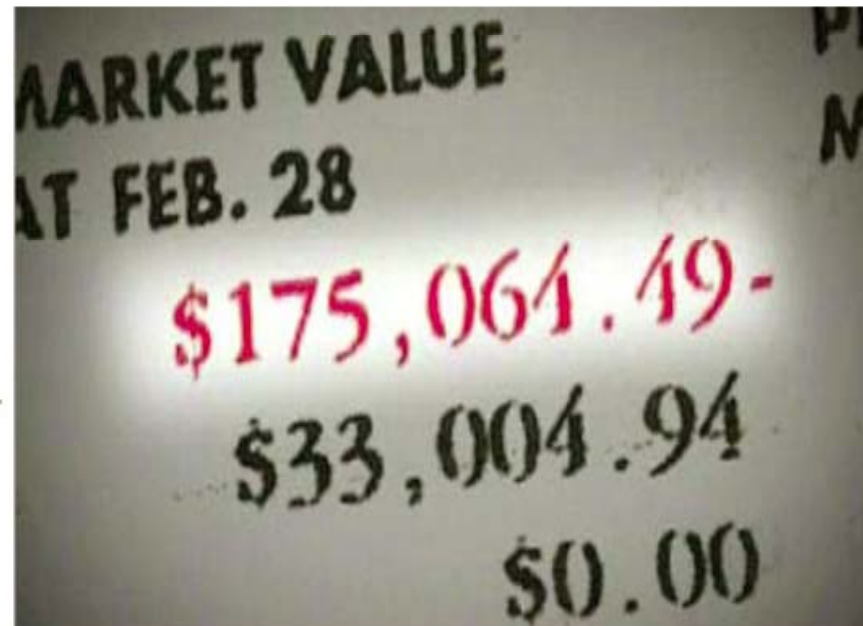
Updated Sat. Apr. 26 2008 7:17 PM ET

Kristen Yu, W-FIVE

[Going for Broke, part I](#)



[Going for Broke, part II](#)



Donald Kennedy, a 58-year-old dairy farmer, placed \$155,000 in secure investments with RBC Dominion Securities. Less than two years later, the account was only worth \$1,800.

Markarian v. CIBC World Markets Superior Court of Quebec - June 14, 2006

- Brokerage failed to detect 1,400 unauthorized trades and a fraudulent guarantee.
- "*CIBC must assume responsibility for the fraud. It was responsible not only indirectly, but directly. The brokerage's behaviour was both reprehensible and irresponsible.*"
-Superior Court of Quebec
Judge Jean-Pierre Senecal



