

Securities fraud in Canada: an examination of white-collar crime

Abstract

Access was obtained to a database of securities fraud cases from the Canadian Securities Administration over a 30-year period. A total of 7,954 cases were scraped from the CSA over 1982-2017. We then took a random 20% sample and produced an SPSS file of 1,486 cases for more detailed analysis. The vast majority of offenses are for illegal capital accumulation in the form of insider trading, illegal or unregistered distributions, outright fraud, improper trading, and market manipulations – crimes of capital and the marketplace in securities. Only five (5) percent were prosecuted as criminal, and only 26 percent involved corporations. One percent resulted in some imprisonment. There was a high rate of repeat offending/multiple cases (15% of the sample), but major securities firms and banks were noticeably absent. We invoke Chambliss¹⁻³ and Quinney^{4,5} to argue that these offenders are part of the detritus of the securities marketplace, for which state regulators prefer civil (fines, costs, disgorgement) and administrative sanctions over further intervention in the marketplace. The median fine was \$32,000.

Keywords: corporate fraud, white-collar crime, political economy, critical theory

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Introduction

This paper will discuss an exploratory study which examined the assignment of sanctions to Canadian security fraud violations. This research is based on literature which demonstrates that security fraud in Canada is under-regulated, leaving Canadians open to security fraud victimization. Such work suggests that high rates of security fraud recidivism in Canada are facilitated by a lack of enforcement and criminal prosecution⁶⁻⁹ The study utilized a random 20% sample of a larger research design. The research question investigated in this sample was “What does the prosecution of securities violations look like in Canada? This study’s descriptive findings show criminal prosecutions are only applied to five percent (5%) of security fraud cases in the sample, even though the vast majority had committed illegal violations (Sutherland, 1949).¹⁰ The theoretical underpinnings of Quinney^{4,5} and Chambliss¹⁻³ are utilized to understand how the lack of regulation surrounding security fraud in Canada is situated in the unique social reality of white-collar crime.

Literature

Security fraud can be understood as a wide range of illegal or banned financial activities. This includes insider trading, fraud, or market manipulation; or less serious activities such as breach of regulatory protocol.¹¹ Although anyone can be a victim of security fraud, the most common victims are the elderly and inexperienced investors. More serious and large-scale security fraud such as market manipulation can impact market stability and have far-reaching consequences. In fact, there is evidence that the 2008 economic crash in the United States was, in part, facilitated by fraudulent corporate behavior.^{12,13}

In Canada, security fraud is regulated provincially and there is no federal regulatory body. Although provinces do criminally prosecute fraud cases, most fraud cases in Canada are handled by provincial security commissions.⁶⁻⁹ As a result, the prosecution of security fraud in Canada has become disjointed and fragmented. Self-regulatory organizations (SRO’s) regulate less serious violations of member rules. Disciplinary action includes fines or bans from security trading.

For illegal activities, either provincial administrative tribunals or judicial courts oversee discipline, which can include restitution or imprisonment.¹⁴ There is no federal regulatory body with sanctioning power in Canada, unlike most capitalistic democracies. However, the Canadian Securities Administrators (CSA) oversee regulation and keep public records of all security fraud cases in Canada in an online database.¹⁴ As will be discussed later, the CSA database is the source of the data used in this project.

The problem with security fraud regulation in Canada was illuminated in an award-winning article produced by *The Globe and Mail* journalists Robertson and Cardoso.⁷⁻⁹ This article demonstrated the lack of coherent regulation results in high recidivism rates of security fraud cases. The investigation also reveals that many of the mandated fines are going unpaid. Those who commit security fraud are able to move among provinces and assume a pseudonym to evade fines and bans. Investing individuals and companies in Canada face the risk of being defrauded, with little recourse for criminal consequences.⁷⁻⁹

There is a robust popular literature on securities fraud in Canada, dating back to at least 1975 with the publication of **Swindle! A Decade of Canadian Stock Frauds** by Roger Croft. This monograph was followed by Marlis Fleming’s **Under Protective Surveillance**¹⁵ about the life of her husband, a masterful bust-out player whom she characterized as follows (p. 22):

Like almost all white collar crime specialists, my husband abhorred mayhem and inelegant, violent crookery. If he ripped off the public for ten thousand cash in a stock deal, and had the currency in his pocket, he wanted the protection of the law to make sure he could walk the streets safe from the stick-up or a mugging.

