

# Fixing Canada's Third World Securities Crime Enforcement

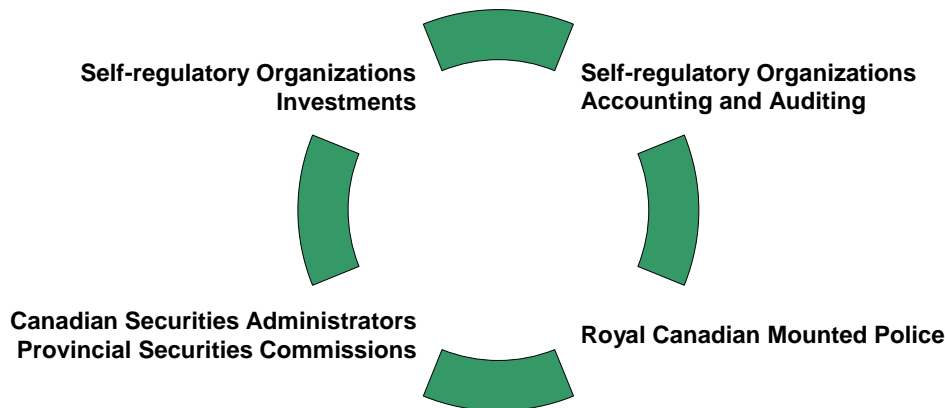
Submission to the Expert Panel on Securities Regulation by Diane Urquhart

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We have to do a complete overhaul of Canada's process for receiving and investigating securities crime complaints from the public and industry whistleblowers. The current approach is failing and is designed to fail.

## Securities Enforcement System

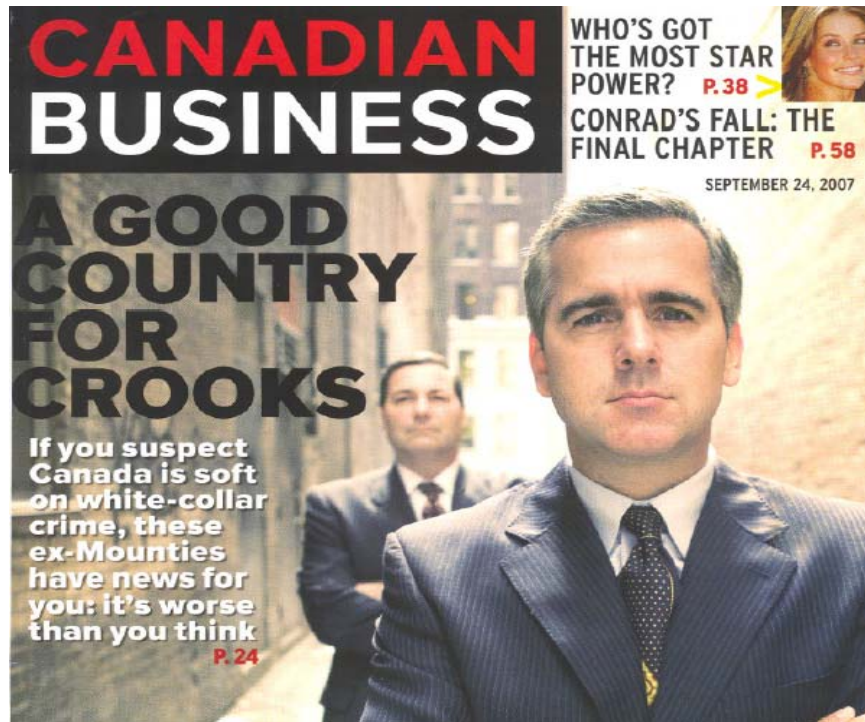


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Securities Crime Enforcement must be fixed in the following ways:

- (1) Create independent and effective securities crime police system. Adopt new securities crime intake and assessment system jointly administered by RCMP IMET and the municipal and regional police forces of Canada.
- (2) Create a national/Quebec securities commission independent of the investment industry that has effective enforcement of securities laws and regulations and has no involvement in either criminal or quasi-criminal prosecutions.
- (3) Eliminate Canada's reliance on investment industry self-regulatory organizations to provide investor protection.
- (4) Create new independent accounting and auditing standards boards that are not controlled by the accounting industry, and that have investor protection and public interest mandates.

