An Examination of Securities Regulation in Canada

By

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A Thesis Submitted to the Faculty of Graduate Studies of
The University of Manitoba
in partial fulfilment of the requirements of the degree of

MASTER OF LAWS

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ABSTRACT

Securities regulators are entities responsible for supervising and regulating financial and securities markets within a designated region. Their primary role is to uphold fair and transparent trading practices, safeguard investors, and preserve the overall integrity of the financial system. This thesis examines securities regulation in Canada. It provides a historical overview and analysis of Canada's provincial securities regulation and model, advantages, effectiveness, challenges and limitations of the decentralized regulatory approach, and a comparative analysis of the United States Securities and Exchange Commission. The doctrinal methodology was adopted for the study, as the work examined relevant court decisions, supported with the use of secondary sources of data with respect to both arguments for and against the use of a single regulator in Canada, and the constitutional and practical impediments that need to be curbed. The study finds that the Canadian provincial regulatory model offers flexibility, allowing each province to tailor regulations to its specific economic and market conditions. This localized approach fosters innovation, competition, and responsiveness to regional needs while maintaining regulatory diversity. However, the decentralized system also creates challenges, such as regulatory fragmentation, inefficiencies, and difficulties in establishing a cohesive national strategy. The research argues that this model hampers Canada's ability to respond uniformly to systemic risks and adapt to the evolving global financial landscape. Centralized models like the U.S. SEC enable faster, coordinated responses during financial crisis, though they may struggle with localized market issues. While Canada's system allows for tailored regulations, the inconsistencies across provinces complicate compliance and may weaken investor confidence. The research supports adopting a more centralized approach in Canada, recommending improved inter-provincial coordination, standardized regulations, and technological innovation to enhance regulatory efficiency and systemic risk management.

ACKNOWLEDGEMENT

I am deeply grateful to God Almighty for granting me the strength and opportunity to complete this program. I also wish to express my sincere appreciation to the University of Manitoba for awarding me the International Scholarship upon admission, which significantly eased my financial burden at the outset of my studies.

Foremost, I am deeply indebted to my supervisor, Professor Darcy MacPherson, for his exceptional guidance, critical insights, and unwavering support throughout the course of this research. His expertise and thoughtful feedback were instrumental in shaping both the direction and quality of this work. I am also sincerely grateful to Professor Donn Short, Associate Dean, and Director of the LLM Research Program, for his valuable advice and support. His thoughtful suggestions significantly enriched the final outcome of this thesis. I extend my appreciation to the staff of the E.K. Williams Law Library for their assistance in providing access to essential resources and research materials. Their support played a vital role in facilitating the completion of this project.

I would also like to acknowledge my colleagues and coursemates for their encouragement. Their shared insights and support helped create a stimulating academic environment throughout this journey. My heartfelt thanks go to my parents and siblings for their enduring love, unwavering financial support, and encouragement. Their belief in my potential made it possible for me to pursue this academic endeavor in Canada. Lastly, I offer special thanks to my husband, Mr. Powell Kelega, for his constant emotional support, patience, and understanding. His encouragement and steadfast belief in me have been a continuous source of motivation.

To all who supported me in any capacity, your contributions have been invaluable, and I am truly grateful.

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1.1 Definition of Terms

Securities: Securities are financial instruments that represent ownership (stocks), a creditor relationship (bonds), or rights to ownership (options) (Cobrief, 2024). They are tradable assets used to raise capital in public and private markets.

Securities Regulation: This is the framework of laws, rules, and guidelines governing the issuance, trading, and disclosure of securities to protect investors, maintain fair and efficient markets, and promote financial system stability (Gratton, 2024).

Securities Regulator: A government agency or authority responsible for enforcing securities laws, overseeing market participants, and ensuring compliance. In Canada, examples include the Ontario Securities Commission (OSC) and the Autorité des marchés financiers (AMF) in Quebec.

Federalism: A constitutional system in which power is divided between a central (federal) government and regional (provincial or territorial) governments. In Canada, this affects how securities regulation is structured and shared.

Systemically Important Financial Market Infrastructures (FMIs): Institutions or systems whose failure could trigger serious risks to the financial system. Examples include clearing houses and payment systems. They are subject to enhanced regulatory oversight.

PFMI (Principles for Financial Market Infrastructures): International standards developed by the CPMI-IOSCO to strengthen the stability and resilience of key financial infrastructures such as payment systems, central securities depositories, and central counterparties.

Canadian Securities Administrators (CSA): An umbrella organization of Canada's provincial and territorial securities regulators that coordinates regulation and develops harmonized policies and enforcement strategies across jurisdictions.

Capital Markets: Financial markets where long-term debt or equity-backed securities are bought and sold. Efficient capital markets are essential for economic growth and investor confidence.

Cooperative Capital Markets Regulatory System (CCMR): A proposed voluntary framework that aims to create a unified securities regulator across participating provinces and territories, balancing national oversight with provincial jurisdiction.

CHAPTER 1: INTRODUCTION

1.1 Introduction

Securities regulators are organizations that oversee and regulate the securities and financial markets within a specified jurisdiction.[1] They play a crucial role in ensuring fair and transparent trading practices, protecting investors, and in general, maintaining the integrity of the financial system.[2] Securities regulators establish and enforce rules and regulations that govern the issuance, trading and disclosure of securities such as stocks, bonds and derivatives.[3] They also monitor and supervise market participants, including brokers, and investment advisors, to ensure compliance with these regulations.[4] The primary goal of securities regulation is to promote investor confidence and maintain the efficiency of the financial market.[5]

Canadian law on securities regulation is primarily governed by provincial and territorial securities regulators.[6] Each province and territory in Canada has its own securities commission or regulatory authority that oversees and enforces securities laws and regulations within their jurisdiction.[7] However, there is also a national regulatory body called the Canadian Securities Administrators (CSA), which is an umbrella organization consisting of representatives from each provincial and territorial securities regulator.[8] The CSA works to harmonize and

[1] Michael Schmidt, "Financial Regulators: Who they are and what they do" (2021), online: <https://www.investopedia.com/articles/economics/09/financial-regulatory-body.asp>.
[2] Janet Austin, "What Exactly is Market Integrity? An Analysis of One of the Core Objectives of Securities Regulation" (2017) 8:2 William & Mary Business Law Review 216.
[3] *Ibid*.
[4] Janet Austin, "Protecting Market Integrity in an Era of Fragmentation and Cross-Border Trading" (2014) 34: 20 JFM 26-27.
[5] Goshen Zohar, "The Essential Role of Securities Regulation" (2004) 55:4 Duke Law Journal 102.
[6] Naglie Harvey, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" <https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf> accessed 15 June 2024.
[7] Thomas Hockin, "Securities Regulation in Canada: The Case of Effectiveness" (2024) online, <https://irpp.org/research-studies/securities-regulation-in-canada/>.
[8] Canadian Securities Administrators, "About Us" (2024) online, <https://www.securities-administrators.ca/about/>

coordinate securities regulation across Canada, aiming for consistent standards and investor protection. The CSA also facilitates information sharing and collaboration among the various securities regulators in the country.[9]

Some experts in the field, including regulators, industry representatives, and legal practitioners, have proposed improvements to the securities framework in Canada. One area of focus is reducing the barriers for issuers and registrants who want to access multiple jurisdictions within Canada.[10] However, it is worth noting that there are differing opinions on this matter.[11]. Some argue that the existing securities regulation in different regions of the country is sufficient, considering the unique characteristics of the Canadian market.[12] This thesis is focussed on explaining and comparing and contrasting these views and uncertainties about the benefits and challenges associated with the single-regulator system,

Over the years, provincial securities legislation has been updated to ensure fair disclosure by reporting issuers, and to protect investors from abusive practices, and oversee securities exchanges to maintain market integrity.[13] Issuers refers to companies or organizations that sell securities like stocks or bonds, to the public to raise money. Imagine a company wants to grow – maybe build a new factor or launch a new product. To do that, it needs more money. Instead of taking a loan, the company might issue (or sell) shares or bonds

[9] C.D. Howe Institute, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" Commentary No.489 (2021) online,
<https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf>
[10] Anand Anita and Klein Peter, "Inefficiency and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda" (2005) 42, Canadian Business Law Journal 41
[11]A. Anand, "Is Systemic Risk Relevant to Securities Regulation?" (2016) 2(2) Journal of Financial Regulation 242-272; P. Crawford & M. Elliot, "The Proposed Cooperative Capital Markets Regulatory System: Evolution or Revolution?" (2015) 56(1) Canadian Business Law Journal 27; M. Morrow, "The Canadian Securities Administrators and the Shifting Landscape of Securities Regulation in Canada" (2019) 56(3) Alberta Law Review 691-713
[12] Autorite Des Marches Financies, "Single Regulator: A Needless Proposal" Brief Submitted to the Expert Panel on Securities Regulation (July 2008)
<lautorite.qc.ca/fileadmin/lautorite/grand_public/publications/professionnels/val-mob/Memoire-commission-unique-07-08_ang.pdf>
[13] Mohindra Neil, "Securities Market Regulation in Canada" (2002) 2 Fraser Institute Critical Issues Bulletin 5

to investors on the stock market. When it does this, it becomes what's called a "reporting issuer" — a company that must regularly share important information with the public so investors can make informed decisions.

Today, Canada's 13 securities regulatory agencies play various roles in safeguarding investors and ensuring the integrity of the market.[14] The investment industry and securities regulation in Canada serve distinct but interconnected roles within the financial system. The investment industry encompasses various entities involved in the buying, selling, and managing of securities.[15] This includes investment banks, brokerage firms, mutual-fund companies, financial advisors, and asset management firms. These entities facilitate the investment process for individuals, corporations, and institutional investors. They offer a range of financial products and services tailored to different investor needs and risk profiles. The investment industry operates within the framework of regulations set by securities regulators to ensure fair and transparent markets and to protect investors from fraudulent activities.[16]. Securities regulators investigate and prosecute violations of securities laws, impose sanctions on individuals and firms found to be in breach of regulations, and provide investor education and outreach to promote awareness and understanding of investing risks and rights.[17]

There have been concerns about the provincial system of securities regulation. These have led to repeated calls for a national securities system in Canada.[18] One of the main problems is the lack of uniformity and consistency across different provinces and territories. Each jurisdiction has its own rules, regulations and processes, which have created complexities

[14] Canadian Securities Association, "Who we are" (2023), online, <https://www.securities-administrators.ca/about/who-we-are/>
[15] Anand Anita and Klein Peter, "Inefficiency and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda" (2005) 42, Canadian Business Law Journal 41
[16] Romano Roberta, "For Diversity in the International Regulation of Financial Institutions: Critiquing and Recalibrating the Basel Architecture" (2014) 31 Yale Journal of Regulation 1.
[17] *Ibid.*
[18] Cooperative Capital Markets Regulatory System, "Commentary on the Cooperative Capital Markets Regulatory System Governance and Legislative Framework" (2014), online: < http://ccmr-ocrmc.ca/wp-content/uploads/Commentary-English1.pdf>.

for businesses operating in multiple regions. The lack of harmonization has resulted in additional compliance costs and administrative burdens when offering securities in multiple jurisdictions. However, the move towards a single securities regulator has faced constitutional and jurisdictional hurdles, making it a complex and ongoing issue in Canada.

The government took steps to address these challenges by establishing the Canadian Securities Administrators (CSA) to coordinate and harmonise securities regulations. Despite the fact that the government sought for the single regulator because of the increasing demand. While many stakeholders have called for a single national securities regulator, efforts to create one have faced constitutional hurdles, particularly around provincial jurisdiction over property and civil rights. As a result, the CSA has served as a collaborative response rather than a centralised authority. As thus, the CSA in 2021 announced plans to establish a new self-regulatory organization (SRO) to streamline oversight of investment dealers and mutual fund dealers. This restructured framework aims to protect investors, enhance public confidence, support innovation, and promote fair and efficient market operations.[19] This new framework aims to protect investors, enhance public confidence, accommodate innovation, and ensure fair market operations.[20]

There is a need to critically observe the existing provincial system of securities in Canada, the associated problems and benefits, to determine the need (if be) of enacting a single regulation system, as proposed by the Canadian federal government. Will this improve the regulatory and criminal enforcement to better fight security-related crimes, and improve the stability of the Canadian financial system? This will be examined along with a comparative

[19] Anita Anand and Maziar Peihani, "Regulating Systemic Risk in Canada" In Douglas W. Aner, *Systemic Risk in the Financial Sector: Ten Years After the Great Crash* (Waterloo: Centre for International Governance Innovation, 2019) 11
[20] *Ibid*.

analysis of the situation in United States, in a bid to provide better mechanisms to ensure an efficient and adequate securities regulatory system in Canada.

1.2 Scope and Limitations

This research examines securities regulation in Canada, with a short comparative element considering the United States. The study will provide a historical overview and analysis of Canada's provincial securities regulation; the provincial model, challenges and limitation of the decentralized regulatory approach. The comparative analysis of the SEC in the United States. The work seeks to carry out a comparative analysis of the regulatory efficiency, responsiveness, and effectiveness between Canada's decentralized model and the United States' largely single regulator approach, and how the Canadian regulatory structures influence market stability and investor convenience; the systemic risk management and regulatory coordination. This will be done in a bid to provide recommendations for enhancing securities regulation in Canada, including potential reforms to improve regulatory efficiency and effectiveness.

Nonetheless, this study has several limitations that should be noted. The study focuses primarily on securities regulation in Canada and the United States, and may not fully capture the nuances of other regulatory model or international perspectives. The United States was selected as a comparator based on the fact that this centralised system has enhanced the U.S.'s international competitiveness, attracting international investors to its jurisdiction. Also, the U.S. and Canada are both developed, high-income countries with large, complex, and internationally integrated capital markets. Canada's capital markets are also closely intertwined with U.S. markets, and many Canadian firms list securities in both countries (dual listings on TSX and NYSE, for instance).

The availability of data and information, especially regarding regulatory decisions and their impact, may be limited, potentially affecting the depth of the analysis.

Despite these limitations, the study hopes to provide a valuable contribution to the understanding of securities regulation in Canada, offering insights that can inform future research and policy decisions in this area.

1.3 Justification of the Study

The regulation of securities markets is a critical aspect of maintaining financial stability, ensuring investor protection, and fostering market integrity. In Canada, the debate between adopting a single national securities regulator versus maintaining the existing provincial system has been ongoing for years, with significant implications for stakeholders across the spectrum. This study aims to provide a comprehensive examination of Canada's securities regulation analysing the merits and drawbacks of both the provincial and single regulatory models.

Securities regulation plays a pivotal role in maintaining economic stability and protecting investors. Effective regulation ensures market integrity, reduces systemic risk, and fosters investor confidence. By examining Canada's current provincial regulatory framework, this study will assess whether the decentralized approach meets these objectives or if a unified national regulator could enhance regulatory efficiency and consistency across provinces. A key focus will be on the ability of each model to respond to financial crises and mitigate systemic risks that could potentially destabilize the economy.

Different stakeholders, including provincial governments, financial institutions, investors, and market participants, have vested interests in the regulatory structure. Provincial regulators argue that localized oversight allows for tailored approaches that consider regional economic conditions and specific market dynamics. Conversely, proponents of a national regulator emphasize the benefits of uniform standards and centralized oversight. This study will delve

into these perspectives, evaluating the potential trade-offs and benefits for various stakeholders under each regulatory model.

