

# Canadians Target of Securities Crime Reform of Securities Crime Policing



**Art Field, President National Pensioners & Senior Citizens Federation**

**Diane A. Urquhart, Independent Financial Consultant**

**March 11, 2008**

# The National Pensioners & Senior Citizens Federation



# **NPSCF Resolutions Voted at October 24-27, 2007 Annual Convention in Saskatoon, Saskatchewan**

**The Federal Government fix the civilian oversight at the Commission for Complaints against the Royal Canadian Mounted Police: so as to accord power to summon RCMP officer and witness evidence under oath and to compel the production of documents; and, to make Commission decisions binding on the RCMP's conduct.**

**The Royal Canadian Mounted Police Integrated Market Enforcement Teams be required to conduct white collar securities crime investigations with competence, integrity and collaboration only with international, municipal and provincial police; without direction or interference from federal politicians, the investment industry self regulatory organizations and provincial securities commissions, who are seeking to protect the reputation of political parties and the investment industry.**

# **Securities Crime is Rampant in Canada**

- **Investor losses from securities crimes are estimated at:**
  - **About \$20 billion annually**
  - **About 1% less annual investment return on individual RRSP's, RRIF's, pension plans and investment assets held outside of retirement plans**
  - **About 15% of expected investment return.**
- **Seniors suffering catastrophic losses are exposed to the second abuse of stonewalling by the investment industry Self Regulatory Organizations, provincial securities commissions and the RCMP IMET.**

# **RCMP Accountability Framework 2006**

## **EKOS Survey, Wave 3, 2005-2006**

**When asked about what type of crimes Canadians were personally more concerned about, those polled rated:**

- Economic crime first at 68%**
- Gang violence second at 59%**
- Gun crime third at 51%**
- Property crime fourth at 48%**
- Terrorism rated last at 30%**

# Justice Canada EKOS Telephone Survey

## December 2007

- Two thirds of seniors are concerned about becoming a victim of fraud.
- About 1 in 10 seniors say they are a victim of fraud.
- But, seniors are unaware of most frauds:
  - (a) income trusts sold at inflated prices on the basis of deceptive cash yields;
  - (b) toxic derivatives in asset backed commercial paper sold with "no use" bank guarantees;
  - (c) market timing of mutual funds by investment professionals;
  - (d) unnecessary transactions in foreign exchange and mutual funds for fee generation only.

**These massive frauds skim small amounts of money from millions of Canadians' investment accounts, that most seniors have no idea is going on.**

# **New Securities Crime Complaints Intake and Assessment System**

- **New system developed and operated on a joint basis by the RCMP IMET and the regional and municipal police forces throughout Canada**
- **Eliminates RCMP IMET's sole reliance on the investment industry SRO's and the provincial securities commissions for the receipt and preliminary assessment of complaints**
- **Has police working only with police to catch the crooks and protect Canadians**