Harry Migirdic, EX VP, CIBC



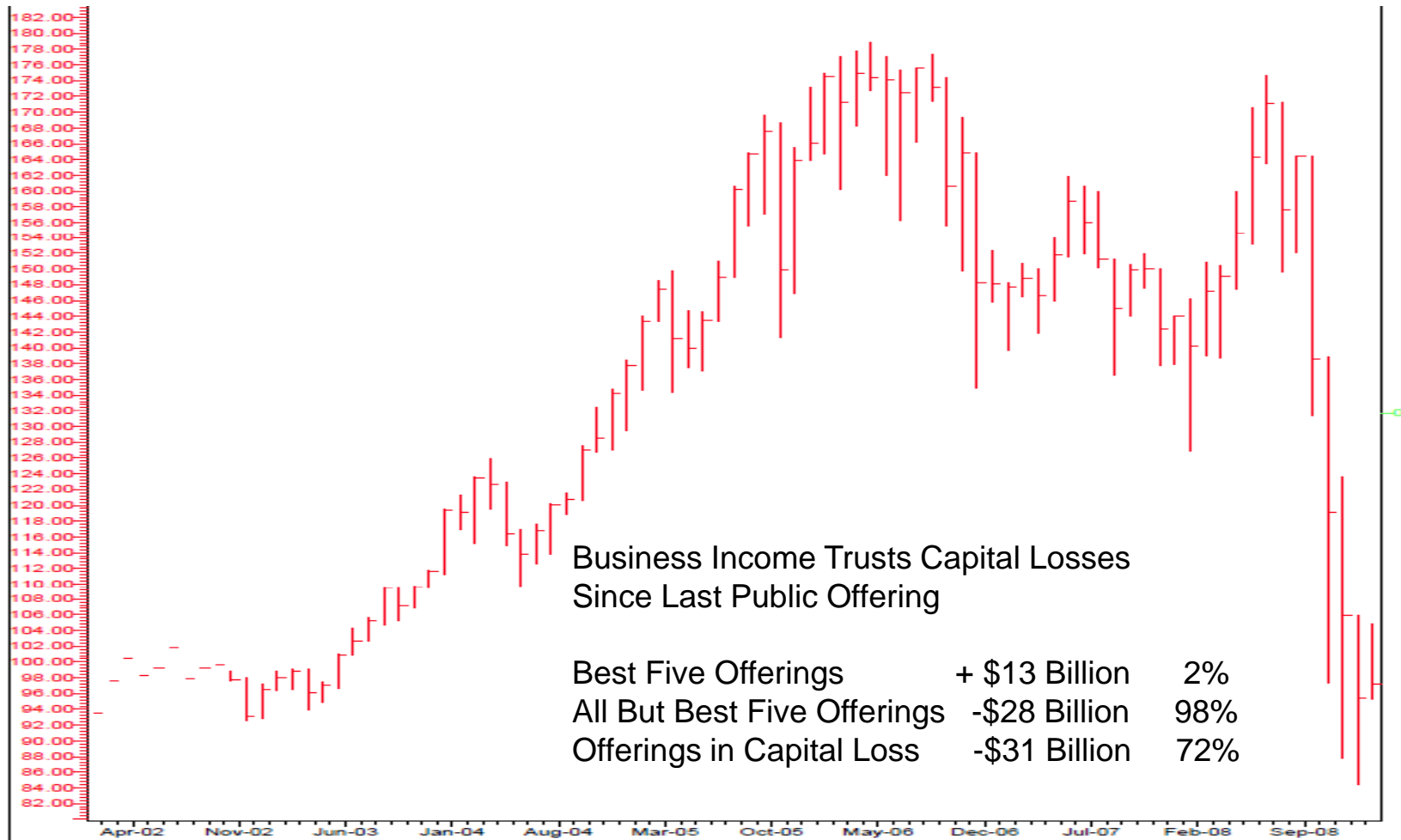
Income Trusts

Allegations of Systemic Fraud

Income Trusts with Distribution Cuts	#	%	Average Cut
Energy Trusts	20	42%	-40%
Energy Services Trusts	17	89%	-76%
Utilities Trusts	5	24%	-33%
Other Business Trusts,	70	45%	-68%
All Energy and Business Trusts	112	46%	-63%

Income Trusts

Allegations of Systemic Fraud



SERPENT ON THE ROCK

**BACKSTABBING. LYING.
EMBEZZLING. COVER-UPS.**

**Just another day on Wall Street in
history's biggest corporate swindle.**



**KURT
EICHENWALD**

NEW YORK TIMES BESTSELLING AUTHOR OF
CONSPIRACY OF FOOLS

Prudential Securities Deferred Criminal Prosecution Agreement for Sale of Energy Income Funds from 1983 to April 1990

investigation, PSI acknowledges that misstatements were made by DIG, which disseminated "internal use only" promotional materials to instruct the brokers on some of the features of the Energy Income Funds. Certain of these materials, without additional explanation, directly compared the cash distributions paid by the funds to interest payments that could be obtained on certificates of deposit, money market instruments and bonds. In reality, however, as DIG knew, such unexplained comparisons were false and misleading, since oil and gas are depleting assets, and since Energy Income Fund investors would thus have to look to their cash distributions, not just for their profit, but for a return of their original investment capital as well. (By contrast, the interest payments on CD's, money markets and bonds

consist of interest or profit.) While Pru-Bache (in 1984 and thereafter) disclosed in the prospectuses for the Energy Income Funds (and in a glossy wrapper that contained the prospectus) that the cash distribution rates on the Energy Income Funds were not readily comparable to rates of return on fixed income investments, some internal promotional materials distributed to brokers after 1984 nevertheless made such comparisons without additional explanation.