The historical and legal context of securities regulation in Canada, including landmark Supreme Court decisions, needs thorough examination to understand the constitutional and practical challenges of shifting to a single national regulator. The study will provide a detailed analysis of these factors.

1.4 Research Methodology

This study adopts a doctrinal and comparative legal research methodology to critically examine the regulatory structure of securities law in Canada and to assess the implications of ongoing reforms, including the proposed establishment of a national self-regulatory organization (SRO).

The doctrinal method will be applied by tracing the development and current use of securities laws administered by provincial and territorial regulators in Canada. This will involve an analysis of legislation, regulatory instruments, and judicial decisions that define the scope and limits of provincial jurisdiction over securities regulation. Particular attention will be paid to key constitutional cases, such as Reference re Securities Act (2011) and Reference re Pan-Canadian Securities Regulation (2018), to explore the legal framework underpinning Canada's fragmented system.

In addition, a comparative approach will be employed to analyze how the United States, which operates under a centralized federal securities regulator (the SEC), addresses similar regulatory challenges. This comparison is justified due to the close economic and financial ties between the two countries, their shared legal traditions, and the relevance of the U.S. model as an internationally recognized benchmark for securities regulation. The comparative analysis will highlight institutional differences, policy effectiveness, and investor protection outcomes,

providing a basis for evaluating whether Canada's reliance on cooperative federalism adequately meets the needs of a modern capital market.

Secondary sources, including academic literature, regulatory reports, government publications, and expert commentary, will be used to contextualize arguments for and against the creation of a single securities regulator in Canada, with emphasis on both constitutional constraints and practical implementation challenges.

1.5 Literature Review?

There have been various studies relating to securities regulations in Canada.

Tabor Pittman provided the issues as an impetus for harmonizing Canadian Securities Law.[21] The work provides a debate in Canada about the state of its security's regulatory framework. It provides arguments for harmonizing Canada's securities laws, and the arguments for maintaining the status quo. The author also discusses the issuers as an impetus for harmonization. However, the work fails to compare the situation in other nations as the arguments supporting both scenarios were not adequate enough. This research intends to fill this gap.

Anand[22] explores the relevance of systemic risk to securities regulation, emphasizing the potential advantages of a single national regulator in mitigating such risks. The author argues that a unified regulatory framework could enhance the ability to monitor and address systemic threats more effectively than a fragmented provincial system. Anand highlights that while provincial regulators have local expertise, they may lack the comprehensive oversight needed to manage systemic risks that transcend provincial boundaries. The author finds that systemic

[21] Tabor Pittman, "Issues as an Impetus for Harmonizing Canadian Securities Law" *Law and Business Review of the Americas* (2006) (12) (3) 413-426

[22] Anita Anand, "Is Systemic Risk Relevant to Securities Regulation?" (2016) 2(2) Journal of Financial Regulation 242-272

risk requires a coordinated regulatory approach. Her work also reveals that a single national regulator could improve oversight and crisis management.

Crawford and Elliott[23] analyse the proposed cooperative capital markets regulatory system in Canada, assessing whether it represents an evolutionary step or a revolutionary change. They argue that the cooperative model aims to balance the benefits of a unified regulatory approach with the need for provincial autonomy. The authors suggest that while the cooperative model could enhance regulatory consistency and reduce duplication, it may face implementation challenges. Thus, the study reveals that these implementational challenges may include aligning provincial and national interests.

Morrow[24] examines the role of the Canadian Securities Administrators in the context of the ongoing debate over a national versus provincial regulatory system. The author discusses how the CSA facilitates coordination among provincial regulators but also highlights the limitations of this approach. Morrow argues that while the CSA has been effective in some areas, a single national regulator could streamline processes and reduce regulatory fragmentation.

However, Johnston and McGill[25] review Supreme Court of Canada decisions related to the federalism of securities regulation, providing a legal perspective on the debate. They argue that the Court's rulings reflect a cautious approach to centralizing regulatory authority, emphasizing the constitutional challenges of establishing a single national regulator. The authors suggest that any move towards a national regulator must carefully navigate the federal-provincial power balance.

[23] P. Crawford & M. Elliot, "The Proposed Cooperative Capital Markets Regulatory System: Evolution or Revolution?" (2015) 56(1) Canadian Business Law Journal 27
[24] M. Morrow, "The Canadian Securities Administrators and the Shifting Landscape of Securities Regulation in Canada" (2019) 56(3) Alberta Law Review 691-713
[25] J. Johnson, and L. McGill, "The Supreme Court of Canada and the Federalism of Securities Regulation" (2014) 56(3) McGill Law Journal 571-604

Puri[26] offers a comprehensive overview of the historical and contemporary efforts to establish a national securities regulator in Canada. Her work effectively outlines the key arguments in favour of reform — including improved regulatory efficiency, enhanced investor protection, and increased global competitiveness. She also acknowledges the constitutional and legal complexities that have hindered the establishment of a unified national regulator. However, while Puri's work lays an important foundation, it remains primarily descriptive and theoretical, and does not extensively explore the practical implementation challenges associated with transitioning from a fragmented provincial system to a centralized regulatory model. These include intergovernmental coordination, operational restructuring, enforcement harmonization, and stakeholder resistance — areas that this current study seeks to examine in greater detail. Moreover, this study builds on Puri's work by adopting a comparative legal approach, analyzing the Canadian regulatory landscape alongside that of the United States, where a federal model has been successfully implemented. This comparative angle enables a more nuanced discussion of institutional design, regulatory capacity, and investor outcomes, offering insights that go beyond the Canadian context.

Therefore, this research contributes to the literature by moving from broad normative discussions to a more granular analysis of the practical and institutional barriers to reform, while also situating the Canadian experience within a wider global regulatory context.

1.6 The Thesis Roadmap

The paper will proceed as follows. Chapter 2 provides a comprehensive historical background of Canadian securities regulation. It begins by exploring the various debates that occurred before the federal government passed significant legislation, highlighting the key arguments and stakeholders involved in shaping the regulatory landscape. The chapter traces the evolution

[26] P. Puri, "Reforming the Regulation of the Canadian Capital Markets: The Quest for a National Securities Regulator" (2012) 49(3) Osgoode Hall Law Journal 661-692

of securities regulation up to the current framework, detailing major events, policies, and reforms that have influenced the current system. It examines the early efforts to establish a regulatory framework, the challenges faced, and the milestones achieved. Finally, the chapter delves into the ongoing discussions and initiatives aimed at moving towards a single regulatory framework, outlining the motivations, potential benefits, and obstacles associated with this shift.

Chapter 3 offers an in-depth analysis of Canada's provincial securities regulation. It begins by highlighting the advantages and strengths of the provincial model, such as localized expertise, tailored regulations that address specific market needs, and the ability to innovate and respond quickly to local market conditions. The chapter then discusses the challenges and limitations of the decentralized regulatory approach, including regulatory fragmentation, inefficiencies, inconsistencies in enforcement, and the complexity of coordinating efforts among different provinces. To illustrate these points, the chapter presents case studies of notable regulatory issues and their resolutions at the provincial level, providing real-world examples of the strengths and weaknesses of the current system.

Chapter 4 focuses on the efficiency, responsiveness, and effectiveness of the Canadian securities regulator. It begins with a comparison of these aspects with Canada's decentralized regulatory system, examining how each structure impacts the regulatory process, market stability, and investor confidence. The chapter analyses how different regulatory frameworks influence the ability to maintain a stable and transparent market environment, protect investors, and foster economic growth. It discusses the importance of systemic risk management and regulatory coordination. Additionally, this chapter examines the role and performance of the United States Securities and Exchange Commission (SEC) during financial crises, evaluating its centralized approach and its ability to manage systemic risks. The chapter also examines regulatory responses to major financial events in Canada, providing insights into the

effectiveness of centralized versus decentralized systems in crisis situations. Finally, it considers potential reforms to improve regulatory efficiency and effectiveness in Canada, proposing strategies to enhance coordination, reduce fragmentation, and better address emerging risks in the financial markets.

Chapter 5 concludes the study with a comprehensive summary of the key findings from the previous chapters. It synthesizes the insights gained from the historical background, and analysis of the provincial regulatory model, and comparison with the single centralized approach. The chapter then presents recommendations based on the analysis, suggesting specific actions and policy changes to enhance the effectiveness of securities regulation in Canada. These recommendations aim to address the identified challenges, leverage the strengths of both provincial and centralized approaches, and promote a more cohesive and efficient regulatory framework. The chapter ends with a conclusion that encapsulates the overall insights and implications of the research, emphasizing the importance of a well-designed regulatory system for ensuring market stability, protecting investors, and supporting economic growth in Canada.

CHAPTER II: HISTORICAL BACKGROUND OF CANADIAN SECURITIES REGULATION

This chapter is very significant as it provides the reader with an overview of the historical development of securities regulation in Canada. To enhance clarity, consider dividing the historical developments into two distinct sections. The first section will focus on the period of provincial exclusive regulation of securities, during which the federal government had no involvement in this area. The second section will address the time marked by federal government intervention, specifically with the establishment of the Wise Person Committee in 2003, the subsequent proposal of the Canada Securities Act, and the Supreme Court's determination of the Act's constitutionality.

2.1 The Era of Exclusive Provincial Regulation

The evolution of securities regulation in Canada is a story marked by gradual development, regional diversity, and ongoing debates about the most effective regulatory framework.

The origins of securities regulation in Canada are rooted in the provincial exercise of power over "property and civil rights," as provided under section 92(13) of the Constitution Act, 1867. This constitutional provision effectively assigned jurisdiction over securities regulation to the provinces. As a result, each province and territory established its own securities regulator and enacted its own securities legislation. This led to a fragmented regulatory framework, with different disclosure requirements, enforcement mechanisms, and administrative structures across the country.

In the early 20th century, Canada's financial markets were relatively small and regionalized, with little formal regulation.[27] The first laws related to securities emerged at the provincial level, reflecting the decentralized nature of Canadian governance and the focus on local

[27] Canadian Securities Administrators, "Introduction to Canadian Securities Administrators", (2018), online: https://www.securities-administrators.ca/wp-content/uploads/2021/08/Introduction_to_CSA_170206_Eng.pdf

issues.[28] These early regulations were primarily concerned with preventing fraud and ensuring the integrity of capital markets within individual provinces.[29]

Ontario, home to the Toronto Stock Exchange (TSE), was the first province to introduce securities legislation.[30] In 1928, Ontario passed the *Securities Frauds Prevention Act*,[31] aimed at curbing fraudulent practices in the sale of securities. This act laid the foundation for future regulatory efforts but was limited in scope, primarily addressing misrepresentation and fraud.

Other provinces followed Ontario's lead, enacting their own securities laws throughout the 1930s and 1940s. For instance, British Columbia passed its *Securities Act* in 1947,[32] while Quebec introduced its *Securities Act* in 1940.[33] These provincial laws varied widely, reflecting the economic and political priorities of each region.[34]

The post-World War II era saw rapid economic growth in Canada, leading to increased activity in financial markets and a corresponding need for more robust securities regulation. The provinces continued to play the dominant role in regulating securities, with each province developing its regulatory framework to address the growing complexity of financial markets.[35]

During this period, several provinces established securities commissions to enforce their respective securities laws. The Ontario Securities Commission (OSC) was created in 1932, becoming one of the most influential regulatory bodies in the country. Other provinces, such

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[28] Ibid
[29] Houston Carlson and Rita Jones, "Canadian Manager Perceptions of the US Exchange Listings: Recent Evidence" (2012) 13:3 Journal of International Financial Management and Accounting 235-253
[30] Martin Joe, "How Toronto became the Financial Capital of Canada: The Stock Market Crash of 1929" (2021), online: https://www.rotman.utoronto.ca/-/media/Files/Programs-and-Areas/CanadianBusinessHistory/Stock-Market-Crash-of-1929_UPDATED.pdf?la=en
[31] SA 1929, c 10
[32] RSBC 1996 C. 418
[33] Quebec's Securities Act RSQ c. V-1.1
[34] Dodek, A. "The Politics of the Single Securities Regulator" (2008) 13:2 Review of Constitutional Studies 282
[35] Sailman, M. Salman, "Legal Aspects of Financial Services Regulation and the Concept of a Unified Regulator" (2006) online, https://documents1.worldbank.org/curated/en/739411468153873981/pdf/359190PAPER0Le1s01OFFICAL0USE0ONLY1.pdf p.4

as Quebec,[36] Alberta,[37] and British Columbia,[38]also established their securities commissions, each with varying degrees of power and autonomy.

Despite the establishment of these commissions, significant variations existed between provincial regulations. Differences in enforcement practices, registration requirements, and disclosure obligations created a fragmented regulatory environment, complicating compliance for companies operating in multiple provinces.[39] In the past, there were some questions as to whether provincial securities laws applied to federally incorporated corporations.[40] The current position is that the law that has the effect of incapacitating a federally incorporated corporation from operating in a province is void as regards the federally incorporated corporation.[41] Subsequently, in *Mayland and Mercury Oils Limited v. Lymburn and Frawley*,[42] the Privy Council ruled that provincial securities law did not violate the federal government's authority over criminal law. This decision altered the division of powers by affirming that provincial legislation could apply to federal corporations. It further emphasized that federal companies were entitled to raise capital within provincial jurisdictions without restriction.[43] "Consequently, corporations incorporated under the federal residual power in s. 91 of the *Constitution Act, 1867* cannot be prevented from issuing securities by the provincial regulatory authorities in furtherance of the provincial powers in s. 92(13) relating to property and civil rights in the provinces.

[36] Autorite des marches finacies, "The Autorite' des marches financiers inaugurates head office" (2004), online, https://lautorite.qc.ca/en/general-public/media-centre/news/fiche-dactualites/the-autorite-des-marches-financiers-inaugurates-its-head-office-1
[37] Alberta Securities Commission, "About the ASC" (2023), online, https://www.asc.ca/about-the-asc
[38] Walker, G.A. "The British Columbia Securities Commission and the National Regulator Debate: A Legal and Economic Perspective" (2007) 20:1 Canadian Journal of Administrative Law and Practice 31-36
[39] *Ibid*
[40] See *Manitoba (Attorney General) v. Canada (Attorney General),* [1929] 1 D.L.R. 369 (J.C.P.C.) [Manitoba].
[41] *Ibid*
[42] [1932] 1 WWR 578 (Alta JCPC).
[43] [1932] 1 WWR 578 (Alta JCPC). See Mary G Condon, Anita I Anand, Janis P Sarra, *Securities Law in Canada: Cases and Commentary*, 2d ed. (Toronto: Edmond Montgomery Publications, 2010) at 90.

In *Multiple Access Ltd. v. McCutcheon*,[44] legislative overlap between federal and provincial governments regarding insider trading laws persisted.[45] The court affirmed that both federal and provincial laws could coexist, as citizens could feasibly comply with both without conflict. The operation of one did not invalidate the other. Notably, the court refrained from definitively ruling out the feasibility of a unified federal framework in this context.[46] In 1999, recognizing the need for some amount of coordination and harmonization, Canadian securities regulators got together to develop the Mutual Reliance Review System (MMRS), which coordinated regulatory review across participating jurisdictions. Under this system, firms applying to list in multiple provinces/territories were generally reviewed by a single jurisdiction, which would then coordinate the review with the other relevant and participating jurisdictions. Applicants would receive a single decision covering all participating jurisdictions in which they applied.