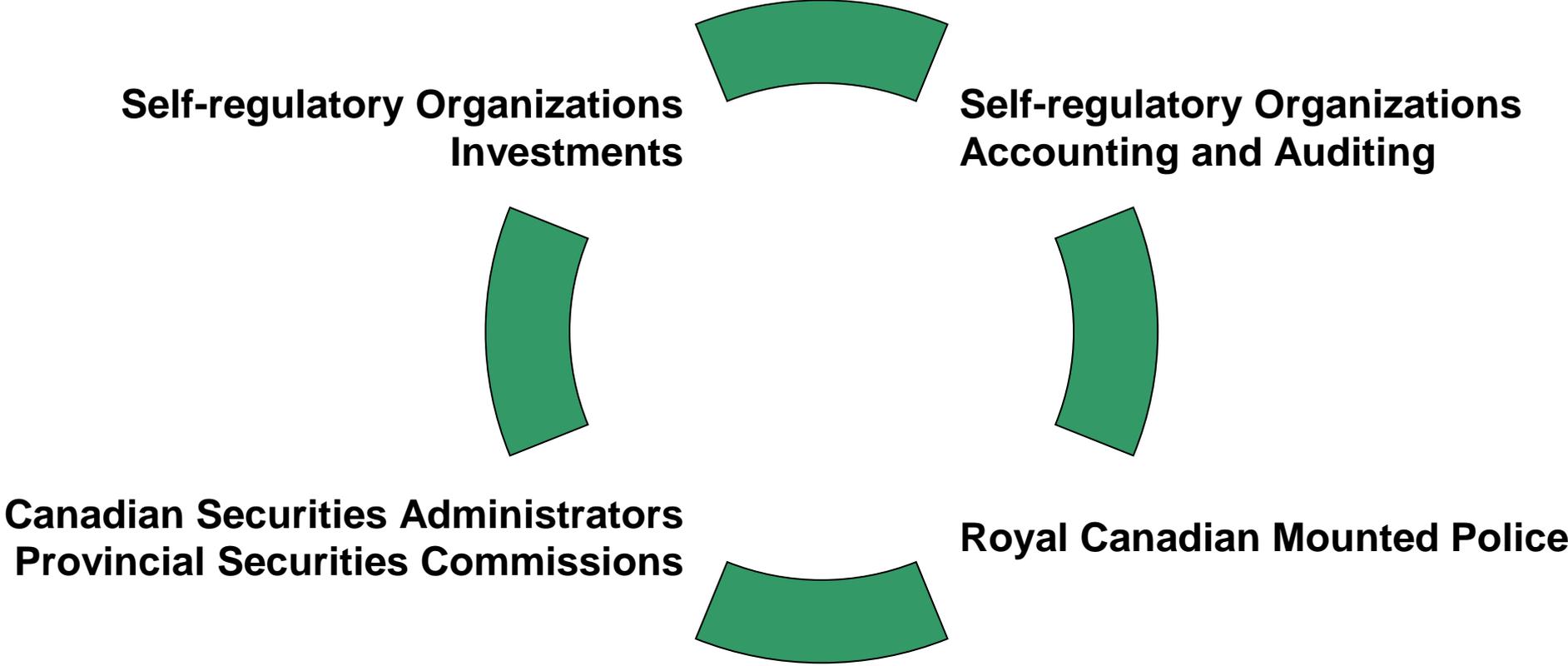
# How Would the New System Work?

- (a) A new multi-jurisdiction police co-ordination committee would be established to set the protocols for assignment of securities criminal investigations to the most logical police force to do the job;**
  
- (b) The public would be able to make a securities criminal complaint at their local police station, with the knowledge that their complaint will receive a file # and be attended to under the protocols established by the new multi-jurisdiction police co-ordination committee;**