The Canadian public is well aware of Canada's abysmal record in both administrative enforcement of provincial and territorial securities laws and securities criminal law enforcement. The following are just some of the recent developments beckoning for a dramatic solution to Canada's securities enforcement problem:



## 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

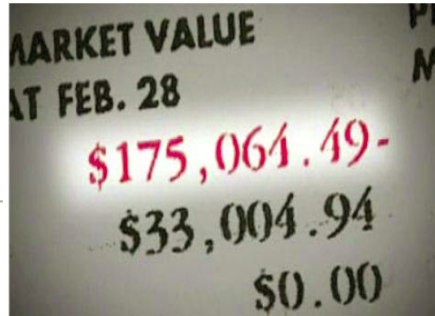
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**W-FIVE: Going for Broke**  
Updated Sat, Apr. 26 2008 7:17 PM ET  
Kristen Yu, W-FIVE

[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



# 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



## Income Trusts Allegations of Systemic Fraud

Income Trusts with Distribution Cuts	#	% of All Not Acquired	Average Cut
Energy Trusts	19	41%	-40%
Energy Services Trusts	16	84%	-67%
Utilities Trusts	4	24%	-23%
Other Business Trusts,	55	41%	-67%
All Energy and Business Trusts	94	44%	-60%

**60 Income Trust Names (Outside of Energy Trusts)  
Have \$15 Billion of Losses Due to Price Declines > -30%  
Since IPO and Last Secondary Offering**

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## Non Bank ABCP Allegations of Systemic Fraud

\$ Billions		Valuation	Loss Estimates
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
	18-Apr-08	51%	-\$16
Urquhart Estimated Liquidation	18-Apr-08	22%	-\$25

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accountability cannot be achieved without complete separation of securities crime enforcement and administrative securities law enforcement in Canada.

The Report of the Standing Committee on Public Accounts, "Restoring The Honor of the RCMP: Addressing Problems in the Administration of the RCMP's Pension And Insurance Plans, submitted by Chairman Shawn Murphy in December 2007 to Parliament, is not addressing the structural change necessary for proper investigation of internal RCMP personnel involved in securities or other white collar crimes.

The Federal Provincial Justice Ministers Securities Enforcement Working Group Report submitted to Federal Minister of Justice and Attorney General Rob Nicholson and to the Provincial Justice Ministers on about November 13, 2007, has not been made public. David Wilson, Chairman of the Ontario Securities Commission (OSC) and Co-Chair of this Working Group, and the RCMP IMET, were criticized in the December 1-8, 2007 Toronto Star Series, "Ontario Enforcement Third World."

The OSC, RCMP, regional and municipal police forces cannot continue to send all persons with complaints of wrongdoing in the investment industry to the investment industry Self-Regulatory Organizations - the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association. These SRO's have no legislative authority, nor public accountability mechanisms, to ensure that wrongdoers are properly investigated and prosecuted.

(a) the SRO's lack any of the legislative tools necessary to properly investigate and enforce fines on wrongdoers;

(b) the 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) the 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) the SRO's interest to protect the reputation of the investment industry usually trumps investor interests and the public interest, particularly when they have no legislative basis to conduct their delegated investor protection functions effectively.

The RCMP, regional and municipal police forces cannot continue to send all persons with complaints of wrongdoing in the investment industry and in public corporations to the provincial securities commissions;

(a) the provincial securities commissions have legislative tools to investigate and enforce fines and other remedies, but it cannot conduct proper justice when their investigations and adjudication functions are both done under one roof and under one chairman, who makes all the decisions on who is investigated and prosecuted and who supervises the commissioners that adjudicate all securities law violations;

(b) the provincial securities commissions have authority to lay quasi-criminal charges involving jail sentences, by presenting such charges to a court; however, the provincial securities commissions have no authority to prosecute criminal charges under the Federal Criminal Code; the new federal securities act and the new single securities commission should remove the power for quasi-criminal prosecutions altogether so that the single securities commission can be held accountable for administrative enforcement. The buck passing between the securities regulators and the police would then be eliminated.

(c) the provincial securities commissions are crown regulatory agencies, but they are not required to refer cases with evidence of criminal conduct to the RCMP or any other regional and municipal police force;

(d) the 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; and 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.

The RCMP IMET and the regional and municipal police forces throughout Canada must establish a new co-coordinated securities criminal complaint intake and assessment process. In doing so, the RCMP IMET would eliminate its sole reliance on the investment industry SRO's and the provincial securities commissions for the receipt and preliminary assessment of complaints from the public and insider whistleblowers about securities crimes.