As Canada's economy became more integrated and financial markets expanded, the limitations of a fragmented regulatory system became increasingly apparent. The 1960s and 1970s were marked by growing calls for greater coordination among provincial regulators and the consideration of a national securities regulatory framework.[47]

One of the first significant efforts to address the issue of regulatory fragmentation was the Kimber Report, published in 1965. Commissioned by the Ontario government, the report, led by Professor Leslie Kimber, recommended the creation of a national securities commission to harmonize regulations across Canada. The report highlighted the inefficiencies and inconsistencies in the existing system, and argued that a national regulator would enhance

[44] (1982) 2 161 15299
[45] Supreme Court of Canada, "Multiple Access Ltd v. McCutcheon", (1982), online, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2450/index.do
[46][1982] 2 SCR 161. See also Condon, Anand & Sarra, *supra* note 33 at 99-100.
[47] Walter Engert, Ben S. Fung, Loretta Nott, and Jack Selody, "Restructuring the Canadian Financial System: Explanations and Implications" online, https://www.bis.org/publ/confp07g.pdf p.142

investor protection and market integrity.[48] However, the recommendation was met with resistance from the provinces, particularly Quebec and Alberta, who were concerned about losing control over their local markets.[49]

In response to the challenges of regulatory fragmentation, the Canadian Securities Administrators (CSA) was formed in 1975 as an informal association of provincial and territorial securities regulators.[50] The CSA aimed to improve coordination and harmonization across provinces through the development of national policies and instruments.[51] While the CSA helped to streamline certain aspects of regulation, it lacked the authority to enforce its policies uniformly across the country, leaving significant power in the hands of individual provinces.[52]

The 1980s and 1990s were characterized by rapid changes in global financial markets, increased cross-border investment, and the growing complexity of financial instruments.[53] These developments put additional pressure on Canada's fragmented regulatory system and intensified the debate over the need for a national securities regulator.[54]

During the 1900s, National Policy Instruments (NPIs) introduced by the CSA to standardize certain aspects of securities regulation across provinces began to be more prevalent.[55] These

[48] Standing Senate on Banking, Trade and Commerce, *The Governance of Securities Regulation in Canada* (SSSBTC, 1996) 2-3
[49] Institute for Research on Public Policy, "Securities Regulation in Canada: The Case for Effectiveness" (2021), online, https://irpp.org/research-studies/securities-regulation-in-canada/
[50] Canadian Securities Administrators, "About Us", (2023), online, https://www.securities-administrators.ca/about/
[51] *Ibid*
[52] Nessbitt, J. "The Evolution of Securities Regulation in Canada: A Historical Perspective" (2006), 44:1 Canadian Business Law Journal 56-87
[53] Eswar S. Prasad, Kenneth Rogoff, Shang-Jin Wei, and Ayan Kose, "Effects of Financial Globalization on Developing Countries" (2003), 220 Occasional Paper, online, https://www.imf.org/external/pubs/nft/op/220/index.htm
[54] Poonam Puri, "The Capital Market Perspective on a National Securities Regulator" (2010), 51:20 Supreme Court Law Review 616
[55]Neil Mohindra, "Securities Market Regulation in Canada" (2002) Critical Issues Bulletin 5

instruments covered areas such as continuous disclosure requirements,[56] prospectus filing,[57] and insider trading regulations.[58] While NPIs represented a significant step towards harmonization, they were still subject to provincial interpretation and enforcement, leading to continued inconsistencies.[59]

Fischer and Milbourne explore the role of provincial securities commissions in the development of Canada's regulatory framework, highlighting the interplay between provincial and federal authorities and the impact on the broader regulatory landscape.[60] In 1994, according to the authors, the Dey Report, named after its chair Peter Dey, called for greater coordination among provincial regulators and emphasized the need for a more unified approach to address the challenges of modern financial markets.[61] However, like previous reports, it stopped short of recommending the establishment of a national securities regulator, reflecting the political sensitivities surrounding the issue.[62]

In sum, the Ontario Securities Act became one of the most influential models, and Ontario emerged as a leading jurisdiction due to the size of its capital markets. Nonetheless, other provinces, such as Quebec, Alberta, and British Columbia, developed distinct approaches to regulation, reflecting local priorities and market conditions. This period was characterized by: a lack of centralized coordination among provincial regulators; challenges in harmonizing regulatory standards; barriers to efficient cross-provincial capital raising; investor confusion over inconsistent protections. Despite these challenges, there was limited political or public

[56] Ontario Securities Commission, "Continuous Disclosure" (2024), online, https://www.osc.ca/en/industry/companies/continuous-disclosure
[57] Ontario Securities Commission, "Filing a Prospectus in Ontario" (2024), online, https://www.osc.ca/en/industry/companies/selling-securities-ontario/filing-prospectus-ontario
[58] BC Securities Commission, "National Instrument 41-101 General Prospectus Requirements, (2023), online, https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicy4/41101_NIBlacklineAmendmentProposed.pdf
[59] Ibid
[60] Fischer, L. & Milbourne, R. (2007). "Securities Regulation and the Role of Provincial Commissions in Canada" (2007), 50:3 Canadian Public Administration 320
[61] *Supra, note 60*
[62] Ibid 313-333

pressure for a national system until the globalization of capital markets and the rise of complex financial instruments in the late 20th century exposed the limitations of the decentralized model.

2.2 Federal Government Intervention and the Move Toward Reform

The second phase of Canada's securities regulation history is marked by federal involvement, beginning with rising concerns about the inadequacy of a fragmented regulatory system to address the demands of a modern, globalized financial market. The early 2000s saw renewed efforts to create a national securities regulator, driven by concerns over the effectiveness of the existing regulatory framework and the need to enhance Canada's global competitiveness.

In 2003, the federal government established the Wise Persons' Committee to review the structure of securities regulation in Canada.[63] The committee's report, published in December 2003, strongly recommended the creation of a single national securities regulator, arguing that the existing provincial system was fragmented, inefficient, and inadequate for dealing with the complexities of modern financial markets.[64] The report emphasized that a national regulator would improve investor protection, streamline enforcement, and enhance Canada's ability to compete globally.[65] Despite these recommendations, the proposal faced significant opposition from several provinces, particularly Quebec and Alberta, which viewed it as an encroachment on their jurisdiction.[66]

The opposition from provinces like Quebec, Alberta, and British Columbia was rooted in concerns about losing regulatory control and the potential centralization of power in Ontario,

[63] Steering Committee of Ministers, "Securities Regulation in Canada: An Inter-Provincial Securities Framework" (2003), online, https://securitiescanada.org/securities_discussion_paper_english.pdf
[64] Government of Canada, "WPC Committee to Review the Structure of Securities Regulation in Canada" (2003), online, https://publications.gc.ca/site/eng/9.688779/publication.html
[65] Ibid
[66] Harvey Naglie "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017), online, https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf

where the bulk of Canada's financial activity was and remains concentrated.[67] These provinces argued that their unique market conditions required localized regulation and that a national regulator could not adequately address regional differences.[68]

While the Wise Persons' Committee (WPC) report recognized the positive aspects of Canada's current system of 13 provincial and territorial regulators, it asserted that the system's weaknesses are significant and outweigh its strengths. According to the WPC, Canada faces challenges such as inadequate enforcement and inconsistent investor protection. The committee also noted that the existing system leads to slow policy development, unnecessary duplication, inefficiencies, and regulatory complexities. The WPC concluded that these weaknesses makes Canada less competitive than it should be in an era of growing global competition.[69]

The WPC also found that the passport system did not adequately address the weaknesses inherent in provincial regulation for two key reasons. First, the WPC argued that the system would not enhance law enforcement, as provincial commissions would still have varying enforcement priorities and smaller provinces might lack the resources needed for effective enforcement. Additionally, provincial commissions would remain limited in their ability to impose sanctions for legal breaches across different jurisdictions. Second, the WPC believed that policy development under the passport system would remain slow and unresponsive, as it would still depend on the ability of provincial commissions to achieve consensus.[70]

The WPC aimed to assess the costs associated with complying with a regulatory framework characterized by multiple regulators and inconsistencies in securities regulation across

[67] Kryzanowski, L. & Roberts, G.S. "Canadian Securities Regulation: Recent Developments and Emerging Trends" Canadian Investment Review (2005), 18:3, 12-20
[68] Ibid 16
[69] Tara Grey & Andrew Kitching,*"Reforming Canadian Securities Regulation*"(Canada:Library of Parliament,2005)p.16
[70] *Ibid*

provincial and territorial jurisdictions.[71] To achieve this, the WPC interviewed market participants in four key areas of securities regulation: registration, IPOs, exempt distributions, and acquisition transactions.[72] They then compared the "material incremental costs incurred under the current system" with those under three alternative regimes: a passport system, uniform securities regulation, and a national securities regulator.[73]

The study highlighted that registrants—those involved in trading securities, underwriting securities issuances, or providing investment advice[74]—were more significantly impacted by the fragmented system than issuers.[75] For example, registrants consistently reported incurring additional pre-trading expenses.[76] The Cost Study also revealed that smaller registrants and issuers were particularly burdened by the provincial system.[77] Overall, the study indicated that a single regulator could potentially reduce costs for various market participants.[78]

Centralization has long been a topic on the policy agenda. However, due to a lack of political will or concerns about federalism, the federal government never proposed a solution on its own. Following the WPC Report, two subsequent panels also recommended establishing a Canadian Securities Commission to oversee a National Securities Act.[79]

In 2010, seizing the opportunity, the federal government proposed a federal act incorporating many of the features recommended by the WPC Report and its successors, including an opt-in

[71] Anita I. Anand and Peter C. Klein, "The Costs of Compliance in Canada's Securities Regulatory Regime" in A.
Douglas Harris, ed., Committee to Review the Structure of Securities Regulation in Canada: Research Studies (Ottawa,
Wise Persons' Committee, 2003) 517 at p. 522, online: Wise Persons' Committee Research Studies <http://www.wiseaverties.ca/report_en.html> [Cost Study
[72] Ibid 526
[73]Ibid 521
[74] Ibid 534
[75] Anita Indira Anand & Peter Charles Klein, "Inefficiency and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda" (2005) 42 Can Bus LJ 41 at 49.
[76] Anand & Klein, Supra note 71 at 522
[77] Ibid at 546, 565.
[78] Ibid at 565, 570
[79] Reference Re Securities Act, 2011 SCC 66 ("Securities Reference")at paras 25-27.

option for provinces.[80] When the act was reviewed by the Supreme Court, the ongoing debate about efficiency and costs—echoing discussions from the Porter Commission era—was reflected in the expert opinions submitted to the Court.

By 2008, the debate over securities regulation in Canada had reached a critical juncture. The global financial crisis that began in 2007 exposed vulnerabilities in financial systems worldwide, leading to renewed scrutiny of Canada's regulatory framework.[81]

The financial crisis underscored the importance of effective regulation in maintaining market stability and protecting investors. In Canada, the crisis reignited the debate over whether the fragmented provincial system was equipped to handle the complexities and risks of a modern, interconnected global market. Proponents of a national regulator argued that the crisis demonstrated the need for a more coordinated and unified regulatory approach to manage systemic risks and respond quickly to market disruptions.[82]

In response to the growing concerns, the federal government intensified its efforts to establish a national securities regulator.[83] In 2008, the government proposed the creation of a Canadian Securities Regulatory Authority (CSRA), which would consolidate regulatory functions under a single federal body.[84] The proposal included a draft national Securities Act and outlined a transition process for provinces to opt into the national system. However, the proposal faced immediate resistance from several provinces, leading to a prolonged legal and political battle.[85]

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[80] *Supra* note 79 at para 31.
[81] Pierre Lortie, "Securities Regulation in Canada at a Crossroads" (2010) 3:5 SPP Research Papers 12
[82] Nicholls, C.C. "The Pasts and Future of Canadian Securities Regulation: A Constitutional and Comparative Analysis" (2008) 58:1 University of Toronto Law Journal 47-67
[83] Leila Rafi, and Samantha Gordon, "Cooperating to Create a National Securities Regulator in Canada" online, https://mcmillan.ca/insights/cooperating-to-create-a-national-securities-regulator-in-canada/
[84] Canadian Securities Administrators, "About Us", online, https://www.securities-administrators.ca/about/who-we-are/
[85] DLA Piper, "Harper Government Draws Battle Lines with Provinces over Proposed National Securities Regulator" https://www.lexology.com/library/detail.aspx?g=3c17c151-eed9-4a70-b0b2-0e0644ec082f

In the spring of 2010, the federal government proposed the Canadian Securities Act to create a national system for regulating securities in Canada. According to Finance Canada, the Act aimed to protect investors better, enhance enforcement of laws, support financial stability, streamline processes for businesses, and boost Canada's influence in international regulations. Ten(10) out of Canada's thirteen(13) provinces and territories were involved in developing the Act, while Alberta, Manitoba, and Quebec chose not to participate.[86] Key features of the Act included a regulatory mandate with guiding principles to promote financial stability, improved criminal and regulatory enforcement mechanisms, a governance framework, and standardized regulatory requirements across participating regions.[87]The Canadian Securities Act outlined the core principles to guide specific regulations but did not include the details, which were to be developed after Parliament passed the Act. The federal government stated that these regulations would largely be based on existing harmonized rules from provincial and territorial authorities.[88]

The Canadian Securities Act used an opt-in model, allowing provinces and territories to choose whether to follow the new federal regulations by providing written consent or to keep their existing regulatory structures.[89] However, the Act included certain criminal prohibitions, such as bans on fraud, market manipulation, and insider trading, which would apply across all jurisdictions in Canada once the Act was passed.[90] Additionally, it granted the Regulatory Authority broad investigatory powers to ensure compliance with the law through search and seizure provisions.[91] The federal government encountered resistance from Alberta, Quebec,

[86] Rory Tighe, *The case for a National Securities Regulator in Canada* (Masters of Arts Thesis, Queen's University, 2015) [unpublished] at p. 4
[87] *Ibid*
[88] *Ibid*
[89] *Ibid*
[90] *Ibid*
[91] *Ibid*

Manitoba, and, to some extent, British Columbia and Saskatchewan.[92] These provinces opposed the proposed Act, even though it allowed them to opt into the unified system of securities regulation. The federal government submitted the proposed Act to the Supreme Court to assess whether the federal government had the competence and authority to introduce such legislation. Despite this opposition, the federal government remained hopeful that most provinces would eventually choose to participate.[93] Obviously relying upon a favourable Supreme Court ruling.