In 1987, two journalists published a study of the Vancouver Stock Exchange under the catchy title **Fleeing the Lamb**¹⁶ According to their research, “VSE investors lose some of their money 84 percent of the time and all of it 40 per cent of the time” (p.x). This was followed shortly by Diane Francis’ **Contrepreneurs**.¹⁷ But one of the most comprehensive books on the subject was by Al and Mark Rosen titled **Swindlers: Cons & Cheats and How to Protect your Investments**

from Them,” published in 2010. In numerous chapters, they conclude that “Claims that Canada is relatively free of securities crime are simply not supported by the facts” (p. xiv).

Academic research concerning this topic has made similar findings, although the literature in the Canadian context is limited. In 2012, graduate student Mark Lohan wrote his dissertation on the subject titled “Regulating Canada’s Securities Market.” In this not-widely known study, Lohan got access to cases before the Investment Dealers Association of Canada, a self-regulatory trade association (SRO) which attempts to police investment firms and dealers who trade in Canadian securities and debt instruments. Data from 1984 to 2008 were collected on 708 cases heard by an IDA panel. Data was collected on the investors (“victims”), the registered representatives and Member firms (“offenders”), and the types of offences and penalties imposed. A total of thirty-nine (39) cases were not applicable, leaving a final dataset of 669 cases for analysis. Lohan found that the IDA functioned to deflects investors’ complaints away from the criminal justice system, by settling most complaints and handling others internally through the IDA’s hearing process. Older Canadians (50+) were disproportionately victimized by securities violators, and most were not wealthy. The most common offences were improper discretionary trading and unsuitable investments. Together, they made up 27% of all offences committed (211). Two thirds of the cases were settled by negotiation at the low end of the punishment spectrum. To quote his study (213):

a bank robber who holds up a bank and steals \$100,000 in cash is appropriately punished by the justice system. A financial advisor, who misappropriates \$100,000 from a few elderly clients, will probably enter a settlement agreement with the IDA and agree to a fine and a permanent ban from the Association. The financial advisor will most likely default on the fines imposed and quit the industry without any repercussions.

Hence, Lohan concluded that the “findings indicate that when the interest of the public clashes with the interests of the IDA’s members, the IDA puts its members first” (216).

Russell and Cheng’s⁶ research shows how security fraud is facilitated by current regulation in Canada. The study examined the CSA’s publicly available database from 1986-2012, overviewing 92 corporate security fraud cases as well as other information on the organization’s site such as press releases. They also find high amounts of recidivism among corporations and individuals who commit security fraud. They find that penalties available to regulators are not severe enough to act as a deterrent to security fraud. The loose regulation stems from the lack of government support for stricter measures, out of fear of creating too much ‘red tape’ for banks, investment houses, and brokers. Furthermore, in finance, oil, and mining, systematic qualities of these industries actually *create* the opportunity for security fraud. Russell and Cheng add to the context that most security fraud violations are receiving mostly mild consequences, adjourned by administrative boards that are without much capacity to deliver severe penalties to deter future crime.

In another Canadian study, Bittle and Snider¹⁸ investigate the regulation and enforcement of corporate crime in Canada. Although the authors focus on corporate crime more generally, their examination did include security fraud cases by corporations. Their findings show that Canadian policies and regulation surrounding corporate crime are targeted at “lone-wolf” fraudsters (385). Therefore, policies fail to address the structural problems within the capital marketplace which generate corporate crime.