# How Would the New System Work?

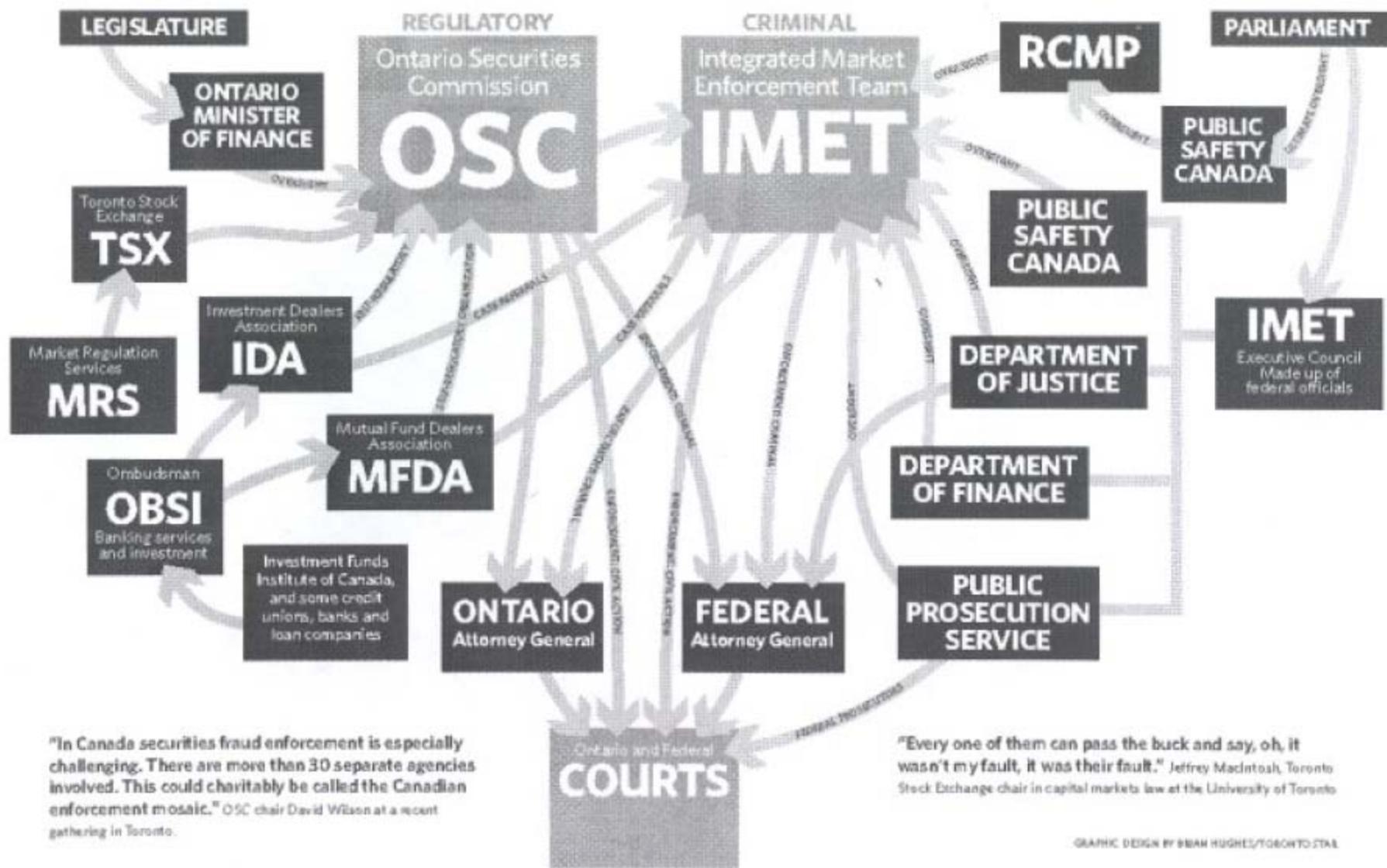
- (c) The participating RCMP IMET, regional and municipal police force white collar crime units will need higher budgets, more skilled resources and the new legislative tools sought to become effective in white collar crime policing. The provinces should be reallocating budgets away from the securities commissions into the regional and municipal police white collar crime units. These units will play a larger and essential role in receiving securities criminal complaints from the public and in criminal investigations that are best completed at the regional level;**
  
- (d) The RCMP IMET, regional and municipal police force white collar crime units, would conduct investigations assigned to them according to the established assignment protocols accepted by all the participating police forces and administered by the new multi-jurisdiction police co-ordination committee.**

# Securities Enforcement System



## FINANCIAL REGULATORS &gt; AN INVESTIGATION

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



# **Fix Securities Crime Policing in Canada**

- **Higher priority than National Securities Commission**
- **The current approach is failing and is designed to fail**
- **The new securities crime complaints intake and assessment system begins the process of fixing Canada's securities crime problem**

# Stop Delegating Securities Criminal Complaints' Intake & Assessment to Investment Industry SRO's

**Investment Industry Self-Regulatory Organizations are:**

- **Investment Dealers Association merged with Market Regulation Services**
- **Mutual Fund Dealers Association**

- (a) SRO's lack any of the legislative tools necessary to properly investigate and enforce fines on wrongdoers;**
- (b) SRO's have no authority to lay criminal or quasi-criminal charges involving jail sentence penalties, either directly or by presenting such charges to a court;**
- (c) SRO's are private sector organizations that are not required to refer cases with evidence of criminal offences to the RCMP or any other regional and municipal police force;**
- (d) SRO's interest is to protect the reputation of the investment industry particularly when they have no legislative basis to conduct their delegated investor protection functions effectively.**

# IDA & MFDA – The Fox in the Chicken Coop



# IDA – 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

# Legal Experts Call for IDA Reform

If SROs make decisions without access to relevant information, or their decisions cannot be enforced, the problem cannot be corrected on review. Either additional powers must be provided to the SROs or a different system of regulation must be put in place.

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.