Court unanimously ruled that the Proposed Act was not a valid exercise of Parliament's power under section 91(2) of the Constitution.[94] The Court explained that the Act primarily dealt with issues related to property and civil rights, which fall under provincial jurisdiction according to section 92(13).[95] It did not address matters of true national significance that would differentiate it from provincial concerns. As a result, it did not meet the *General Motors test* needed for Parliament's general trade and commerce power.[96] In its decision, the Court acknowledged that federal intervention in securities law could be justified if the issues were significantly different from what the provinces could handle. The Court was careful not to make a blanket statement, noting that "the need to prevent and respond to systemic risk may support federal legislation."[97]It concluded by suggesting a cooperative approach that respects the provinces'

[92] Anita Anand & Andrew Green *"Side Payments, Opt-Ins and Power: Creating a National Securities Regulator in Canada*" (2011) 51 CBLJ 1 at 2.
[93] *Reference Re Securities Act, supra* note 79 at para 31
[94] *Constitution Act*,1867(UK), 30 & 31 Vict, c 3
[95] *Ibid*
[96] *Reference Re Securities Act,* at para 125-126, 134. See also, para 80 citing *General Motors of Canada Ltd. v. City National Leasing,* [1989] 1 S.C.R. 641, 661-662 (the requirements for a matter to fall within the federal government's general trade and commerce jurisdiction are: "(1) whether the impugned law is part of a general regulatory scheme; (2) whether the scheme is under the oversight of a regulatory agency; (3) whether the legislation is concerned with trade as a whole rather than with a particular industry; (4) whether it is of such a nature that provinces, acting alone or in concert, would be constitutionally incapable of enacting it; and (5) whether the legislative scheme is such that the failure to include one or more provinces or localities in the scheme would jeopardize its successful operation in other parts of the country."
[97] *Ibid* at para 128.

role in securities regulation while allowing for federal inte\rvention when necessary. This approach aligns with Canadian constitutional principles, particularly federalism.[98]

Although the Supreme Court ruling occurred in 2011,[99] the groundwork for the legal challenge was laid in the years leading up to 2008. Leading up to 2008, Canada faced increasing pressure to establish a single national securities regulator to replace the provincial and territorial regulatory framework. Unlike many other developed nations, Canada had a decentralized securities regulation system, with each province and territory overseeing its own capital markets. This fragmented system led to inefficiencies, inconsistencies, and regulatory gaps, especially during the 2008 global financial crisis.[100] In response, the federal government proposed the Canadian Securities Act, which sought to centralize securities regulation under federal jurisdiction. The government argued that national oversight would improve investor protection, streamline regulations, and enhance Canada's global competitiveness.[101] However, several provinces, including Alberta and Quebec, opposed the move,[102] arguing that securities regulation fell under provincial jurisdiction as per Section 92(13) of the Constitution Act, 1867 (which grants provinces authority over property and civil rights).

The reference case sought to determine whether the federal government had the constitutional authority to create a national securities regulator.[103] The court ultimately ruled that the proposed federal regulatory framework overstepped provincial jurisdiction, reaffirming the provinces' primary role in securities regulation. The ruling prevented the creation of a single national securities regulator under exclusive federal authority. It reaffirmed that securities

[98] *Ibid* at para 130-133
[99] Reference re Securities Act 2011 SCC 66. This was a landmark decision in Canadian constitutional law concerning the federal government's attempt to create a national securities regulator.
[100] David, L. Johnson, and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014) 17 Allard Research Commons 690
[101] Ibid 690
[102] Ibid 690
[103] Reference re Securities Act 2011 SCC 66

regulation remains a shared responsibility between federal and provincial governments. In response, the federal government worked with willing provinces to create the Cooperative Capital Markets Regulatory System (CCMR), a voluntary framework allowing provinces to harmonize securities regulation while maintaining provincial control.[104]

Following the report, the federal government drafted the Canada Securities Act and referred the matter to the Supreme Court of Canada in 2011 for a ruling on its constitutionality. In its decision (Reference re Securities Act, 2011 SCC 66), the Court ruled that the proposed Act was unconstitutional, as it intruded on provincial jurisdiction over property and civil rights.[105] However, the Court left open the possibility of federal-provincial cooperation. This led to the Cooperative Capital Markets Regulatory System (CCMR) initiative, launched in 2013 by several provinces and the federal government.[106] Though participation remains voluntary and not all provinces have joined (notably Quebec and Alberta), the CCMR represents a hybrid attempt to balance national coordination with provincial autonomy.

In 2021, the Canadian Securities Administrators (CSA)—a voluntary alliance of provincial and territorial regulators—announced plans to launch a new self-regulatory organization (SRO) to consolidate the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA). This reflects a continued push toward harmonization without constitutional conflict.

[104] David, L. Johnson, and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014) 17 Allard Research Commons 692
[105] David, L. Johnson, and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014) 17 Allard Research Commons 691
[106] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" *C.D. Howe Institute Commentary 489*. Online. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3041599

2.2 Existing Debates regarding the Canadian Securities Regulation

The debates surrounding Canadian securities regulation before the federal government passed the relevant legislation were marked by intense discussions among policymakers, provincial authorities, legal experts, and market participants.

The first argument put forward by the proponents of securities centralization in Canada is that participants have to deal with thirteen securities commission, thereby increasing costs and reducing the competitiveness of the Canadian securities market. An analysis of the 4,131 companies for which a stock exchange symbol is available shows, firstly that 20% of them should be considered inactive.[107] Also, four provinces monopolize almost all of the share issues (97%), the companies listed on an exchange (90%), the population (85%) and economic activity in Canada. Thus, the vast majority of issuers deal with only one or two securities commissions, and it is therefore difficult to argue that a Canadian issuer should nonetheless face 13 commissions.[108] To address almost all investors, the vast majority of issuers only have to satisfy four jurisdictions, which are related through mutual review procedures for prospectuses and exemptive relief, under regulation which has gradually been harmonized. In 2003, the disparities which remain only relate to relatively limited aspects of securities law.

Another significant debates was the tension between provincial autonomy and federal control over securities regulation.[109] Provinces, particularly those with large and developed financial markets, like Ontario and Quebec, argued that they were best positioned to regulate their markets due to their understanding of local economic conditions and investor needs.[110] They

[107] Jean-Marc Suret and Cecile Carpentier, "Canadian Securities Regulation: Issues and Challenges" (2003) 1:1 Burgundy Report 7
[108] *Ibid*
[109] Daniels, R., Morck, R., and Mullins, W.P. *Corporate Decision Making in Canada* (University of Calgary Press 2005)
[110] Ibid.

feared that federal control would erode their ability to tailor regulations to their specific markets and impose a one-size-fits-all approach that might not address regional nuances.[111]

Advocates for a national securities regulator argue that a single regulatory body would provide consistency, reduce regulatory fragmentation, and streamline the oversight process.[112] They highlight the inefficiencies of having multiple provincial regulators, which could lead to duplication of efforts, inconsistent enforcement of rules, and increased compliance costs for businesses operating across provincial borders.[113] Proponents believed that a national regulator would enhance investor protection and market stability, especially in an increasingly interconnected and globalized financial environment.[114]

The debates were primarily centered on the following issues:

2.2.1 Constitutional Challenges

The arguments also touched on constitutional issues, as the division of powers between the federal and provincial governments is a fundamental aspect of Canada's governance structure. The provinces argued[115] that securities regulation fell under their jurisdiction according to the *Constitution Act, 1867*,[116] which grants them authority over property and civil rights.[117] The federal government, on the other hand, contended that it had the authority to regulate securities[118] under its power to oversee trade and commerce.[119] This constitutional conflict

[111] Ibid
[112] Government of Canada, Department of Finance, *Iit's Time: Moving Towards a Single Canadian Securities Regulator: Final Report.* (Wise Persons Committee, 2003), at 11
[113] *Ibid*
[114] Kimber, L. *Proposals for a Securities Market Law for Canada* (Ontario Securities Commission, 2005) 6
[115] Backhouse Carl, "The Role of the Supreme Court of Canada in Shaping the Constitutional Debate over Securities Regulation" (2005) 43:4 Osgoode Hall Law Journal 689-729
[116] 30 & 31 Vict, c 3
[117] Ibid
[118] See Section 91(2) of the Constitution Act 1867
[119] Francis Lord, "Parliament's General Trade and Commerce Power in Brief" (2018) 32 Library of Parliament, online, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201832E

became a central point of contention, with legal experts weighing in on the potential implications of federal intervention.[120]

2.2.2 Market Fragmentation and Global Competitiveness

Another aspect of the debate was the concern over market fragmentation and its impact on Canada's global competitiveness. Critics of the provincial system argued that the fragmented regulatory environment made it difficult for Canada to compete with other countries that more streamlined and centralized regulatory systems.[121] They pointed out that the lack of a unified approach could deter foreign investments and complicate cross-border financial activities, thereby weakening Canada's position in the global market.[122]

2.2.3 Investor Protection and Enforcement

A significant concern in the debates was the issue of investor protection and the effectiveness of enforcement mechanisms. Proponents of a single regulator argued that a national body would be better equipped to enforce securities laws uniformly across the country, thereby providing more robust protection for investors.[123] They cited instances where inconsistent enforcement by provincial regulators had led to gaps in investor protection, which could undermine confidence in the Canadian financial markets.[124]

2.2.4 Regulatory Costs and Inefficiency

According to the proponents of centralization of securities regulation, there are serious efficiency problems in terms of excessive costs and delays resulting from compliance with

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[120] Daniels, R.J. & Halpern, P.J. "Too Close for Comfort: The Role of the Federal Government in Securities Regulation" (2005) 26:1 Canadian Business Law Journal 11-38
[121] *Ibid*
[122] Julia Lurye, "The Canadian Securities System: In Desperate Need for Reform" (2011), online, https://policyoptions.irpp.org/magazines/continuity-and-change-in-the-provinces/the-canadian-securities-system-in-desperate-need-of-reform/
[123] Daniels, R., Morck, R., and Mullins, W.P. *Corporate Decision Making in Canada* (University of Calgary Press 2005) 45
[124] *Ibid*

statutes and regulations. Firstly, it is useful to point out the absence of any rigorous analysis of the costs of securities regulation in Canada or, for that matter, the United States, probably because of the difficulty of evaluating them. Regulation implies three types of costs: direct costs of organizations, indirect or supplementary costs incurred by intermediaries to comply with such regulation, and distortion costs.[125] A comparative estimate of direct costs is difficult because of differences between the regulatory structures for the financial sector in different countries. Whereas the United Kingdom now has only a single authority, a number of other countries regulate the banking, insurance and securities sectors separately.[126] Very little empirical study has been done on showing the additional costs related to regulation, and they almost all deal with specific aspects of American regulation.

Thus, there is very little evidence that the present regulatory structure greatly penalizes Canada. According to Coates, issuers incur lower costs than in the United States, direct costs appear to be lower than those in Australia, which combined the securities commission, and direct costs of regulation are only a small fraction of costs incurred by issuers and investors.[127] Thus, in view of this dissertation, it is possible that the total level of regulation is not optimal.[128]

In view of this research, it can be noted that throughout these debates, comparisons were made to other jurisdictions that had centralized securities regulators, such as the United States with its Securities and Exchange Commission (SEC).[129] It can be noted in view of this study that adopting a similar model could provide Canada with a more efficient and effective regulatory framework. However, despite the federal government's efforts to create a single national

[125] Clive Briault, "The Costs of Financial Regulation 2003" (2009), online: http://www.fsa.gov.uk/pubs/speeches/sp140.html
[126] *Ibid*
[127] John C. Coates, "Cost-Benefit Analysis of Financial Regulation: Case Studies and Implication" (2015) 124:4 The Yale Law Journal 882
[128] Emphasis mine
[129] Supra note 125

securities regulator, strong opposition from several provinces and the constitutional challenges involved have made it difficult to achieve a unified approach.

CHAPTER III: ANALYSIS OF CANADA'S PROVINCIAL SECURITIES MODEL

This chapter critically analyzes the current framework of securities regulation in Canada, which is primarily administered at the provincial and territorial level. Despite longstanding calls for a centralized national regulator, Canada continues to operate under a decentralized system, where each province and territory maintains its own securities laws and regulatory authority. This chapter explores both the strengths and limitations of this provincial model, offering a balanced assessment of its practical impact on market regulation and investor protection.

The first section highlights the advantages and institutional strengths of the provincial approach, such as responsiveness to regional market needs, regulatory innovation, and the development of specialized local expertise. The chapter then transitions to a discussion of the challenges and inefficiencies inherent in a fragmented system, including regulatory duplication, inconsistent enforcement, and barriers to capital mobility across jurisdictions.

Finally, the chapter evaluates the growing need for a more responsive and resilient regulatory framework that can adapt to the complexities of modern capital markets — particularly in the face of globalization, digital transformation, and systemic financial risks. This analysis sets the stage for subsequent chapters, which consider recent reform efforts and international comparisons, especially with jurisdictions like the United States that operate under a unified regulatory structure.

3.1 Advantages and Strengths of the Provincial Model

Effective securities regulation is key to investor protection and efficient, vibrant and competitive national and local capital markets. A lot of stakeholders have expressed concerns about the ability of the current securities regulatory framework in Canada to keep up with the

pace of change.[130] At the same time, investor confidence has been shaken by substantial downturns in world equity markets and corporate scandals like in the United States.[131]

3.1.1 Regional Autonomy and Flexibility

One of the primary advantages of the provincial model is that it allows each province to tailor its securities regulations to meet the unique needs of its local market. Canada's provinces differ significantly in terms of their economic structures. For example, the financial markets in Ontario, home to the Toronto Stock Exchange (TSX), are more developed and complex compared to those in smaller provinces like Prince Edward Island.[132] The Ontario Securities Commission, as the regulator for Ontario, has implemented a sophisticated regulatory framework to oversee the Toronto Stock Exchange (TSX), Canada's largest stock exchange. Since Ontario is home to a highly developed and complex financial services industry, the OSC has adopted more advanced rules to regulate public offerings, market conduct, and corporate governance for large, publicly listed companies. Ontario's regulation is more tailored to address issues such as high-frequency trading, securities disclosure, and derivatives trading, reflecting the province's role as the hub of Canada's capital markets. The Ontario *Securities Act*,[133], has set high standards for investor protection, requiring public companies to provide comprehensive disclosure and adopt corporate governance practices suited to Ontario's large and complex market. This level of regulation would not be necessary in smaller provinces with less complex financial markets.[134]

[130] Greg Melchin, Janet Ecker, and Yves Seguin, "Securities Regulation in Canada: An Inter-Provincial Securities Framework" *Discussion Paper,* June 2003 https://securitiescanada.org/securities_discussion_paper_english.pdf
[131] Ibid
[132] Douglas Harris, *A Symposium on Canada Securities Regulation: Harmonization or Nationalization.* (Toronto: CMI/CFIE, 2002) 33
[133] Ontario Securities Act (OSA) of 1990, c. S. 5
[134] Terrence Corcoran, "Unlawful Trading in OSC Shares" *The Globe and Mail* (June 14, 1999)

It is pertinent to note that British Columbia is home to a thriving venture capital and startup ecosystem, particularly in sectors like mining, natural resources, and technology. Recognizing the unique needs of this market, the BCSC has developed polices that foster innovation and entrepreneurship. It has tailored its rules to be more flexible for smaller and early-stage companies seeking to raise capital. In 2015, the BCSC introduced specific exemptions from securities-registration requirements for companies seeking to raise small amounts of capital through equity crowdfunding.[135] This allowed startups to access funding more easily while ensuring adequate investor protections were in place.[136] This flexibility was tailored to the needs of British Columbia's burgeoning tech sector, and it served as a model for similar regulations in other provinces.[137]

Also, Alberta's economy is heavily reliant on natural resources, particularly oil and gas. The Alberta Securities Commission (ASC) has tailored its regulatory framework to address the specific needs of companies in these sectors. For instance, the ASC has developed rules for reporting standards that are appropriate for companies dealing in energy commodities and resource extraction, recognizing that traditional securities regulation may not fully address the complexities of these industries.[138] The ASC has introduced tailored requirements for oil and gas companies to disclose their reserves and other key information in line with industry

[135] Canadian Securities Administrators, "CSA Notice of Publication – National Instrument 45-110 Start-up Crowdfunding Registration and Prospectus Exemptions" (n.d.) online https://www.osc.ca/sites/default/files/2021-06/csa_20210623_45-110_crowdfunding-registration-prospectus-exemptions_0.pdf
[136] British Columbia Securities Commission, "Securities Regulation in British Columbia" (n.d.) online: https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicyBCN/Dealers-and-Advisers.pdf
[137] Equity Crowdfunding Alliance of Canada, "Proposed Amendments to National Instruments 45-106 Prospectus and Registration Exemptions" (2014) online: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20140625_45-106_equity-crowdfunding-alliance-of-canada.pdf
[138] Alberta Securities Commission, "About Us" *LinkedIn.* (2021) online: https://ca.linkedin.com/company/alberta-securities-commission

standards. This ensures that investors in these companies have access to critical information that might not be relevant in other sectors but is essential in Alberta's resource-heavy market.