But perhaps the most notorious case of securities fraud was the Bre-X scandal on the Toronto stock exchange. Bre-X was a mining stock originally created on the Alberta stock exchange as a penny stock. Its main asset was an alleged gold strike in Indonesia, discovered by two geologists. From 1994 to 1996, the share price of Bre-X rose dramatically based on assay results from the mining operation. At one point, Bre-X was worth \$6 billion dollars on the Toronto Stock Exchange. Unfortunately, the assay results did not come from mining, but the gold was purchased from “river walkers” and used to salt the samples which were sent to the laboratory. Hence, the assay results were fraudulent; and in early 1997, the stock plummeted such that trading was halted on North American exchanges. One of the suspect geologists mysteriously fell from a government helicopter; and the other was indicted for securities fraud and acquitted following a trial.¹⁹⁻²³

Internationally, there are many works that examine the issue of security fraud more generally. Levi²⁴⁻²⁶ studied the regulation of fraud in the UK, as well as other white-collar crimes. He finds that despite the harmful impacts on the economy from securities fraud, there has been little moral panic about corporate crimes. Those who engage in securities fraud, especially those who engage in corporate security fraud, manage to evade responsibility by denying intent to cause harm. Those who commit financial crimes escape moral panics not only in the criminal context but are also portrayed more positively in media than other criminals.²⁴⁻²⁶

In the US context, Elson and Alleyne²⁷ compare the efficiency of US securities fraud policies and find that fraud legislation is under applied by regulators. Other works argue that the US financial crisis in 2008 was partially facilitated by large-scale corporate fraud.^{13,29} Due to the aggressive political power of financial interest groups and lobbying firms, there was little regulatory or criminal consequences for the banks.^{13,28} Yeager and Calathes¹² find that corporate fraud in the US is often settled administratively and outside the criminal courts. In civil settlements, the offenders are able to avoid criminal sanctions by admitting liability and negotiating fines which are less severe. In another US study, Bakan claims that there is a structural incentive to break the law as corporations have a legal “imperative” to maximize their profits.^{6,29}

Given the current state of research, there is a need to examine the types of common fraud being committed in Canada, and the types and severity of sanctions that are commonly applied to securities fraud. If *The Globe and Mail* found that recidivism rates were high, is there a lack of consequences for those who commit fraud in Canada? This project explores the same topic, using the same *Globe and Mail* dataset. *The Globe and Mail* focused on the issue of offender recidivism in their study. This project will focus more broadly on the type of violations and sanctions, and some brief descriptive features of the violators.

It is also important to note that both this study and Russel and Cheng’s study examine the same data of CSA’s ‘Disciplined List’.¹ However, Russel and Cheng only examine corporate cases, whereas this study will focus on both individuals and corporations. This study’s original sample is over 7,000 cases long and includes every single case to be indexed on the site, as compared to Russel and Cheng who examined a smaller sample of 92 disciplined cases. Even the 20% sample of 1486 cases is considerably larger than their sample.

Theory

¹Although the same data and same data source is used, Russel and Cheng⁶ collected their data independently of Roberston and Cardoso.

There are a host of explanations for securities fraud, ranging from the early work of Willem Bongers³⁰ to Robert K. Merton³¹ as well as David M. Gordon.³² All note the presence of structural holes in the marketplace and that pressures are intense at the business level to accumulate capital, sometimes by any means possible. This logically produces what Sutherland¹⁰ labelled a “culture” of corporate deviance, and because of competition over finite resources in the marketplace, the securities industry experiences organizational “strain” as noted by Merton,³¹ Quinney,⁵ and Chambliss.^{2,3,33} As David Harvey further observes:³⁴

“Stock promotions, Ponzi schemes, structured asset destruction through inflation, asset stripping through mergers and acquisitions, the promotion of level of debt encumbrance that reduce whole populations, even in the advanced capitalist countries, to debt peonage, to say nothing of corporate fraud, dispossession of assets (the raiding of pension funds and their decimation by stock and corporate collapses) by credit and stock manipulations – all of these are central features of what contemporary capitalism is about.”

Here, regulatory agencies push enforcement into the civil fraud arena. Consent settlements are negotiated with minimal financial penalties to perpetrators. Securities fraud is effectively decriminalized for market elites. Finally, a structural analysis posits that the owners of capital (finance capital in this case) receive preferential treatment due to the central role of finance capital in the functioning of the private marketplace.