While the funds provided certain limited tax advantages, some internal promotional materials, without additional explanation, characterized the cash distributions as, in part, "sheltered" and "tax advantaged yield" and as "tax free" income. As DIG knew, these characterizations, in particular contexts, overstated the tax advantages and created the false impression that the Energy Income Funds were like municipal bonds in the sense that a portion of their otherwise taxable income would be exempt from tax.

Very truly yours,

MARY JO WHITE
United States Attorney

By: Kenneth Vianale / Baruch Weiss
Kenneth J. Vianale
Baruch Weiss
Assistant U.S. Attorneys

APPROVED:

J. L. [Signature]
Chief, Criminal Division

Prudential Securities
Incorporated

By: [Signature]

10/27/99
DATE

Scott W. Muller, Esq.
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Attorneys for PSI

10/27/99
DATE

Prudential Securities Group

By: [Signature]
Attorney for PSG

The Prudential Insurance Company
of America

By: [Signature]
Attorney for The Prudential

**CBC News Sunday: The Great Wall Street Swindle
Shady Practices on Wall Street and in Canada Too
November 4, 2008**



Non Bank ABCP

Allegations of Systemic Fraud

		Valuation %	Loss Estimates \$ Billions
Total Non Bank ABCP Under CCAA			\$32
JPMorgan Market to Market Model	4-Mar-08	49%	-\$16
Urquhart Estimated Trading Range	18-Apr-08	43%	-\$18
	9-Jan-09	30%	-\$22

Bank of Montreal C.E.O. William Downe says on Jan. 8, 2009:
**“The Canadian market for asset-backed commercial paper will
 “essentially be gone” within two years as investor demand for
 the short-term debt dries up”**

Ontario Government and OSC Facilitation of Non Bank ABCP

- Allows sale of Non Bank ABCP to retail market buyers under \$50,000 in 2005, provided credit rating agencies give minimum credit ratings. OSC does not supervise the credit rating agencies despite this delegation of public interest responsibility
- Gives DBRS an exemption from civil liability for misrepresentation in the secondary market in 2005
- Several OSC Commissioners give exemptive relief decisions for BMO, TD and CIBC to sell ABCP with just one DBRS credit rating above its minimum at R1 (high) and S&P and Moody's failing their credit rating tests for ABCP in 2006.
- Purdy Crawford and Goodmans LLP make Jan. 02, 2009 late amendment to the ABCP Restructuring Plan so that DBRS and its legal counsel get their fees paid during the ABCP Restructuring.
- Huston Loke, President of DBRS refuses to disclose how much DBRS was paid during restructuring and for the “A” credit rating for the new notes.

Federal Government Bank and CCAA Policies Contrary to Investors' Interests

- Federal Office of the Superintendent of Financial Institutions introduces Guideline to Regulation 5 in 2004 reconfirming 1994 change, which allowed the Non Bank ABCP sponsors to use “No Use” Liquidity Agreements
- Former Federal Minister of Industry James Prentice makes November 17, 2007 amendment to the CCAA Act and Regulations that defines credit default swap contracts as eligible financial contracts not subject to CCAA court stays
- The Federal Minister of Industry delays implementation of CCAA amendment that would have denied the ability of parties to make a legal release that arguably constrains the ability of securities regulators from making orders and awards that involve compensation or restitution to investors.
- Federal government joins Quebec, Ontario and Alberta Governments in providing \$3.5 billion senior funding facility without ensuring that all retail investors have gotten full cash settlements for their ABCP.