This flexibility allows provincial regulators to implement rules that best suit their respective market dynamics. Other regions have other specifications, in light of the unique attributes of their respective economies. These include Quebec and the Autorite des marches financies, Manitoba and Agricultural-Based Securities, Newfoundland and Labrado Securities Commission (NLSC) and localized resource regulations, Saskatchewan Finanical and Consumer Affairs Authority (FCAA) and crowdfunding for startups, Yukon and Northwest Territories Securities Regulations. These show that the provincial model of securities regulation in Canada has allowed regulators to craft rules and policies that are closely aligned with the unique economic and legal needs of their regions. Whether through specialized disclosure requirements for resource-heavy industries, exemptions for small businesses, or language-specific provisions in Quebec, the provincial approach ensures that securities regulation is not a one-size-fits-all model but instead one that is flexible and adaptable to local market conditions.[139] This customization enables market participants in different provinces to operate in environments that are more closely aligned with their specific needs, promoting both economic growth and investor protection across Canada. Also, provincial regulators often have a closer relationship with market participants within their jurisdiction. This proximity fosters a deeper understanding of local market conditions, enabling them to act more effectively and respond to issues that may be more specific to their regions.

3.1.2 Encouragement of Innovation and Competition

In a sector subject to rapid changes, the ability of laws and regulations to adapt quickly and the rapid detection of problems and trends is essential. As the primary goal of a stock market is to

[139] Neil Mohindra, "Securities Market Regulation in Canada" *Critical Issues Bulletin*, (2002), online: https://www.fraserinstitute.org/sites/default/files/SecuritiesMarketRegulation.pdf

provide issuing companies with capital at the lowest possible cost, regulation should be made to correspond to the needs of investors. The issue is, therefore, whether a decentralized, competitive system of provincial regulation can achieve these dual objectives more efficiently than a centralised, unified national regulator.

Also, because of international competition, it is important to define a regulatory system which is attractive to both local and foreign companies so as not to lose a share of the financial market. According to Romano,[140] competition is preferable to reach this objective. The proposed forms of regulatory competition and, in practice, the existing forms of competition are two types, which, as Frederick Tung,[141] points out, are very often confused. The form proposed by Romano, and which prevails in company law in the United States, is direct regulatory competition. Frederick[142] proposed a type of model used in Europe, called portable reciprocity, The Canadian system, for the time being, resembles neither of these models, although certain forms of competition in terms of provisions may be observed.[143] Tung analyses the differences between direct competition and the passport and shows the very important differences between them in terms of effects and policies.[144]

The existence of multiple provincial regulators creates a form of competition among jurisdictions, which can spur innovation in regulatory approaches. For instance, provinces may compete to attract businesses by offering a more business-friendly regulatory environment. This competition can encourage provinces to adopt best practices and modernize their

[140] Roberta Romano, "The Need for Competition in International Securities Regulation" (2001) 2 Theoretical Inquiries in Law 1015; Roberta Romano, "Competition for Corporate Charters and the Lesson of Takeover Statutes" (1993) 61: 4 Fordham Law Review 843
[141] Frederick Tung, "Passports, Private Choice, and Private Interests: Regulatory Competition and Cooperation in Corporate Securities, and Bankruptcy Law" (2002) SSRN Journal Doi: 10.2139/ssrn.334700 https://www.researchgate.net/publication/228165635_Passports_Private_Choice_and_Private_Interests_Regulatory_Competition_and_Cooperation_in_Corporate_Securities_and_Bankruptcy_Law
[142] *Ibid*
[143] Calvin, S. Goldman, Navin Joneja, & Elizabeth, Yuh, "A Canadian Perspective on Tied Selling and Exclusive Dealing" (2007) 12th Annual Competition and Policy Workshop, Robert Schuman Centre, 8-9 June, EUI Florence 28
[144] *Ibid*

regulations to stay competitive.[145] For instance, the British Columbia has emerged as a key hub for capital, technology startups, and innovative industries, thanks in part to the flexible regulatory environment overseen by the British Columbia Securities Commission (BCSC). The BCSC has adopted a lighter regulatory touch for early-stage companies, especially through crowdfunding exemptions and startup-specific regulations. This flexibility encourages a more dynamic investment ecosystem in BC, creating a competitive advantage for startups looking to raise capital.[146] This approach has positioned BC as a competitor to Ontario and other provinces for attracting venture capital investment. Startups in BC benefit from the local regulatory framework, which lowers barriers to entry and encourages investors to participate in these emerging markets.[147]

On the other hand, Ontario's robust regulatory framework, combined with the OSC's commitment to investor protection and market transparency, has helped TSX maintain a dominant position in the national and international markets. However, smaller exchanges in other provinces, like the TSX Venture Exchange in Alberta and British Columbia, have emerged to provide alternative platforms for smaller and riskier companies to list.[148] The success of the TSX in Ontario has driven other provinces to tailor their regulations to compete for listings of smaller or growth-stage companies. For example, the TSX Venture Exchange caters to smaller, early-stage companies, promoting competition between provinces in attracting public listings.[149] Each province's tailored regulations help maintain a level of

[145] Government of Canada, "Technology-Led Innovation and Emerging Services in the Canadian Financial Services Sector" (2017) online: https://competition-bureau.canada.ca/how-we-foster-competition/consultations/technology-led-innovation-and-emerging-services-canadian-financial-services-sector#section2_1

[146] Serge Boisvert and Charles Gaa, "Innovation and Competition in Canadian Equity Market" (2001) 2 Bank of Canada Review 25-27

[147] Camden Hutchison, Li-Wen Lin, "The Growth of Vancouver as an Innovation Hub: Challenges and Opportunities" (2021) 54:3 UBC Law Review 693

[148] *Ibid*

[149] Corey Garlott & Anna Pomeranets & Thomas Thorn, "Fragmentation in Canadian Equity Markets" (2013) 5 (Autumn) Bank of Canada Review 28

competition that encourages companies to select an exchange based on the regulatory environment that best suits their needs.[150]

Alberta's regulations are crafted to support the unique financial needs of companies involved in natural resource extraction, which has made the province highly competitive in attracting energy investments. The ASC's industry-specific regulations have given Alberta an edge over other provinces by encouraging companies to operate within a regulatory framework that understands the complexities of natural-resource investments. This specialized regulation encourages competition in the energy sector by positioning Alberta as a leading destination for oil and gas financing, especially in comparison to provinces with less tailored regulatory frameworks.[151]

Quebec's Autorité des marchés financiers (AMF) has introduced regulations and policies [152] that are not only sensitive to the province's unique legal and linguistic landscape but also promote competition in the mutual-fund industry. The AMF has fostered a competitive market for mutual-fund companies by ensuring that its regulations are responsive to the specific needs of Francophone investors, including language-specific disclosure requirements and marketing materials.[153] By fostering regulations that cater to Quebec's unique investor base, the AMF has created competition with other provinces for investment management services. This provincial competition encourages fund managers to create products and marketing strategies that align

[150] *Ibid* 33
[151] Cecile Carpentier, Jean-Francois L'Her & Jean-Marc Suret, "Competition and Survival of the Stock Exchange Market: Lessons From Canada" (2007) CIRANO Working Papers 26
[152] These include Language Requirements, Mutual Fund Governance and Investor Protection, Client-Focused Reforms, Alternative Investment Funds Regulation, Regulation of Fund Distribution Channels, and Promotion of Financial Literacy.
[153] Jean-Marc Suret, Cecile Carpentier, and Cirano Montreal, "Centralized or Competitive Securities Regulation: What Canada can Learn from the US and the EU" (2003) online: https://www.researchgate.net/publication/228749578_Centralized_or_Competitive_Securities_Regulation_What_Canada_can_learn_from_the_US_and_the_EU

with local regulatory and cultural expectations, enhancing investor choice and market dynamism.[154]

However, there have been main arguments regarding the regulatory competition in securities market. The main criticisms against regulatory competition include information externalities,[155] the race to the bottom, instability, and lack of harmonization. For instance, Cox[156] argues that if issuers can choose their jurisdiction, they will opt for the least demanding one, leading to a relocation to more lenient regulatory environments. However, the appeal of highly regulated markets to foreign issuers challenges this view. Other concerns include the difficulty for investors to take legal action against issuers and intermediaries across borders. Given that competition is often cited as both a key advantage and disadvantage, it is important to examine these arguments, which have been less explored.

Breton[157] uses the example of securities regulation in Canada to illustrate how competition has not resulted in optimal outcomes. According to Breton, this is due to the dynamic instability created by competition, where changes in one jurisdiction provoke larger changes in others, triggering ongoing reactions. Two additional factors should be considered in this case: harmonization at a high level can only be optimal if issuers and investors share similar utility preferences. The information needs and risk appetite of Alberta investors focused on junior gas exploration stocks are likely quite different from those of institutional investors holding large bank or insurance stock positions in Ontario. Moreover, the Canadian system is not a pure form of regulatory competition because provincial regulations only apply within that province, allowing local authorities to maintain monopolies.

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[154] *Ibid*
[155] M. Fox, "The Issuer Choice Debate" (2001) 2:2 Theoretical Inquiries in Law 563
[156] J.D. Cox, "Regulatory Duopoly in U.S. Securities Market (1999) 99 Columbia Law Review 1229-1237
[157] A. Breton, *An Introduction to Decentralization Failure.* Conference on Fiscal Decentralization. IMF Fiscal Affairs Department (FAD), Washington D.C (2000) online: http://www.imf.org/external/pubs/ft/seminar/2000/fiscal/breton.pdf

Breton suggests three ways to address these challenges. These include centralization, imposition of unitofmr standards, and facilitated regulatory competiionThe first two—centralization and the imposition of uniform standards—eliminate competition, which may have worse consequences than some forms of instability. Thus, centralization involves consolidating decision-making power or control into a single authority or organization. While it can simplify processes and promote consistency, it often stifles competition by removing diversity in approaches and reducing the ability of different entities to innovate or operate independently. The uniform standards refers to imposing the same rules or criteria across all entities. While it ensures fairness and predictability, it may overlook unique circumstances or needs of individual entities, leading to inefficiencies or reduced adaptability. Eliminating competition through such standards can exacerbate problems, as competition often drives innovation and improvement.[158]

Thus, Breton argues that these two approaches, while potentially addressing some instabilities, could lead to worse outcomes by eroding the benefits of a competitive environment, such as innovation, efficiency, and responsiveness to needs. Instead, Breton favors "weak harmonization" over "strong harmonization." Bretton, advocates for a weak harmonization which seeks to establish a basic level of alignment while allowing flexibility for individual entities to adapt or innovate within a broad framework. This maintains some consistency without sacrificing the benefits of diversity and competition.[159] In essence, Breton prefers a balance where entities can operate within a loosely aligned structure that encourages collaboration and coherence without eliminating the dynamic advantages of competition and adaptability. In essence, Breton prefers a balance where entities can operate within a loosely

[158] Albert Breton, "An Introduction to Decentralization Failure" (n.d.) Online: https://www.imf.org/external/pubs/ft/seminar/2000/fiscal/breton.pdf
[159] *Ibid*

aligned structure that encourages collaboration and coherence without eliminating the dynamic advantages of competition and adaptability.

This approach aims to control instability while preserving regulatory competition, alongside clear dispute resolution mechanisms. This is the direction the European Community appears to have taken.[160]

Regulatory competition is often viewed as incompatible with harmonization, but Tung[161] contends that this is not necessarily true for several reasons. First, minimal harmonization is required for certain forms of regulatory competition to function, such as the portable reciprocity that supports the European passport system.[162] Second, in cases of direct regulatory competition, the laws of the originating jurisdiction apply in the host jurisdiction,[163] necessitating some level of agreement between regulators. In the European Community (EC), regulatory competition is seen as a way to harmonize regulations by addressing the needs of market participants, rather than imposing harmonization from the top down, which is often considered unrealistic. In theory, competition should lead to harmonization if economic actors have similar needs, but there are cases where this does not hold true.. Choi and Guzman[164] argue that regulatory competition doesn't always result in uniform regulation, as different investors may have varying regulatory needs. They argue that portable reciprocity allows

[160] *Ibid*
[161] F. Tung, "Passports, Private Choice, and Private Interests: Regulatory Competition and Cooperation in Corporate, Securities and Bankruptcy Law" (2002) 3:2 Chicago Journal of International Law 169
[162] *Ibid*
[163] Regulatory competition focuses on fostering diversity and innovation by allowing diversity and innovation by allowing jurisdictions to compete with their regulatory approaches, while minimal harmonization aims to ensure a basic level of consistency to enable smoother cross-jurisdictional interactions. Regulatory competition emphasizes maximum flexibility and encourages diversity while minimal harmonization provides limited flexibility and diversity. In the context provided, Tung suggests that regulatory competition and minimal harmonization can coexist, as the latter provides the necessary structure (e.g., reciprocal systems like the European passport) to allow regulatory competition to function effectively without chaos or incompatibility. See F. Tung, "Passports, Private Choice, and Private Interests: Regulatory Competition and Cooperation in Corporate, Securities and Bankruptcy Law" (2002) 3:2 Chicago Journal of International Law 169
[164] S.J. Choi, and A.T. Guzman, "Portable Reciprocity: Rethinking the International Reach of Securities Regulation" (1998) 71 Southern California Law Review 904-950

different regulatory frameworks to coexist, avoiding the costs of imposing uniform rules on diverse issuers and investors. This raises the question: in a highly diverse community, should there be one or multiple regulatory systems?

Research and market observations suggest that regulatory monopolies are not necessarily better than regulatory competition, whether in company law or securities regulation.[165] It's important not to pit the two concepts against each other, as a certain level of competition can coexist with minimal harmonization. This approach avoids the costs of enforcing uniform regulation on jurisdictions unwilling to cede their authority and allows for local adaptations that reflect specific or evolving circumstances. This is the path adopted by the European Community.[166]

The European system of mutual recognition encourages some level of competition but does not eliminate local authorities, which many countries are currently reinforcing. In France, for instance, regulatory modernization has led to the creation of two new bodies: the Autorité des marchés financiers (AMF) and the Commission de contrôle des assurances, des mutuelles et des institutions de prévoyance (CCAMIP)[167]. These authorities were formed by merging existing institutions to improve efficiency.[168] The AMF, specifically, was created from the merger of the Commission des opérations de bourse (COB), established in 1967, the Conseil des marchés financiers (CMF), founded in 1996, and the Conseil de discipline de la gestion financière, established in 1988.[169] Its role is to safeguard savings in financial products, ensure

[165] OECD, "Competition Enforcement and Regulatory Alternatives" OECD Competition Committee Discussion Paper, (2021) online: http://oe.cd/cera
[166] Jean-Marc SUret, Cecile Carpentier, and Cirano Montreal, "Centralized or Competitive Securities Regulation: What Canada can Learn from the US and the EU" (2003) online: https://www.researchgate.net/publication/228749578_Centralized_or_Competitive_Securities_Regulation_What_Canada_can_learn_from_the_US_and_the_EU
[167] The AMF, "An Independent Multidisciplinary Organization with Collective Responsibility" (2004) online: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.amf-france.org/sites/institutionnel/files/contenu_simple/rapport_annuel/rapport_annuel_amf/Annual%20Report%202004%20-%20Introduction%20to%20the%20AMF.pdf
[168] *Ibid*
[169] AMF, "French AMF: What We Do" (n.d.) Online: http://www.amf-france.org/en_US/L-AMF/Missions-et-competences/Presentation.html

proper investor information, and maintain market integrity.[170] Europe has adopted a regulatory model that balances competition, with some jurisdictions applying minimum standards[171] and others setting stricter requirements.[172] However, minimal harmonization prevents stricter jurisdictions from blocking access to companies or intermediaries based in less stringent areas. This regulatory competition is tempered by baseline standards, preventing a race to the bottom.[173] The approach to harmonization in securities regulation is one of reciprocity, rather than convergence.