*Critical Issues in  
Enforcement Report*<sup>16</sup>

# Stop Delegating Securities Criminal Complaints' Intake & Assessment to OSC

- (a) provincial securities commissions have legislative tools to investigate and enforce fines and other remedies, but cannot conduct proper justice when their investigations and adjudication functions are under one roof and under one chairman, who makes all the decisions;**
- (b) provincial securities commissions have authority to lay quasi-criminal charges involving jail sentences, by presenting such charges to a court; however, provincial securities commissions have no authority to prosecute criminal charges under the Federal Criminal Code;**
- (c) provincial securities commissions are crown regulatory agencies, but are not required to refer cases with evidence of criminal conduct to the RCMP or any other regional and municipal police force;**
- (d) provincial securities commissions are crown regulatory agencies, but their record shows bias to protect the reputation of the investment industry and Canada's corporate and professional elite rather than to protect investors, due to:**
  - their investment industry funding sources;**
  - senior executives and commissioners being drawn from the investment banking, corporate accounting and legal communities;**
  - the lack of public accountability mechanisms, such as hearings before standing committees of the provincial legislatures or regular independent audits on the thoroughness and integrity of enforcement activities.**

# Provincial Securities Commissions To Get Out of Securities Criminal Policing

- Provincial securities commissions have power to compel testimony in regulatory investigations, and are not allowed to supply this testimony for use by police in criminal proceedings.
- The Federal Provincial Justice Ministers Securities Enforcement Working Group Report plans to remove the restriction on transfer of compelled testimony on regulatory violations for use in criminal proceedings.
- **Provincial securities commissions should be removed from involvement in both quasi-criminal and criminal investigations and prosecutions altogether.**

**Release Immediately**  
**Federal Provincial Justice Ministers**  
**Securities Enforcement Working Group Report**

- The January 22, 2008 Provincial/Territorial Council of Ministers of Securities Regulation Annual Progress Report for January 2007 to December 2007, says: "The Council strongly urged the Justice Ministers to support the Working Group's recommendations and to direct their timely implementation."
- "The Justice Ministers referred the recommendations to Deputy Ministers of Justice to be considered at their next meeting in January 2008 to determine which items could be implemented immediately and which require further analysis."

# RCMP to Resign from Joint Securities Intelligence Teams



**RCMP Commissioner, OSC Chairman, IDA President**

**Decide White Collar Crime Enforcement**

# RCMP IMET To Take the Investment Industry SRO's & OSC Signs Down



“You wouldn't trust the man who made the mess to clean it up”

Richard M. Nixon

*"Checkers"*



delivered 23 September 1952

You've read about the mess in Washington.

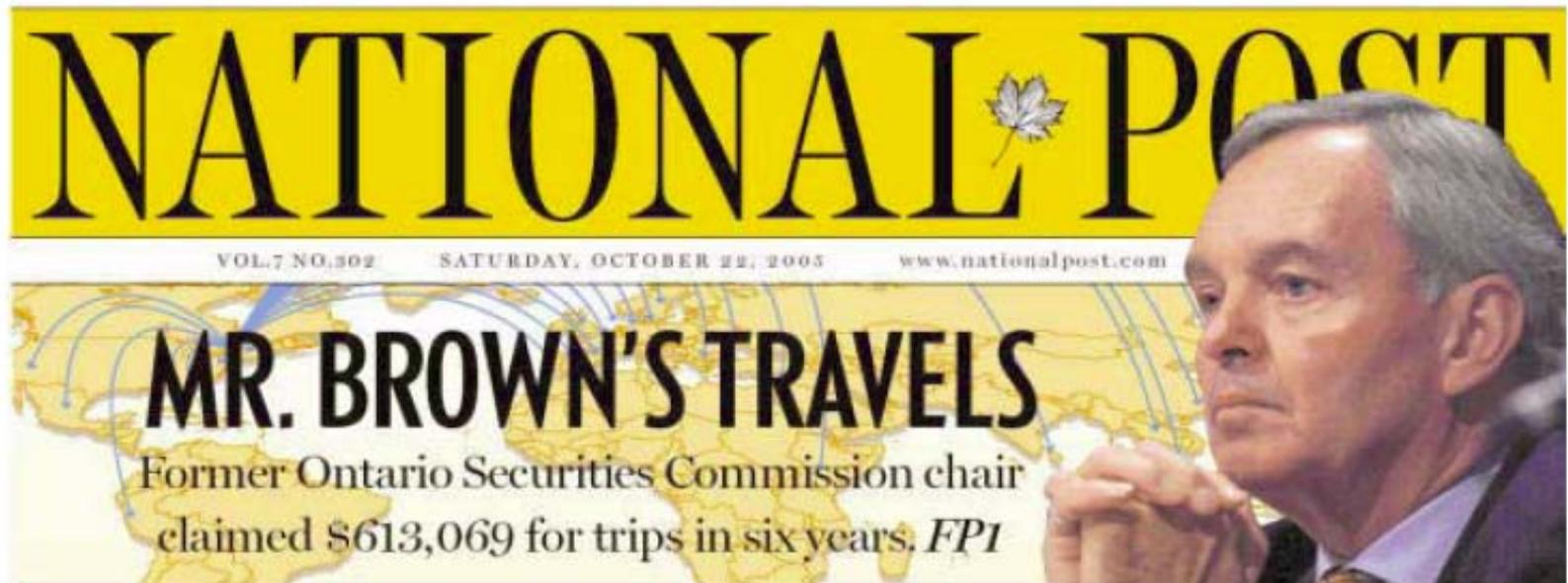
Mr. Stevenson can't clean it up because he was picked by the man, Truman, under whose Administration the mess was made.