This has led to the development of structural contradictions theory as an explanation of piracy, organized crime, state and white collar crime. Here is Chambliss in his own words (1988: 122-3):

At the basis of the process are structural contradictions. These may be economic, political, social, or ideological. In capitalist economic systems, a basic economic contradiction is between the private ownership of production and the public nature of the productive process; that is the “public” (workers).... We noted in Chapter 2 the prevalence of class, race, and labor strife over the years. In the beginning, the laws overwhelming favored the owners.... The fact that these laws reflected neither consensus nor societal needs was clearly established when workers, slaves, women, and children rebelled. They blatantly violated the law and suffered imprisonment, beatings, and even deaths at the hands of law enforcers....

Applying the lessons from structural contradictions theory, the question is whether data from our securities database of violators is consistent with this theoretical explanation.

Methods and data

The database examined in this study was created by *The Globe and Mail* reporters who used the data to scrutinize the recidivism rates of securities fraudsters. Using statistical software, *The Globe and Mail* scraped each fraud case in the CSA database from 1982-2017. This database included a record of each security fraud violation, along with the subsequent sanctions of each case, the violator’s name, and whether the offender was an individual or a company. *The Globe and Mail* journalist, Tom Cardoso, generously sent this file to the lead author of this paper.

From the original file of 7,954 cases, a random sample of approximately 20% was created using the random sample function on SPSS. The original sample contained 1591 cases. However, due to the nature of the data, some of the cases had either the sanction, the violation, or both missing from the data. As the goal of this project was to analyze and compare the severity of violations and sanctions,

any cases which did not include both the sanction and the violation were eliminated from the sample. After these cases were removed, the entire sample was 1486 cases.

The next step in the methodology was examining the state of variables for analysis. In order to answer the research question, the variables of violations (the security fraud violations committed by individuals or companies) and sanctions (the subsequent punishments handed down by either provincial governments or security fraud commissions) are of great importance. However, in the original coding, each violation and sanction that each individual or company received is in list form. For one case the sanctions may be: “Trading ban, administrative fine, and imprisonment”. Whereas for another case the sanctions may be: “Administrative Penalty/Fine; Registration ban and/or restrictions; other”. In the file, there are 28 possible violations and 15 possible sanctions. Therefore, there are hundreds of combinations of possible violations and sanctions. In order for there to be a meaningful statistical analysis, the file had to be recoded, specifically the violation and sanction variables. Individual dummy variables for each violation and sanction were created, with a binary category for “yes” or “no” if the violation/sanction has occurred for each case. Sanctions were also coded on whether or not they were adjourned criminally or administratively. Any cases which faced criminal trial were coded as criminal, and any cases which faced an administrative tribunal in the form of an SRO or provincial regulatory board were coded as administrative. The data was coded this way due to the current literature and information currently available on securities fraud in Canada and the researcher’s familiarity with the subject. Due to the relative unavailability of data on how security fraud regulation and rules may vary by province, a more complex coding scheme was not possible.

Other variables of interest were repeat offending and payment. The variable of payment is a dichotomous variable which discerns whether or not a payment was made. A payment can refer to fine or restitution to victims, or any other type of payment which is made as part of the sanction. Repeat offending refers to whether or not the corporation or individual had more than one case of security fraud against them, which may or may not be a traditional definition of recidivism. This variable does not distinguish when the violations occurred, or how far apart they occurred. Therefore, this variable should not be misinterpreted to represent those who were prosecuted for security fraud *and then* committed another fraud violation. Instead, it should be understood as having more than one security fraud violation at any point in time. This may inflate the number of repeat offenders, as opposed to a variable which only discerned true recidivism.