3.1.3 Proximity and Responsiveness to Local Market Participants

In the provincial model in Canada, securities regulators tend to be more responsive to the needs of local businesses and investors because of their direct relationships with stakeholders. This proximity facilitates faster communication and allows for a more nuanced understanding of regional concerns. Smaller provincial regulators often develop close ties with market participants, which can enable them to respond swiftly to issues.[174]

Since provincial regulators focus on the specific needs of their regions, they can make decisions more quickly regarding localized issues. For example, if an economic shock or market failure occurs in a specific province, the local regulator is well-positioned to intervene promptly without having to navigate a more complex national bureaucracy.

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[170] *Ibid*

[171] For example, The Markets in Financial Instruments Directive Ii (MiFID II) establishes minimum requirements for financial services providers across the European Union. Firms authorized in one EU country can offer services throughout the EU, leveraging passporting rights while adhering to these baseline rules. See European Union, "Markets in Financial Instruments Directive (MiFID II)" (2014) online: https://europa.eu/rapid/press-release_MEMO-14-305_en.htm

[172] Countries like Germany and France often impose additional local rules on financial

[173] Supra, note 164

[174]Greg Melchin, Janet Ecker, and Yves Seguin, "Securities Regulation in Canada: An Inter-Provincial Securities Framework" *Discussion Paper,* June 2003 https://securitiescanada.org/securities_discussion_paper_english.pdf

3.1.4 Preservation of Constitutional Balance

Canada's provincial securities regulation system respects the country's federal structure, which grants significant powers to provinces. This decentralized approach aligns with the principle of federalism, ensuring that provinces retain control over economic activities within their jurisdictions.[175] Securities regulation, being traditionally recognized as a provincial matter, allows provinces to maintain their sovereignty over this area, reflecting Canada's commitment to provincial autonomy.

The federal government have made previous efforts to institute federal securities regulation. In 2011, there was a landmark decision from the Supreme Court of Canada striking down proposed federal securities legislation as *ultra vires.*[176] The decision was unanimous and consistent with the previous reference decisions of the Courts of Appeal of both Alberta[177] and Quebec .[178]These decisions revisit one of the more contested constitutional question in Canada's history – the scope of provincial jurisdiction over property and civil rights vs federal jurisdiction over trade and commerce – which has always reflected centralist vs. decentralist views of Canadian federalism.[179] The decisions essentially re-affirmed the constitutional status

[175] Eric Spink, "Federalism and Securities Regulation in Canada" https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/SpinkNov242013.pdf
[176] The court ruled that the proposed legislation was not valid because it interfered with the provinces' jurisdiction over property and civil rights. The court also said that the legislation was an attempt to "wholesale takeover" securities regulation. See Eric Spink, "Federalism and Securities Regulation in Canada" Institute of Intergovernmental Relations Working Paper, November 24, 2013. online: https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/SpinkNov242013.pdf
[177] In a unanimous decision, the Alberta Court of Appeal found the proposed federal Securities Act to be unconstitutional, concluding it was beyond the federal government's legislative authority. See Nicholas P. Caughey, "Case Law Update: Reference Re Securities Act (Canada)" (2011) online: https://www.weirfoulds.com/case-law-update-reference-re-securities-act-canada?utm_source=chatgpt.com
[178] Similarly, the Quebec Court of Appeal determined that the proposed federal Securities Act was ultra vires the federal government, aligning with the Alberta Court of Appeal's findings. See Dee Pham, "Reference Re Securities Act: What are the Remaining Options for a National Securities Regime" (2012) 44:3 Ottawa Law Review 561-569
[179] Supra, note 175

quo by characterizing the existing securities regulation as property and civil rights, not trade and commerce.[180]

Although the federal government consistently portrayed its securities legislation as a policy initiative,[181] it was widely recognized to be, as Alberta's then-Finance Minister described it, an "unprecedented federal power grab".[182] The theme of the 2011 State of the Federation conference – "rebalancing" – scarcely describes the scale and aggressiveness of the federal constitutional claim. This point is crucial to any understanding of the securities references and their aftermath.[183] If valid, the federal government's arguments in the securities references would have produced a seismic shift of jurisdiction in other areas by effectively overturning the seminal decision in *Citizens Insurance Company v. Parsons*[184]. The Alberta Court of Appeal compared this with the federal government's earlier campaign to assume the national regulation of the insurance industry and described the reference as "an attempt to overturn all those earlier cases [*including Parsons*], and to rewrite Canadian constitutional history".[185] At the Supreme Court, British Columbia's counsel described the proposed Act as a constitutional Trojan horse that would result in the complete evisceration of provincial power over securities regulation and other areas.[186] MacIntosh[187] lists over a hundred Ontario statutes that might be construed as falling within the trade and commerce power, if federal securities legislation had been valid.

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[180] *Ibid*
[181] H. Curry, J. McFarland, and R. Seguin, "Securities Watchdog Plan Allows Provinces to Opt Out" May 15, 2010, online: http://m.theglobeandmail.com/globe-investor/securities-watchdog-plan-allows-provinces-to-opt-out/article1581470/?service=mobile
[182] H. Curry, J. McFarland, and R. Seguin, "Securities Watchdog Plan Allows Provinces to Opt Out" May 15, 2010, online: http://m.theglobeandmail.com/globe-investor/securities-watchdog-plan-allows-provinces-to-opt-out/article1581470/?service=mobile
[183] Nadia Verrelli, "The Changing Federal Environment: Rebalancing Roles" (2012) online: https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/PDF%20Publications/SOTF%202011%20book.pdf
[184] Citizens Insurance Company v. Parsons 1881
[185] Reference ABCA 2011, parap 42
[186] Supra. Note 175
[187] J.G. Macintosh, "Politics Not Law" (2012) 2:2 Canadian Business Law Journal 179-181

The Supreme Court rejected the federal government's core argument that "securities markets have undergone significant transformation in recent decades, evolving from local markets to markets that are increasingly national, indeed international which has given rise to systemic risks and other concerns that can only be dealt with on the national level".[188] The Supreme Court said:

> This argument requires not mere conjecture, but evidentiary support. The legislative facts adduced by Canada in this reference do not establish the asserted transformation. On the contrary, the fact that the structure and terms of the proposed Act largely replicate the existing provincial schemes belies the suggestion that the securities market has been wholly transformed over the years. [189]

Some commentators have severely criticized the Supreme Court's decision, particularly the Court's rejection of the asserted transformation.[190] For example, Puri[191] argues that the decision "fails to demonstrate an understanding of Canadian capital markets" and suggests that the Court "ignored" or "turned a blind eye" to the federal evidence of transformation.[192] While Trebilcock[193] suggests that "the facts – along with their policy relevance – appeared not to matter". However, those criticisms do not address, or even acknowledge the existence of, the contradictory evidence presented by the provinces. As described below, a review of the contradictory evidence shows that the courts did not ignore the federal evidence but rather rejected it in favour of the provincial evidence, and were correct to do so.

Maintaining a provincial model avoids the constitutional conflicts that could arise from attempting to centralize securities regulation. Canada's Constitution grants provinces jurisdiction over property and civil rights, which has been interpreted to include securities

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[188] Reference SCC 2011, para 33
[189] Reference SCC 2011, parap 116
[190] A. Anand, *What's Next for Canada? Securities Regulation after the Reference.* (Toronto: Irwin Law, 2012)
[191] P. Puri, "The Capital Markets Perspective on a National Securities Regulator" (2010) 51 Supreme Court Law Review 603-623
[192] P. Puri, "Twenty Years of Supreme Court Reference Decisions: Putting the *Securities Reference* Decision in Context, in *What's Next for Canada? Securities Regulation After the Reference,* (Toronto: Irwin Law; 2012) 15, 18
[193] M.J. Tribilcock, "More Questions than Answers: The Supreme Court of Canada's Decision in the National Securities Reference? *In What's Next for Canada? Securities Regulation After the Reference* (Toronto: Irwin Law, 2012) 37-48

regulation.[194] A federal takeover could lead to lengthy legal battles, which the provincial model circumvents.

3.1.5 Enhanced Investor Protection through Local Oversight

Provinces have tailored investor protection mechanisms to suit their local market participants.[195]In markets with less sophisticated investors, provincial regulators can adopt stringent protections, while larger markets like Ontario may focus on more complex regulatory issues such as derivatives or high-frequency trading.[196]

Sino-Forest Corporation was a Chinese forestry company listed on the Toronto Stock Exchange, and it was one of the largest publicly traded companies in Canada. In 2011, allegations surfaced that Sino-Forest had engaged in fraudulent practices by inflating the value of its assets and misstating its revenues.[197] The Ontario Securities Commission (OSC) led the investigation into the allegations.[198] The OSC issued enforcement actions against Sino-Forest's executives, accusing them of defrauding investors. The case resulted in substantial investor losses, but the OSC played a critical role in uncovering the fraudulent activities and pursuing legal action against the company's leadership.[199]

The OSC's local oversight and enforcement helped to expose the fraud, and the company eventually filed for bankruptcy. The OSC's actions helped recover some funds for investors

[194] Centre for Constitutional Studies, "Securities Regulation and the Division of Powers" (2011: online: https://www.constitutionalstudies.ca/2011/07/securities-regulation-and-the-division-of-powers/?print=print
[195] Poonam Puri, "Legal Origins, Investor Protection and Canada" (2010) Comparative Research in Law and Political Economy, Research Paper No.3/2010,
[196] Canadian Securities Administrators, "Canadian Securities Regulators, SROs and Investor Protection Funds establish timeline for new self-regulatory framework" (2021), online: https://www.securities-administrators.ca/news/canadian-securities-regulators-sros-and-investor-protection-funds-establish-timeline-for-new-self-regulatory-framework/
[197] Gall R. Wright, and Charles P. Cullinan, "Sino-Forest Corporation: The Case of the Standing Timber" (2017) 14 Global Perspectives on Accounting Education 10-22
[198] *Ibid*
[199] *Ibid*

and underscored the importance of local regulatory bodies in responding quickly to investor protection issues within their jurisdiction.[200]

In the same vein, the Norbourg scandal involved a large-scale financial fraud in which Vincent Lacroix, the CEO of Norbourg Asset Management, misappropriated over CAD 130 million from investors. This case represented one of the largest fraud cases in Quebec's history. The AMF played a crucial role in investigating the fraud after receiving complaints from investors. Its local oversight allowed for rapid intervention in response to warning signs. The AMF took enforcement action, freezing Lacroix's assets and filing civil and criminal charges against him and other executives involved. Lacroix was convicted and sentenced to prison, and the AMF helped secure compensation for defrauded investors. This case showed how local regulatory oversight can act swiftly to address investor protection concerns, particularly in complex fraud cases that may have escaped national attention initially.[201]

Also, Penn West Petroleum Ltd., one of Canada's largest oil and gas companies, faced allegations of accounting irregularities that resulted in misleading financial statements.[202] The company overstated its financial performance, which led to inflated stock prices and misinformed investors. The Alberta Securities Commission (ASC) took charge of investigating the allegations due to the company's operational base in Alberta.[203] The ASC worked closely with the OSC and other provincial regulators to ensure a coordinated response. [204]They imposed strict penalties on the company and worked to implement governance reforms to

[200] P. Koven, "Sino-Forest Corp's Former CEO was controlling mind behind alleged frauds, lawyer tells OSC hearing" *Financial Post,* April 18, 2016
[201] Reuters, "Ex-CEO of Canada's Norbourg gets 12 years for fraud" (2008), online: https://www.reuters.com/article/business/ex-ceo-of-canadas-norbourg-gets-12-years-for-fraud-idUSN28511018/
[202] Carrie Tait and Jeffrey Jones, "Investors Slam Penn West after Accounting Irregularities Revealed" (2014) online: https://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/penn-west-may-face-lawsuits-after-alleged-accounting-irregularities/article19844808/
[203] U.S. Securities and Exchange Commission, "Penn West Petroleum Ltd., d/b/a/ Obsidian Energy Ltd., Todd H. Takyasu, Jeffery A. Curran and Waldemar Grab, - SEC Settles with Former Top Finance Executive of Oil and Gas Company" (2020), online: https://www.sec.gov/enforcement-litigation/litigation-releases/lr-24809
[204] *Ibid*

prevent future misconduct.[205] The regulatory action helped restore investor confidence by holding the company accountable. Penn West was forced to restate its financial results and make internal changes to improve transparency. This case highlighted how provincial oversight, especially in a key industry such as energy in Alberta, helps protect local investors and ensures companies adhere to high governance standards.[206]

Thus, the provincial securities regulation model in Canada has enhanced investor protection through local oversight, demonstrating the benefits of decentralized regulation. Each province's securities is tasked with regulating its capital markets, tailoring their oversight to local market conditions and investor needs. It is also essential to add that provincial regulators are often better positioned to identify and mitigate risks that are specific to their regions. They can implement rules and guidelines that cater to the specific investor profiles and financial products in their jurisdictions, leading to more effective regulation in managing local risks.

3.1.6 Compatibility with Diverse Economic Structures

Each province has its own economic strengths and industries that drive its securities market.[207] For example, Alberta's economy is heavily driven by energy and natural resources, while British Columbia has a strong presence in venture capital and emerging technologies. The provincial model allows securities regulations to cater to these diverse economic structures, ensuring that the regulations align with the specific industries that dominate the provincial economy.[208]

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[205] *ibid*
[206] *Ibid*
[207] International Monetary Fund, "Canada Financial System Stability Assessment" (2019, online: https://www.imf.org/-/media/Files/Publications/CR/2019/1CANEA2019003.ashx
[208] *Ibid*

Therefore, provincial regulators can focus on regional economic development priorities, such as fostering small businesses or encouraging the growth of particular industries, without needing to conform to a one-size-fits-all national regulatory framework.[209]

In view of the above discussion, it is important to note that the provincial securities model in Canada provides several distinct advantages including regional autonomy, the ability to tailor regulations to specific markets, encouragement of regulatory innovation, and responsiveness to local needs. It respects the constitutional division of powers, fosters investor protection at the local level, and allows for regional economic diversity.

3.2 Challenges and Limitations of the Decentralized Regulatory Approach

While there are advantages to the decentralized regulatory approach, there are also challenges, such as issues related to coordination across provinces. The fragmentation of regulatory authority across provinces and territories poses structural and operational hurdles that can affect the overall efficiency and consistency of securities in Canada.