Universities Owning Non Bank ABCP

	\$ Millions
University of McGill	\$40
University of Western Ontario	\$30
University of Alberta	\$50
University of British Columbia	\$122

Governments Owning Non Bank ABCP

	\$ Millions
Quebec	\$13,299
Federal	\$2,662
Ontario	\$1,302
Alberta	\$1,321
British Columbia	\$122
Yukon	\$37
	<hr/>
Non Bank ABCP Owned by Governments	\$18,742
% of Non Bank ABCP Outstanding	55%

Domtar Canadian Pension Plan Has 30% of Its Assets in Non Bank ABCP

On December 30, 2007, Domtar's Canadian defined benefit pension funds had \$445 million in Non Bank ABCP – 30% of total assets

\$389 million of this is subject to the ABCP CCAA Restructuring Plan.

Losses would result in future increased contributions paid over 5-year period by Domtar Corporation or its Canadian subsidiaries.

Losses would also impact operating results over a longer period of time and immediately increase liabilities and reduce equity.

Domtar to close historic Gatineau mill, Ottawa plant 250 jobs lost in region; U.S. mill closures to cut 180 more jobs

Last Updated: Tuesday, July 31, 2007 | 4:15 PM ET

[CBC News](#)

Non Bank Asset Backed Commercial Paper Wreaking Havoc in Canadians' Lives



ABCP Hurts Ordinary Investors with Extraordinary Stories



BNN talks to Jill O'Hara and Reid Moseley.

07 March 2008



Photo, Candace Elliott, The Journal

CEO Rick Waugh speaks at Scotiabank's 2007 Annual Meeting held on March 4, 2008.



Brian Hunter

NATIONAL POST

20 February 2008

Letter received from Canaccord
Capital



Yulan Wong, a retired real estate agent, has \$300,000 invested through Canaccord in ABCP.

THE VANCOUVER SUN

20 March 2008



Calgary pastors Garry & Merelyn Webber

SUN
toronto

19 March 2008



Ron Lawley, a retired computer technician has \$210,000 in ABCP.

NATIONAL POST

31 March 2008



Brain Iler, a Toronto lawyer, says his account holds about \$229,000 of ABCP

NATIONAL POST

31 March 2008



Nick Kovics, a chemical engineer, found out he had \$100,000 in ABCP.

NATIONAL POST

31 March 2008



Retired engineer Peter Myers shows his frustration yesterday while questioning an ABCP panel in Edmonton



01 April 2008



Linda Paget and Wayne Duke, who spoke to the committee on Tuesday, have about \$130,000 and \$200,000 respectively tied up in the troubled ABCP market.



02 April 2008



Victoria resident Angela Speller, who along with her husband had invested 41 years of savings in the tainted notes through Canaccord Capital Inc..



03 April 2008



Layne Arthur



05 April 2008



Mark Wasserman



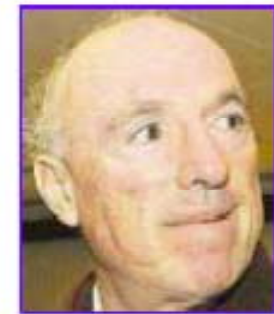
05 April 2008



Simon Jegher



05 April 2008



William Wisenthal



05 April 2008

MP's to Fix OSFI & Securities Commissions



Scott Brison
Liberal Finance Critic



Jean-Yves Laforest
Bloc Québécois
Finance Critic



James Flaherty
Minister of Finance



Thomas Mulcair
NDP Finance Critic

MP's to Fix RCMP IMET & Its Integration with Municipal & Regional Police



Ujjal Dosanjh
Liberal Public Safety Critic



Serge Ménard
Bloc Québécois
Public Safety Critic



Peter Van Loan
Minister of Public Safety



Joe Comartin
NDP Public Safety Critic

What Can You Do?

- Watch as financial abuses:
 - Raise your tuition fees as university budgets get squeezed
 - Reduce your pension benefits and personal retirement savings
 - Reduce our governments' ability to fund daycare, schools, recreation facilities and public safety services
 - Limit private sector innovation and job creation
- Help us to get accountability and effectiveness from our securities regulators and securities crime police