Limitations

There are many limitations to this study. Most of the limitations pertain to the data itself and to the very nature of survey data gleaned from a cursory sample of case characteristics. Some variables which may seem important to this study were unavailable for analysis at the present time due to the nature of CSA’s database. As only the names of the offenders are listed on CSA’s website, most demographic data about offenders is unknown, including gender, age, occupation, income and race/ethnicity. Provinces have digitized records retroactively, but each province has started this retroactive process at different points of time. For example, Quebec has digitized records from 2007, whereas British Columbia has digitized records as far back as 1987. Furthermore, due to the complex nature of how each individual province regulates security fraud, provincial analysis may lead to an uninformed interpretation of the complex nuances among provinces.

One of the more serious deficits with this database is the absence of narrative data on people’s lives, their emotions, their intentions, and the context of their behavior – all of which influence decision-making which has moral and legal dimensions. Reducing people and businesses to static case characteristics reifies information and eliminates what Kiviat³⁵ calls non-comparative data – which should be included in decision-making.

As this is a preliminary exploratory analysis of a sample of larger data, this study leaves many opportunities to improve upon these measures going forward. As the data is publicly available on CSA’s website, some of the missing gaps in the data may be corrected in the future. The CSA does not include demographic data on culprits in its public files. Even with these limitations, this study still has many contributions to make, especially considering the relative unavailability of security fraud analyses in the Canadian context.

Findings

Descriptive statistics

Table 1 shows the results of the descriptive statistics. We list six of the major violations and they include fraud/forgery, illegal distributions, misrepresentations, unregistered trading, false statements, and finally illegal insider trading. The largest category (28%) were illegal or unregistered distributions.

Table 1 Major violations

Variable	Response	Frequency (n=1486)	Percentage (%)
Fraud and/or forgery and/or falsification	Yes	184	12.4
	No	1302	87.6
Illegal or unregistered distributions	Yes	420	28.3
	No	1066	71.7
Misrepresentations	Yes	136	9.2
	No	1350	90.8
Unregistered, unauthorized and/or improper trading	Yes	355	23.9
	No	1131	76.1
Making false or misleading statements	Yes	60	4
	No	1426	96
Illegal insider trading	Yes	46	3.1
	No	1440	96.9

These are quasi-criminal violations of the marketplace in securities and debt instruments, and they represent attempts at capital accumulation on the part of violators. Because the operation of the marketplace is at issue, theory must address the political economy of the marketplace as a significant cause of the offending.

In Table 2, we list some descriptive features of the offenders. As noted previously, the database does not code much information about the demographics of offenders by design. Here, we learn that only 5 percent of cases are referred to provincial criminal courts; that 74% of the violators are individuals, and that recidivists/multiple cases make up 15% of our sample. Of passing interest, three Canadian provinces make up 56 percent of the cases (Alberta, British Columbia, and Ontario).

Table 2 Descriptive features

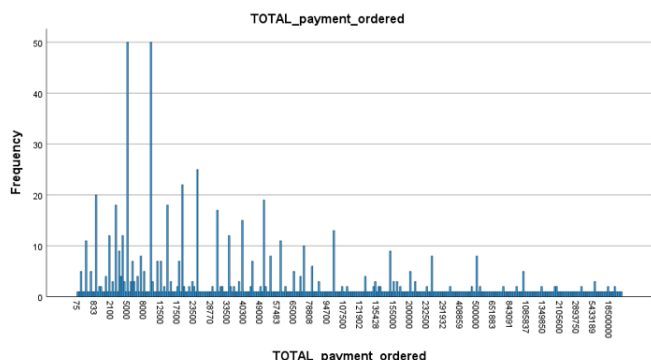
Category		Frequency (n = 1486)	Percentage (%)
Adjudicating body	Provincial Securities Commission	1144	77
	Provincial Court	71	4.8
	Self-Regulatory Organization (SRO)	271	18.2
Respondent type	Person	1103	74.2
	Corporation	383	25.8
Province	Alberta	274	18.4
	British Columbia	319	21.5
	Manitoba	124	8.3
	New Brunswick	48	3.2
	Nova Scotia	6	0.4
	Ontario	245	16.5
	Quebec	147	9.9
	Saskatchewan	95	6.4
	SRO	227	15.3
	Total		1486
Recidivists / Multiple Cases	Yes	218	14.7
	No	1268	85.3

Finally, in Table 3, we list major sanctions as well as two penalties which were rarely imposed. Termination of membership for a securities license was rarely imposed: only in 0.6% of cases. As well, imprisonment only occurred in 1 percent of the cases sampled. On the other hand, trading ban (52%), director/officer bans (31%), and fines and costs (31%) were the most typical sanctions imposed.