3.2.1 Regulatory Fragmentation and Duplicate Regulatory Processes

The most significant challenge of the decentralized approach is the fragmentation of regulatory authority across 13 different jurisdictions, each with its own securities regulator. This leads to inconsistent rules and practices between provinces, creating a complex and sometimes confusing regulatory environment for both businesses and investors.[210] For example, a company seeking to raise capital through a public offering in multiple provinces must comply with the specific securities laws of each jurisdiction, which can vary. This results in increased legal and compliance costs, as well as delays in the capital-raising process. For instance,

[209] Government of Canada, "Rural Opportunity, National Prosperity: An Economic Development Strategy for Rural Canada" (2018) online: https://ised-isde.canada.ca/site/rural/en/rural-opportunity-national-prosperity-economic-development-strategy-rural-canada

[210] F. Tung, "Passports, Private Choice, and Private Interests: Regulatory Competition and Cooperation in Corporate, Securities and Bankruptcy Law" (2002) 3:2 Chicago Journal of International Law 169

disclosure requirements and filing procedures can differ across provinces, making it difficult for issuers to navigate the system efficiently.[211]

Due to the fragmentation of securities regulation, Canada suffers from a net disadvantage compared to other jurisdictions, which limits development of its markets. This argument was put forward in the following manner by the Ontario Teacher's Pension Plan Board which, in its comments submitted to the Ontario Securities Act Five Year Review Committee.[212] The Provinces need to recognize that Canada is suffering as a destination for business and capital because they refuse to give up jurisdiction to a first-class regulatory regime that is administered and enforced by a first-class regulator.[213]

However, amidst these arguments, it is pertinent to note that this seems to be a sacrifice to pay. Moreover, the various arguments put forward to justify the creation of a single commission are not very convincing. The benefits of the present system are systematically omitted from the debate and centralization is often presented as the only solution to the various problems raised. This solution leads to a regulatory monopoly, a model criticized by many scholars.[214]

Duplicative regulatory processes also serve as a limitation to this model. Businesses that operate in multiple provinces must often go through duplicative regulatory processes. This results in inefficiencies and higher administrative costs for issuers who are subject to multiple sets of regulations and filings.[215] A company listed on stock exchanges that operate across

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[211] Ibid
[212] OSC Annual Report 2002, http://www.osc.gov.on.ca/en/about/publications/annualrpt2002/en/messages_chair.html
[213] Jean-Marc Suret and Cecile Carpentier, "Securities Regulation in Canada" (2003), online: https://www.researchgate.net/publication/4816462_Securities_Regulation_In_Canada?enrichId=rgreq-42ac563c019a87cbaaf2b02765d4fffe-XXX&enrichSource=Y292ZXJQYWdlOzQ4MTY0NjI7QVM6MjAyNTY3ODU5NjA5NjAwQDE0MjUzMDczNDkwNDI%3D&el=1_x_2&_esc=publicationCoverPdf
[214] United States General Accounting Office, SEC Operations: Increased Workout Creates Challenges" http://www.gao.gov/new.items/d02302.pdf
[215] Pierre Lortie, "Securities Regulation in Canada at a Crossroads" (2010) 3:5 University of Calgary Journal Hosting 9

multiple provinces may be required to file the same or similar documents with multiple securities commissions. These redundant processes increase operational costs and can discourage companies, particularly smaller ones, from participating in capital markets.[216] The duplication of regulatory processes can stifle innovation and growth in Canada's financial markets, particularly for smaller businesses that may lack the resources to navigate the complex regulatory landscape.[217]

3.2.3 Increased Costs for Market Participants

The decentralized system results in higher costs for both issuers and investors. Market participants must engage legal, accounting, and compliance experts in multiple provinces to ensure adherence to the varying rules and regulations.

Companies that operate across provinces must budget for compliance costs in each jurisdiction. For example, a company raising funds through an initial public offering (IPO) may need to pay fees to each provincial securities regulator, in addition to the legal and advisory fees required to meet the distinct requirements of each jurisdiction.[218]

According to Harris, the regulation of the Canadian financial sector is too complex and the existence of thirteen securities authorities (ten provinces and three territories) is harmful to proper market operations.[219] Such a situation increases issuance and compliance costs, and thereby generally hurts the competitiveness of the Canadian market. Total costs of regulation, higher than in other countries is particularly harmful in Canada because of the smaller market size. Regulation is confusing and sometimes not applied, and this situation hurts both the brokerage industry as well as financing for growth companies. The compartmentalization of

[216] Ibid
[217] Ibid
[218] F. Heinemann, and M. Scholar, "A Stigler View of Banking Supervision" Centre for European Economic Research, Discussion Paper 02-06
[219] D.A. Harris, "A Symposium on Canadian Securities Regulation: Harmonization or Nationalization" White Paper, University of Toronto Capital Markets Institute

Canadian securities authorities would make complex situations involving investors, intermediaries and issuers in various jurisdictions unmanageable. Costs related to the existence of differences in provincial laws and multiple jurisdictions penalize businesses, intermediaries and the entire market in Canada. This situation has changed little and is even unchanged since the 1964 Porter Report because of the relative ineffectiveness of harmonization efforts in Canada.[220]

These additional costs can be particularly burdensome for smaller businesses and startups, which may be priced out of the capital markets due to the high compliance costs, limiting their ability to grow and expand.

3.2.3 Complexity of Coordinating Efforts among Different Provinces

In a decentralized regulatory framework, coordination between provincial securities regulators can be difficult, particularly in the face of complex and fast-evolving market dynamics. Without a unified approach to these issues, it can be challenging for regulators to respond to national and international market developments effectively.[221]

During financial crises, such as the 2008 global financial meltdown, the need for rapid and coordinated responses across jurisdictions was critical. However, the fragmented nature of Canada's securities regulation meant that there were delays in harmonizing regulatory responses across provinces.[222]

[220] Ibid
[221] Greg Melchin, Janet Ecker, and Yves Seguin, "Securities Regulation in Canada: An Inter-Provincial Securities Framework" *Discussion Paper,* June 2003 https://securitiescanada.org/securities_discussion_paper_english.pdf
[222] Jean-Marc Suret and Cecile Carpentier, "Securities Regulation in Canada" Working Paper undertaken for the Commission des valuers mobilieres du Quebec July 29th 2003, online: https://www.researchgate.net/publication/4816462_Securities_Regulation_In_Canada

The lack of a single national regulator complicates efforts to manage systemic risks and respond to financial crises, potentially leaving gaps in oversight or delayed responses that could exacerbate financial instability.[223]

In recognition that each of Canada's provinces and territories have different securities legislation, in the fall of 2001, the CSA embarked on a project to develop, within two years, uniform securities legislation for the consideration of governments across Canada. This project, known as the USL Project, was the CSA's top priority and is part of a broader proposed regulatory reform strategy to reduce the burden of regulation on market participants and make regulation more effective in protecting investors and preserving market integrity.[224] Although the primary focus of the USL Project is to harmonize securities legislation, the CSA has taken the opportunity to simplify and streamline the regulatory framework in areas where this complementary goal can be achieved within the project timeframe. Once the common platform is in place, further initiatives aimed at rationalizing and streamlining the legislation can proceed.[225]

In some areas, substantive changes to current laws are contemplated. For the most part, proposed changes are either well-advanced CSA initiatives for which the USL Project presents an ideal opportunity to make necessary legislative amendments, or proposed changes that would further the project's complementary goal of streamlining and harmonizing the framework of securities regulation in Canada.[226] The most significant proposed policy changes were: A streamlined and uniform securities act with details contained in regulations to allow future changes to be made in a timely and harmonized manner through the rule-making process.

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[223] Ibid
[224] Ibid, 4
[225] David L. Johnson and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014) 631https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1142&context=fac_pubs
[226] Ibid

The ability for a securities regulator to delegate decision-making across all regulatory functions to another securities regulator. A streamlined system for inter-jurisdictional registration of investment firms and individuals.[227]

Under the current system, investment dealers, advisers and their representatives (registrants) and companies that raise financing in our capital markets (issuers) have said that they face a number of burdens due to differences in securities laws across Canada and the need to deal with a number of securities regulators.[228] Registrants must register in each jurisdiction in which they have clients and registration requirements are not identical across jurisdictions.[229] This is thought to be more of a concern for registered firms that operate in more than one province than for individual representatives who tend to operate in only one province. Issuers typically must file a variety of documents with more than one securities regulator. For example, issuers must file a prospectus when they raise capital and afterwards must comply with continuous disclosure requirements such as the need to file material change reports.[230] Prospectus, continuous disclosure and other filing requirements vary among jurisdictions. This can create additional costs and delays, as companies must often hire lawyers in each jurisdiction to make sure they are in compliance.[231] Some issuers claim that the current system of prospectus and continuous disclosure requirements is costly, apart from any differences among jurisdictions, and hinders financing opportunities.

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[227] A. Douglas Harris, *White Paper: A Symposium on Canadian Securities Regulation: Harmonization or Nationalization* (Toronto: CMI/CFIE 2002) 5

[228] Ontario Securities Commission, "Reducing Regulatory Burden in Ontario's Capital Markets" (2019) https://www.osc.ca/sites/default/files/pdfs/irps/20191119_reducing-regulatory-burden-in-ontario-capital-markets.pdf

[229] Greg Melchin, Janet Ecker, and Yves Seguin, "Securities Regulation in Canada: An Inter-Provincial Securities Framework" *Discussion Paper,* June 2003 https://securitiescanada.org/securities_discussion_paper_english.pdf

[230]

[231] Anita I. Anand and Peter C. Klein, "The Costs of Compliance in Canada's Securities Regulatory Regime" in A. Douglas Harris, *Committee to Review the Structure of Securities Regulation in Canada* (Ottawa: Wise Persons' Committee, 2003) 522

Insider trading reports for most issuers must be filed in multiple jurisdictions, making compliance costly and causing delays in reporting to investors. Documents and applications for exemptions from securities laws must be submitted to regulators in each jurisdiction where the filing or exemption is required. Multiple filings and applications add time and expense for participants in Canada's capital markets and compliance is more difficult in cases where regulators' decisions are not consistent.[232] Some stakeholders argue that, while the Mutual Reliance Review System (MRRS) has enhanced harmonization and co-ordination, it is limited in what it can achieve since securities law is not uniform across jurisdictions and separate decisions are needed in each jurisdiction.[233] These stakeholders also maintain that MRRS is not well-suited to increasingly common complex or novel transactions.[234]

On the other hand, concerns have been raised that the current regulatory framework may not include all the measures needed to allow regulators to work together effectively in enforcement matters.[235] For example, there is no statutory authority for regulators taking enforcement actions on behalf of others. However, some jurisdictions have a practice of imposing reciprocal enforcement orders, based on the orders in another jurisdiction, on registrants who engage in securities business in those other jurisdictions.[236]

Similarly, mechanisms are needed to ensure that regulators take a similar and coordinated approach to surveillance, investigation and enforcement to facilitate consistent regulation across jurisdictions. Concerns also have been raised by some that the objective of consistent regulation across jurisdictions may be frustrated by varying local procedural requirements that

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[232] Ibid
[233] H.E. Jackson, *Regulatory Intensity in the Regulation of Capital Markets: A Preliminary Comparison of Canadian and U.S. Approaches.* Research Study, Task Force to Modernize Securities Legislation in Canada (July 30, 2005)
[234] Ibid
[235] The Canadian Securities Transition Office, *Transition Plan for the Canadian Securities Regulatory Authority* (July 12, 2010) 33
[236] Eric C. Chaffee, "Finishing the Race to the Bottom: An Argument for the Harmonization and Centralization of International Securities Law" (2010) 40 Seton Hall Law Review https://scholarship.shu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1075&context=shlr

apply in court and securities commission hearings and differing judicial interpretations of similar securities laws.[237] More common procedural requirements and practices could ensure common standards of due process and better facilitate joint hearings before more than one regulator.[238] In addition, the existence of differing local interpretations of the meaning and effect of harmonized securities laws is inconsistent with the objectives of harmonization. Some in the regulatory community feel that harmonizing the areas of hearings and sanctions is less important than harmonizing the rules of access to and operation in the capital markets.[239]

3.2.4 Problems for Marketplaces and Self-Regulatory Organizations

Securities marketplaces and self-regulatory organizations operate nationally and each is recognized in several jurisdictions. They are subject to the rules of operation of each jurisdiction in which they operate; however, oversight primarily is undertaken by their principal regulator(s).[240] Being subject to oversight of more than one regulator can result in added compliance costs and an inefficient administrative structure for vitally important components of our capital markets, such as the TSX Venture Exchange. Higher costs for stock exchanges lead to higher fees levied on companies seeking to raise capital, which restricts access to capital for companies and limits the investment choices available to investors.[241] While steps have been taken to streamline oversight and approval processes, there are still situations where duplication of oversight activities occurs across jurisdictions.

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[237] Pierre Lortie, "Securities Regulation in Canada at a Crossroads" (2010) 3:5 University of Calgary Journal Hosting 9

[238] Julia Black, Stephane Jacobzone, "Tools for Regulatory Quality and Financial Sector Regulation: A Cross-Country Perspective" OECD Working Papers on Public Governance No.16 (2009) online: https://www.oecd.org/content/dam/oecd/en/publications/reports/2009/12/tools-for-regulatory-quality-and-financial-sector-regulation_g17a1d67/218772641848.pdf

[239] Eric C. Chaffee, "Finishing the Race to the Bottom: An Argument for the Harmonization and Centralization of International Securities Law" (2010) 40 Seton Hall Law Review https://scholarship.shu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1075&context=shlr

[240] C.D. Howe Institute, Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2012) https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf

[241] Ontario Energy Board, "Improving Distribution Sector Resilience, Responsiveness and Cost Efficiency" (June 29, 2023) https://www.oeb.ca/sites/default/files/uploads/documents/reports/2023-12/Report-DRCCE-20230629.pdf

3.3 The Need for a Responsive Resilient Framework

The securities regulatory framework must be able to quickly evaluate and adapt to changes in the marketplace and securities industry. This ensures that regulations remain up-to-date.[242] A responsive system promotes innovation in capital markets while safeguarding investors. Several[243] provincial securities commissions now have the authority to create legally binding rules, subject to requirements such as public comment periods and, in most provinces, submission to the responsible Minister for review.[244] While this rulemaking power allows for more flexible and responsive regulation, concerns have been raised that the process of implementing rules is not keeping pace with the rapidly evolving markets.[245] Improved coordination in rule development across jurisdictions could help streamline these efforts.[246] Some provinces regularly update their securities laws and regulations, but there is no formal process for coordinating legislative changes across regions.[247]

The securities regulatory framework must also be resilient enough to handle stresses in capital markets. Appropriate tools should be available to address urgent issues promptly while ensuring that long-term solutions are developed and implemented in a timely manner.[248] In response to corporate accounting scandals like it occurred in the United States, some Canadian jurisdictions, including the federal government, have introduced or announced measures to

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[242] Mattias Levin, "Competition, Fragmentation & Transparency: Providing the Regulatory Framework for Fair, Efficient and Dynamic European Securities Market" (2003) https://aei.pitt.edu/9549/2/9549.pdf

[243] For example the Ontario Securities Commission has the power to make legally binding rules, public comment period, and ministerial review. See Ontario Securities Regulation, "Securities Rule-Making in Ontario" (2024) online: https://www.osc.ca/en/securities-law/instruments-rules-and-policies/securities-rule-making-ontario

[244] IISD Report, "Advancing the Climate Resilience of Canadian Infrastructure" (2021), online: https://www.iisd.org/system/files/2021-07/climate-resilience-canadian-infrastructure-en.pdf