You wouldn't trust the man who made the mess to clean it up.

That's Truman. And by the same token you can't trust the man who was picked by the man that made the mess to clean it up -- and that's Stevenson.

# David Brown, Chairman Task Force on RCMP Cultural Change & Governance



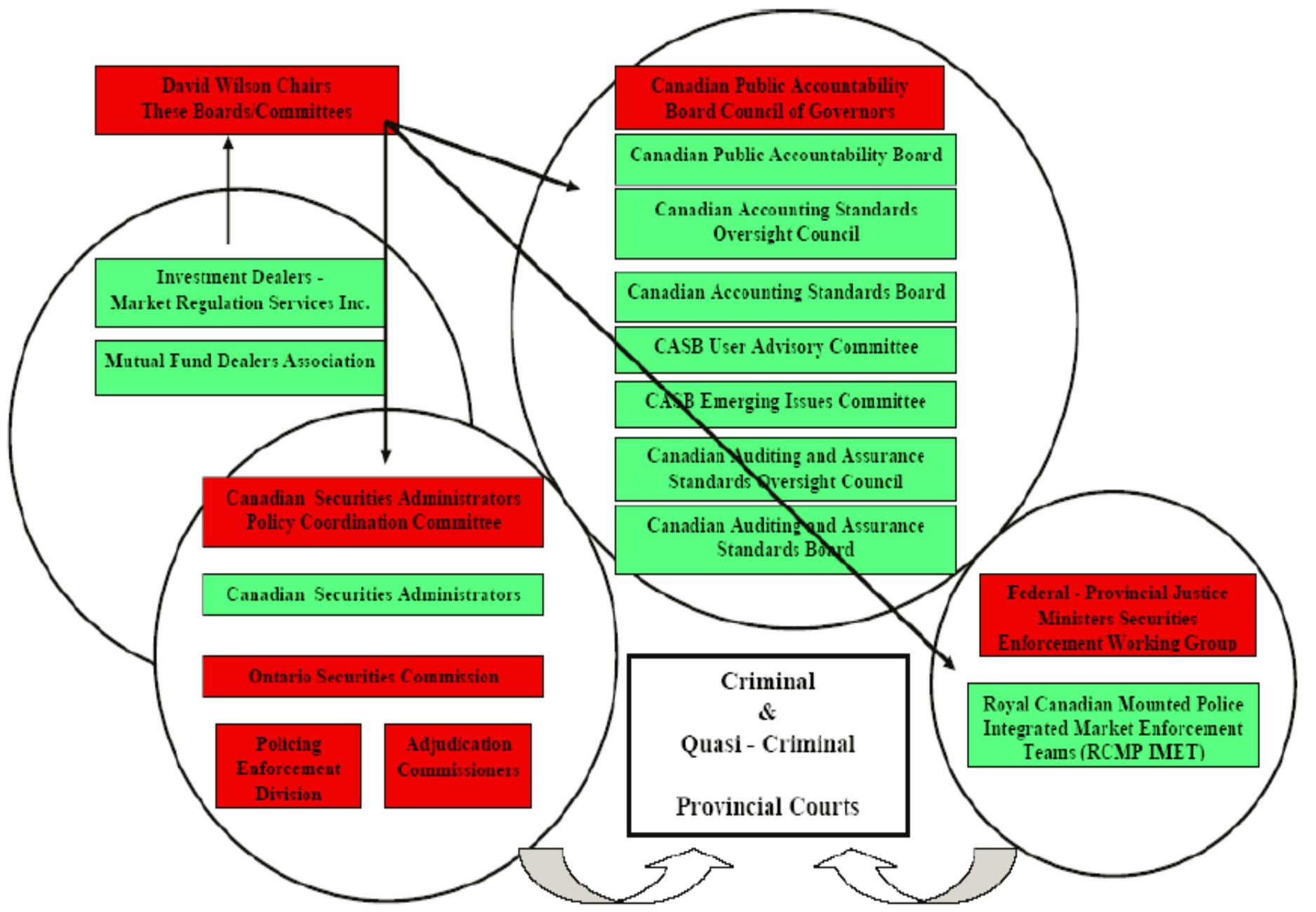


## **Living large off the Street**

**David Brown spent at least \$613,069 on travel while chair of the OSC**

Theresa Tedesco  
Chief Business Correspondent

*Saturday, October 22, 2005*



**David Wilson Chairs  
These Boards/Committees**

**Investment Dealers -  
Market Regulation Services Inc.**

**Mutual Fund Dealers Association**

**Canadian Public Accountability  
Board Council of Governors**

**Canadian Public Accountability Board**

**Canadian Accounting Standards  
Oversight Council**

**Canadian Accounting Standards Board**

**CASB User Advisory Committee**

**CASB Emerging Issues Committee**

**Canadian Auditing and Assurance  
Standards Oversight Council**

**Canadian Auditing and Assurance  
Standards Board**

**Canadian Securities Administrators  
Policy Coordination Committee**

**Canadian Securities Administrators**

**Ontario Securities Commission**

**Policing  
Enforcement  
Division**

**Adjudication  
Commissioners**

**Criminal  
&  
Quasi - Criminal  
Provincial Courts**

**Federal - Provincial Justice  
Ministers Securities  
Enforcement Working Group**

**Royal Canadian Mounted Police  
Integrated Market Enforcement  
Teams (RCMP IMET)**

# Normand Inkster, Member

## Task Force on RCMP Cultural Change & Governance

### Normand David Inkster

September 1, 1987 to June 24, 1994