Table 3 Major sanctions

Variable	Response	Frequency (n = 1486)	Percentage (%)
Trading Ban (with or without conditions)	Yes	767	51.6
	No	719	48.4
Administrative Penalty/Fine	Yes	464	31.2
	No	1022	68.8
Director, Officer and/or Supervisor Ban	Yes	462	31.1
	No	1024	68.9
Imprisonment	Yes	19	1.3
	No	1467	98.7
Registration Ban	Yes	389	26.2
	No	1097	73.8
Termination of membership	Yes	9	0.6
	No	1477	99.4

Disgorgement was most common in the largest financial penalties, suggesting that when considering cost reimbursements, regulatory agencies depend, substantially, on an enforcement pattern which generates operating funds for the agencies in question. In our sample, the median fine was \$32,000; and the largest financial penalty in the sample was \$47,139,967(Figure).



Discussion

The findings from the descriptive statistics illuminate the contrast between cases which are prosecuted criminally and cases which are prosecuted through a regulatory board, with only 5% of the sanctions being criminal. Most securities fraud cases will be handled administratively as civil violations. It suggests, like other literature on the topic, that securities fraud in Canada is most often handled outside of the criminal justice system, leading to lighter penalties^{7–9,12,14,24–26} The high rate of multiple or repeat offending (15% of the sample) also compliments the literature that repeat offenders are problematic.^{6–9} However, these results must be interpreted cautiously because this variable was not a measure of true recidivism, but it does point to a similar trend of multiple and repeat offenses.

Chambliss' structural contradictions theory puts the findings into further context. The theory proposes that criminality is a function of contradictions in the capital markets, in effect, the social detritus of the marketplace. Hence, securities fraud is dealt with administratively instead of criminally. As suggested in the literature, legal agents fear creating too much 'red-tape' around financial markets.⁶ This should be properly read as opposition to enhanced government regulation and intervention against banks, brokerage houses, and dealers. Other literature demonstrated how white-collar crimes possess a much more positive social image than other criminals, evading moral panics in both the media and the public.^{24–26} Although this study cannot confirm the findings about the motivations of legal agents or moral panics, the descriptive statistics can further confirm that there is a unique context for securities fraud in Canada in which security fraudsters enjoy relaxed regulation.

Contributions and future directions

This research project has made several contributions to the literature on security fraud and corporate crime in general. First, this study has applied a Canadian context to confirm that criminal sanctions are applied far less in security fraud than regulatory sanctions, resulting in lighter penalties.¹² It also illuminates the theoretical underpinnings of security fraud regulation, suggesting that security fraud may be regulated less severely because of the unique social context of the powerful elite.^{4,5} These finding bust the myth that security fraudsters are only 'bad apples'.^{19,29} It highlights how this issue is ingrained in the legal system and part of systematic power relations which ignore the crimes of the powerful. Our analysis suggests that the regulatory structure is largely funded by the very fines it imposes on securities violators. Thus, there is a structural conflict of interest by regulators not to impose more severe sanctions, or lobby for more intervention in the securities marketplace.

Regarding future directions, the research points, in part, to a need for more severe criminal punishments for security fraud.^{6–9,12,13,28}

Ideally, these changes should consist of a more comprehensive legal framework at the federal level to ensure consistency across provinces.^{7–9} But what is also clearly implied in this research is the need for further intervention in the marketplace.³⁶ If this shift does not occur, it is unlikely that efforts to control security fraud will ever be considered a priority by the Canadian state.¹⁸

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Conflicts of interest

The author declares that there is no conflicts of interest.

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