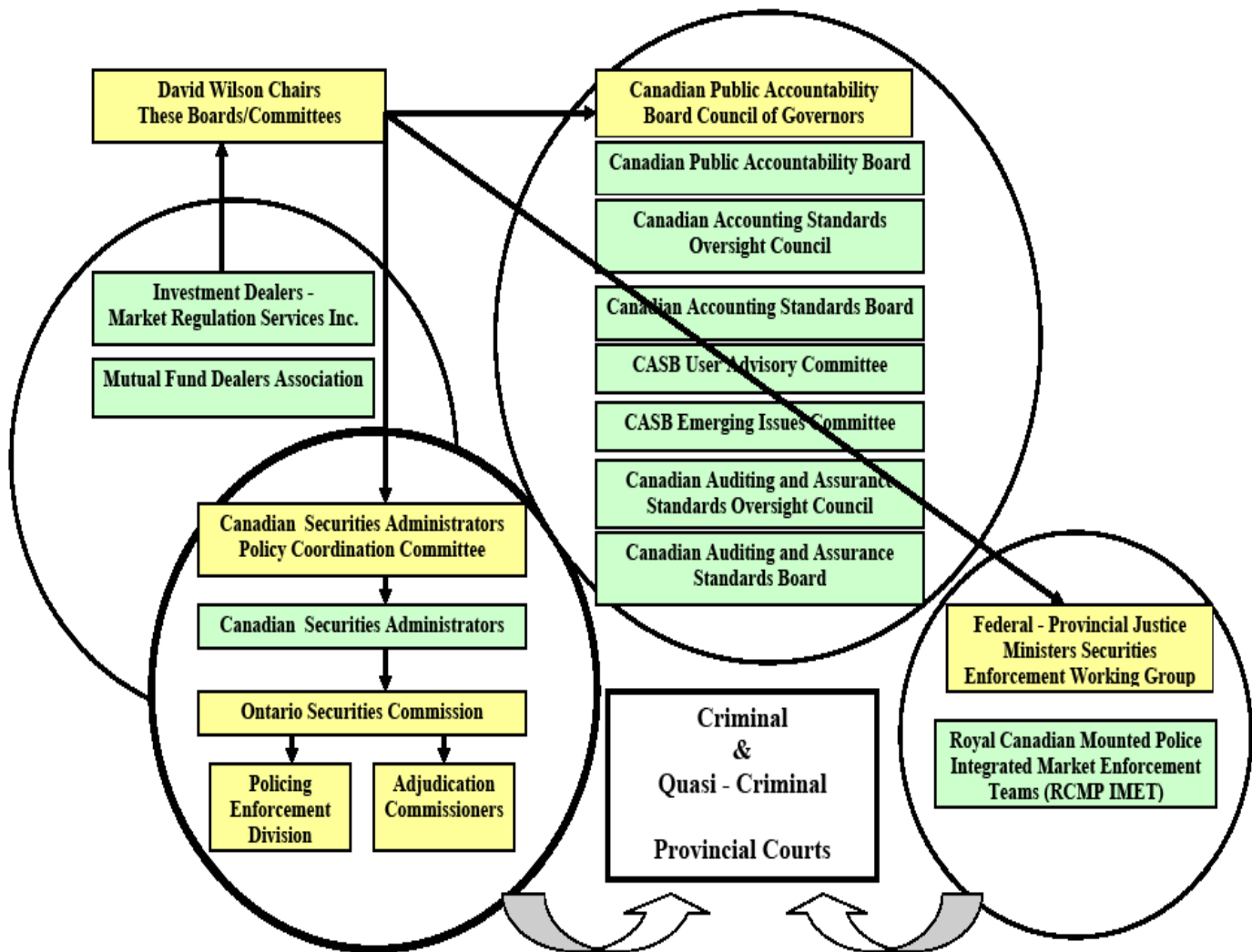
(a) A new multi-jurisdiction police co-ordination committee should be established to set the protocols for assignment of securities criminal investigations to the most logical police force to do the job;

(b) The public should be able to make a securities criminal complaint at their local police station, with the knowledge that their complaint will be properly attended to under the protocols established by the new multi-jurisdiction police co-ordination committee;

(c) The participating RCMP IMET, regional and municipal police force white collar crime units will need higher budgets, more skilled resources and, new legislative tools to become effective in white collar crime policing, provided these tools are fully compliant with the Charter of Human Rights and Freedoms. 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 and local 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.

## One Man Cannot Control All Aspects of Securities Enforcement in the Country



# RCMP to Resign from Joint Securities Intelligence Teams



RCMP Commissioner, OSC Chairman, IDA President  
Decide White Collar Crime Enforcement

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



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