Commissioner Inkster joined the RCMP in 1957, beginning his career in Regina, but later moving throughout Canada. Inkster faced the unionization debate, established an external review committee to address public complaints, expanded international police duties with peacekeeping and adopted community policing as a service delivery model. He is perhaps best known for wanting to “change the face” of the Force by campaigning to make the RCMP a career option for all Canadians no matter their race, gender or ethnic background, helping to establish advisory committees for local communities, and allowing members of the Force to be exempted from wearing any item of the uniform on the basis of their religious beliefs. On June 2, 1991 Inkster was presented with a Corps Ensign by the Governor General. This was the first ensign granted to the Force.



# Recent Securities Crimes

Few Securities Crime Investigations

Criminal Prosecutions Almost Non-Existent

# Calling all fraudsters

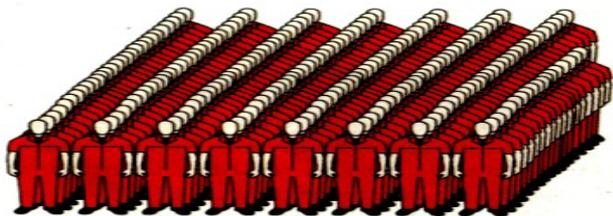
TO THOSE WHO THINK CANADA IS NOT DEFICIENT in the prosecution of corporate criminality, we offer the comparison below. The upper number is the tally of convictions obtained by the multi-agency U.S. President's Corporate Fraud Task Force over the past five years. The lower figure is the number of convictions achieved thanks to Canada's multi-agency Integrated Market Enforcement Teams, or IMETs, since their inception more than four years ago. Our question to Canada's politicians, police, prosecutors, regulators and judiciary: If you were a crook, where would you rather set up shop?

THE EDITORIAL BOARD

## CONVICTIONS IN U.S.A.

# 1,236

INCLUDING:



214

Presidents and CEOs, among them  
Conrad Black on July 13



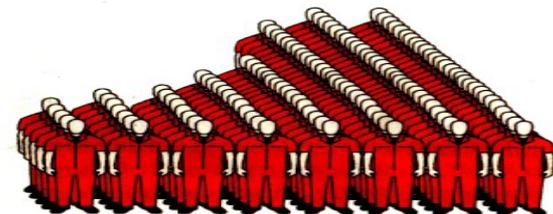
53

Chief financial officers



23

Corporate counsels



129

Vice-presidents

## CONVICTIONS IN CANADA

# 2

Mitton pleaded guilty in March to fraud and money laundering in connection with a pump-and-dump scheme. A serial fraud artist long known to police, Mitton has racked up at least 105 convictions over his criminal career.



MICHAEL LEE MITTON

Aug.13-22, 2007

CANADIAN  
BUSINESS

Please direct comments and questions by e-mail to [letters@canadianbusiness.com](mailto:letters@canadianbusiness.com)

# **12 % of Advisors in the ComSet Database**

- **2,883 problem advisors in Investment Dealers Association ComSet Database**
- **This is 12% of IDA registered advisors**
- **Just a handful of the problem advisors have been sent to police for criminal investigation**

# IDA ComSet Database Problems Recorded

- **Customer complaints that are not service related**
- **Securities-related civil claims and arbitration notices**
- **Internal disciplinary actions**
- **Internal investigations of theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading**
- **Criminal offences**
- **Denial of registration by any regulatory or self-regulatory organization, professional licensing or registration body**
- **Proceedings or disciplinary actions by any regulatory or self-regulatory organization, professional licensing or registration body**

# IDA – Blind to Frauds

## Pearls of Wisdom from the IDA

*"A forgery is not always a forgery."*

Warren Funt, V.P., Western Canada, Investment Dealers Association

June 11, 2007



**An advisor can fill out and sign your name on the  
KNOW YOUR CLIENT FORM.  
For this, he only gets a reprimand.**

# 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
- **So why hasn't the Investment Dealers Association, Quebec Autorite or the RCMP pursued CIBC World Markets?**



**Harry Migirdic, EX VP, CIBC**



# **Broker Gift from 90 Year Old Widow IDA Hearing Decision – July 9, 2007**

**A hearing panel of the Investment Dealers has imposed a fine of \$15,000 on Donald Moffat Little, ...a registered advisor with the London, Ont. branch of TD Waterhouse Canada.**

**In or about March 2006, Little accepted a cheque from an elderly client in the sum of \$500,000, liquidated securities in the client's account in order to cover the cheque, and then deposited the cheque into his personal bank account without the knowledge or consent and contrary to the internal policies of TD Waterhouse.**

**The panel found Little guilty of engaging in business conduct or practice unbecoming or detrimental to the public interest.**

# Nobody Protecting Investors from Defective Investment Products



# 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.

# **Non Bank Asset Backed Commercial Paper Vendors & Large Institutions Control the Process**

**Expected losses of -\$7 billion to -\$13 billion on this Made-In-Canada defective money market product, a loss of -20% to -40%.**

**Individuals, pension fund beneficiaries, taxpayers and shareowners bear the damages.**

**The Montreal Accord Group/Pan Canadian Committee is a secretive process serving the interests of the vendor group and large institutions:**

- (a) vendors, who were either negligent or intended to deceive the buyers;**
- (b) professional buyers, who were either negligent, or were deceived by the vendor group;**
- (c) meanwhile, a large group of individual owners have become financially and emotionally distressed because their savings were taken, and the Montreal Accord restructured long term notes are no solution.**

# Non Bank ABCP Complaints

- **The Federal Office of the Superintendent of Financial Institutions (OSFI) Regulation B-5 permitted the banks to sign "Made-in-Canada" defective liquidity agreements for the Third Party ABCP. Banks can walk away to protect their balance sheets, while investors take big hits.**
- **Dominion Bond Rating Services (DBRS) bears significant responsibility for giving false top credit ratings on the Non Bank ABCP.**
- **The Non Bank ABCP sponsors sold without a prospectus, despite international credit rating firms calling the whole Canadian Non Bank ABCP market below investment grade and below the prescribed minimum in NI 45-106 Prospectus & Registration Exemptions**
- **Inadequate disclosure of the trusts' contents such as credit derivatives, where counterparties have the right to make margin calls for more cash to be added, and to lay claim to the collateral of quality assets. The owners of the Third Party ABCP naturally assumed the quality assets were their collateral.**
- **Non Bank ABCP placed in retail accounts, while they were unsuitable and defectively designed, and in many cases without the client's knowledge or permission.**

## **Labour demands that government stand up for the pensions of Canadian workers and retirees**

October 2, 2007

OTTAWA – The President of the Canadian Labour Congress demands that the federal government make sure the pension investments of working Canadians are not put at further risk by the crisis in the asset-backed commercial paper market.

In a letter, dated Friday, September 28, to the federal Minister of Finance (below), Ken Georgetti urges the appointment of an independent monitor to represent the public interest in ongoing efforts to resolve the crisis.

# Financial Advisors on Income Trusts Wolves in Sheep's Clothing



# Income Trusts - Cash Yield Deception

$$\begin{aligned} \text{Cash Distribution} &= \text{Income} + \text{Return of Capital} \\ \$0.81 &= \$0.405 + \$0.405 \end{aligned}$$

$$\text{Cash Yield Valuation} = \text{Cash Distribution} / \text{Expected Yield}$$

$$\$10.00 = \$0.81 / 8.1\%$$

$$\text{Fair Valuation} = \text{Income} / \text{Expected Yield}$$

$$\$5.00 = \$0.405 / 8.1\%$$

# Funding of Excess Cash Distributions

**Not maintaining and replacing buildings, machinery and equipment**

**Using cash reserves from**

- **Prior debt financings**
- **Prior equity issuances**
- **Prior reserves established for other purposes**

# Income Trust Distributions Suspended and Cut

## Income Trusts' Distribution Suspensions & Cuts (# and % of Each Type)

	9-Mar-08	Number	Distribution Suspensions	Distributi on Cuts	Combine d	%
Energy Trusts		48	2	17	19	40%
Energy Services Trusts		19	6	9	15	79%
Utilities Trusts		21	0	3	3	14%
Other Business Trusts,		156	22	29	51	33%
Total Business Trusts		196	28	41	69	35%
All Energy and Business Trusts		244	30	58	88	36%

# Income Trusts – Offerings In Capital Loss

**Business Income Trust Offerings Between January 1, 2001 and December 31, 2006**

**Performance As of**

<b>March 9, 2008</b>	<b>All Offerings</b>		
	<b>All</b>	<b>In Capital Loss</b>	<b>In Capital Loss &gt; -20%</b>
# Trusts	174	109	74
# Offerings	289	162	111
Offerings \$ Millions	\$35,749	\$21,475	\$12,742
% of All Offerings	100%	56%	38%
Offerings Gain (Loss) Average %	-4%	-35%	-52%
Offerings Gain (Loss) \$ Millions	-\$1,379	-\$7,451	-\$6,622
Market Cap Gain (Loss) * \$ Mil	-\$3,592	-\$18,222	-\$16,704
Investment Banking Fees \$ Mil	\$1,892	\$1,121	\$687
Other Offering Expenses \$ Mil	\$622	\$356	\$224
Total Offering Fees \$ Mil	\$2,514	\$1,476	\$912

# Canada – A Good Country for Crooks

**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**

# **RCMP Securities Crime Unit Broken**

**Bill Majcher, Former RCMP IMET Senior Investigator, says:**

**We need politicians to admit that the system is broken from the top to the bottom.**

**Canadians have to understand that we have a two-tiered justice system, where people with money can play the system.**

**Show me a person who has gotten any sort of satisfaction from going to the authorities after being victimized by a white-collar fraud...who got their money back in a timely fashion and didn't go through a lot of grief. I can't think of a single person like that.**

# **Securities Crime Policing, Prosecutors Office & Courts Need Repairs**

**Craig Hannaford, Former RCMP IMET Senior Investigator:**

**There are serious structural problems throughout the system.**

**Politicians get up and say we can solve this with a national securities commission, but the problems are not going to go away. We have the same issues with the courts, the same issues with disclosure, the same issues with sentences and parole.**

**If you don't deal with all of those problems from beginning to end, we will wind up in the same spot—with a national securities regulator that everyone is angry with because it can't seem to do the job.**