[245] D. Erman, "Securities Regulation in Canada: Past and Present Challenges of the Provincial Model" (2008) 16:2 Journal of Financial Regulation and Compliance 157

[246] *Ibid*

[247] David L. Johnson, Kathleen Rockwell and Cristie Ford, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014), online: p.638 https://researchers.allard.ubc.ca/files/39710210/National%20and%20Coordinated%20Approaches%20to%20Securities%20Regulation:%20The.pdf

[248] J.A. VanDuzer, "The Provincial Regulation of Securities Market: Advantages, Disadvantages and Prospects for Reform" (2003) 48:2 McGill Law Journal 331

enhance investor confidence. However, these actions have been taken without formal coordination, and some commentators emphasize the need to tailor such responses to the Canadian context.[249]

Currently, each provincial and territorial securities regulator in Canada participates in international regulatory organizations, enabling them to stay aligned with global best practices and emerging trends. The Ontario and Québec securities commissions are full members of the International Organization of Securities Commissions (IOSCO), actively contributing to its policy and technical committees. Meanwhile, the Alberta and British Columbia commissions hold associate membership, and all four are also members of the Council of Securities Regulators of the Americas (COSRA). Every provincial and territorial regulator in Canada is a member of the North American Securities Administrators Association (NASAA).[250] This international engagement is not merely symbolic; it is a crucial mechanism through which Canadian regulators enhance their responsiveness and resilience. Participation in global and regional regulatory networks allows provincial regulators to access early warnings about systemic risks, learn from the regulatory innovations of other jurisdictions, and adopt international standards that strengthen investor protection and market integrity. In doing so, they are better positioned to adapt to rapid technological change, global financial interconnectivity, and evolving market behaviors.[251]

Thus, while Canada's securities regulatory system remains decentralized, its integration with the international regulatory community provides a valuable supplement to domestic efforts. It

[249] M.J. Trebilcock, & R.J. Daniels, "The Future of Securities Regulation in Canada: A Discussion of Alternatives to the Provincial Model" (1990) 16: 2 Canadian Public Policy 125-131

[250] P. Puri, "Twenty Years of Supreme Court Reference Decisions: Putting the *Securities Reference* Decision in Context, in *What's Next for Canada? Securities Regulation After the Reference,* (Toronto: Irwin Law; 2012) 15, 18

[251] David L. Johnson and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation: The Latest Initiatives in Historical Context" (2014) 631https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1142&context=fac_pubs

serves as a channel for continuous learning and adaptation — a critical feature of the responsive and resilient regulatory framework this chapter argues is essential for modern capital markets.

Some commentators argue that Canada's securities regulators lack a unified international voice. In an increasingly global capital market, there is a growing call for Canada to present a cohesive and authoritative stance. A unified presence would not only ensure strong representation of Canadian interests in international forums — such as the International Organization of Securities Commissions (IOSCO) — but also strengthen Canada's position in bilateral discussions with key foreign agencies, including the U.S. Securities and Exchange Commission (SEC).[252] However, while the lack of a unified voice is a legitimate concern, it is also true that provincial regulators in Canada have historically played a significant role in international regulatory initiatives. Their direct membership in international organizations — such as IOSCO, COSRA, and NASAA — enables them to contribute meaningfully to global regulatory discourse. Moreover, a decentralized system offers its own form of responsiveness by allowing regulators to tailor rules to local market conditions and innovate in response to regional dynamics. [253]

Thus, the question of whether centralization would improve responsiveness depends on how that concept is defined. If responsiveness means national coordination and international engagement, then centralization offers clear benefits. But if it means flexibility, adaptability, and sensitivity to regional differences, then the current decentralized model continues to hold significant value. The challenge, therefore, lies in striking a balance — potentially through cooperative federalism — that combines the strengths of both approaches.

[252] R. Johnson, "Provincial Versus National Securities Regulation in Canada: The Ongoing Debate" (2008) 58:4 University of Toronto Law Journal 315
[253] C. Brown, "The Regulation of Securities in Canada: Provincial Autonomy and the National Interest" (2004) 39:3 Canadian Business Law Journal 231

CHAPTER FOUR

EFFICIENCY, RESPONSIVENESS AND EFFECTIVENESS OF THE CANADIAN SECURITIES REGULATOR

Introduction

This chapter delves into the operational performance of Canada's securities regulation system, focusing on its efficiency, responsiveness, and overall effectiveness in managing financial markets. Firstly, the chapter discusses the evolution and background for the current securities regulatory reform initiative, before discussing its effectiveness. The discussion is structured around the comparison between Canada's decentralized regulatory system and the centralized frameworks in other countries, particularly the United States. This comparative analysis is pertinent so as to ascertain and measure its effectiveness and efficiency. Key areas such as market stability, investor confidence, systemic risk management, and the ability to respond to financial crises are explored to provide a comprehensive understanding of how Canada's regulatory system performs in critical areas.

4.1 Background to the Current Securities Regulatory Reform Initiative

In February 2008, less than four years after introducing the passport system, the Canadian government created a third-party Expert Panel on Securities Regulation to suggest ways to improve the country's securities regulation. The reasoning behind establishing this panel at that time was not immediately clear. The passport system was still new and lacked a proven track record to assess its effectiveness. Furthermore, despite the global financial crisis causing turmoil in many markets, Canada's financial markets were performing relatively well. Some believe the immediate trigger for forming the expert panel was the liquidity crisis in Canada's asset-backed commercial paper (ABCP) market during the financial crisis.[254] Although the

[254] In an April 15, 2008, Canadian Press article referencing the mid-August, 2007, Canadian financial market meltdown (when approximately $32 billion of non-bank, or third-party, sponsored asset-backed commercial paper was frozen by the inability of the conduits to rollover their maturing notes), finance minister Jim Flaherty said that "a national regulator would [also] provide more transparency for investors. We have 13 securities

regulation of ABCP fell under provincial securities authority, the federal government had to intervene and provide resources to resolve the crisis. This costly intervention, coupled with the global focus on regulatory reform following the financial crisis, may have given the federal government an opportunity to push for a greater role in securities regulation.[255]

The Expert Panel on Securities Regulation conducted a thorough and thoughtful review of Canada's securities regulatory framework. It commissioned research, consulted international experts, obtained legal advice, and carried out a wide-ranging consultation process. On January 12, 2009, the panel released its final report and recommendations, along with a draft of a National Securities Act. The panel recommended establishing a single national securities regulator, the Canadian Securities Commission (CSC), to administer a new Federal *Securities Act*.[256] The CSC would be a federal body governed by an independent board, appointed by the federal government and accountable to Parliament through the finance minister. It would oversee policymaking, rulemaking, and the investigation and prosecution of regulatory offences. A separate adjudicative tribunal would handle securities-related legal disputes.

The panel acknowledged that not all provinces might agree to this national model and suggested that the act should apply only in participating jurisdictions. To address potential operational issues if some provinces opted out, the panel recommended a "market participant opt-in feature."[257] This would allow companies or dealers headquartered in non-participating provinces to choose to be regulated by the CSC rather than follow their province's securities

regulators in Canada, which, quite frankly, makes no sense and makes for a great deal of inefficiency in terms of regulation."

[255] Standing Committee on Finance and Economic Affairs, "Report on the Five-Year Review of the Securities Act" Legislative Assembly of Ontario https://www.ola.org/en/legislative-business/committees/finance-economic-affairs/parliament-38/reports/report-five-year-review-securities-act

[256] Expert Panel on Securities Regulation, "Final Report and Recommendations" January 12 2009. https://publications.gc.ca/collection_2009/fin/F2-188-2008E.pdf

[257] Ibid

laws. This would ensure that both companies and registered dealers could be governed by the national CSC regime instead of provincial regulations.

The final report also proposed several forward-thinking recommendations aimed at improving regulatory accountability, rule-making, and investor protection. These included ensuring regulation is cost-effective, promotes innovation, and supports the competitiveness of Canada's capital markets.[258] The report also called for the creation of an independent panel to represent the interests of small reporting issuers, a dedicated service to assist investors with complaints and redress, and granting the securities regulator authority to order compensation for violations of securities law.[259] Additional suggestions included establishing an investor compensation fund, requiring registrants to participate in a legislatively designated dispute resolution process, and creating an independent investor panel. Nearly a decade later, these recommendations remain relevant and insightful.[260]

Following the report's release, the federal government set up the Canadian Securities Transition Office (CSTO) to help establish a Canadian securities regulation regime and a national regulatory authority. In May 2010, the CSTO presented a draft *Canadian Securities Act* to the federal government. To encourage provincial cooperation, this draft was modeled more closely on existing provincial securities laws rather than the expert panel's original proposal. This reflected the federal government's shift from advocating a single national regulator to embracing a hybrid federal-provincial model, though no evidence was provided to suggest this would be more effective than the current system.[261] The CSTO's draft maintained the option for provinces to choose whether to join the new regulator but omitted the market participant opt-in feature. It also did not clarify how the hybrid regulator would coordinate with

[258] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary489.pdf
[259] Ibid
[260] Ibid
[261] Ibid

non-participating provincial regulators. Lastly, the draft prioritized regulatory familiarity over reform, leaving out many of the expert panel's more progressive recommendations for improving accountability and investor protection.

The federal government promptly referred the *proposed Canadian Securities Act* to the Supreme Court of Canada to seek an advisory opinion on its constitutional validity. Several provinces, led by Alberta, Quebec, Manitoba, and New Brunswick, opposed the legislation, arguing that it exceeded the federal government's legislative authority. In contrast, the federal and Ontario governments contended that the Act fell under federal jurisdiction over general trade and commerce. Before the Supreme Court heard the case in April 2011, appellate courts in Quebec and Alberta had already ruled, nearly unanimously, that the proposed law was unconstitutional.[262] In December 2011, the Supreme Court unanimously concluded that the Canadian Securities Act was beyond Parliament's legislative authority. While the court acknowledged that certain elements of the Act, particularly those addressing systemic risks like data collection, raised legitimate national concerns, it rejected the federal government's argument that these concerns justified replacing provincial regulation of the securities industry. The court suggested that a cooperative approach, which recognized the provincial nature of securities regulation while allowing Parliament to address national concerns, remained a viable option.[263] In analysing the key holdings of this case, it is pertinent to note that the court determined that securities regulation is primarily a matter of provincial jurisdiction, falling under the property and civil rights clause[264] and the matters of a local or private nature clause.[265] Provincial securities commissions have traditionally regulated securities markets, and this

[262] Supreme Court of Canada: Reference re *Securities Act, 2011* SCC 66, (2011) 3 S.C.R. 837
[263] Ibid
[264] Section 92(13) of the Constitution Act 1867
[265] Ibid, Section 92(16)

framework reflects the localized nature of market participants, financial institutions, and businesses.

On the other hand, the federal government argued that the Canadian Securities Act was justified under its general trade and commerce power.[266] It claimed that a national securities framework was necessary to address systemic risks, ensure consistent regulation, and improve international competitiveness. The court acknowledged that certain aspects of securities regulation, such as systemic risks and data collection, have national implications. However, it concluded that these elements alone did not transform securities regulation into a matter of national concern justifying federal jurisdiction. The proposed Act went too far by effectively replacing provincial regulation, which was deemed unconstitutional. Lastly, another key holding of the case was the legitimacy of national concerns. The court recognized the federal government's legitimate interest in addressing issues that transcend provincial boundaries, such as systemic risk to the financial system and the stability of capital markets.

Seizing on this suggestion, the federal government shifted away from its unilateral approach and, without much consultation or analysis, began seeking provincial support for a new, seemingly ad hoc, cooperative regulatory reform initiative. This approach would involve the federal government working collaboratively with provinces to address national concerns while respecting the provincial nature of securities regulation.

Thus, this research notes that the decision emphasized the importance of respecting the division of powers while fostering collaboration between federal and provincial government. This sets a precedent for addressing cross-jurisdictional issues through cooperation rather than unilateral federal action. Also, the court clarified the scope of the federal trade and commerce power,

[266] Section 91(2), Ibid

reinforcing that it does not extend to regulating areas that are traditionally provincial unless there is a clear and compelling national dimension.[267]

4.2 Evolution of the Current Securities Regulatory Reform Initiative

After nearly two years of negotiations, the federal government announced in September 2013 that it had persuaded Ontario and British Columbia to join in creating a co-operative capital markets regulatory system, known as the Co-operative Regulator. The three jurisdictions formalized their collaboration by signing an agreement in principle (AIP) and invited other provinces and territories to participate.[268]

It was predictable for the federal government, eager to expand its jurisdiction, and Ontario, wanting to support its securities industry, to be initial signatories of the AIP. British Columbia's participation was more surprising, as the province had previously opposed federal involvement in securities regulation.[269] One possible reason for this shift was the 2013 federal budget's indication that the federal government might establish a standalone systemic risk regulator if enough provincial support for the cooperative model wasn't secured. British Columbia may have preferred limited federal involvement through a federal-provincial initiative over the alternative of a federal-only regulator.[270]

Another possible factor was Alberta's decision not to participate. With a major western province refusing to be involved, the initiative risked being seen as Ontario-centric, and British Columbia likely recognized its crucial role in making the project viable. This gave British Columbia leverage, allowing it to negotiate equal governance status in the new regulator

[267] Supreme Court of Canada: Reference re *Securities Act, 2011* SCC 66, (2011) 3 S.C.R. 837
[268] P. Crawford, and N. Le Pan, "The Origins and Future of Canada's Cooperative Capital Markets Regulatory System" (2015) (1) (1) Journal of Financial Regulation 1-36
[269] Nadia Verrelli, "The Changing Federal Environment: Rebalancing Roles?" https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/PDF%20Publications/SOTF%202011%20book.pdf
[270] Ibid

alongside the federal government and Ontario.[271] By achieving co-equal status, British Columbia ensured it could protect its local market participants from unwanted federal or Ontario interference, making its participation in the AIP more palatable.[272]

The AIP set out the principal components of the proposed Co-operative Regulator. Some of the features of the predecessor unilateral federal model were retained, but many had to be changed or adapted to accommodate the shared federal-provincial character of the proposed Cooperative Regulator.[273] The more important and distinct structural elements set out in the AIP include: uniform virtually identical provincial and territorial legislation to replace existing provincial legislation; complementary federal legislation dealing with criminal matters, systemic risk and national data collection; a single capital markets regulator reporting to an independent board of directors; a Council of Ministers (composed of ministers responsible for capital markets regulation in each participating province and territory and including the federal finance minister) to oversee the regulator and be accountable to participating governments..The regulator would be headquartered in Toronto but be managed by a decentralized regionally based executive team. The AIP targeted a launch date of July 1, 2015, for the Co-operative Regulator.[274]

After the signing of the Agreement in Principle (AIP), the three participating jurisdictions made significant efforts to build public support and encourage other provinces and territories to join the initiative.[275] They worked to differentiate the proposed Co-operative Regulator from previous unilateral federal attempts. However, when outlining the potential benefits of the Co-

[271] Ibid
[272] Government of Canada, "Future of Canada's Competition Policy Consultation – What We Heard Report" (2023) online: https://ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/consultation-future-competition-policy-canada/future-canadas-competition-policy-consultation-what-we-heard-report
[273] Supra, note 258
[274] Ibid
[275] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) C.D. Howe Institute Commentary 489

operative Regulator, they often did not emphasize this distinction. Most of the claimed advantages of the earlier federal initiative with a single national regulator were adopted into the promotion of the Co-operative Regulator without much alteration.[276] The press release accompanying the AIP signing confidently stated that the Co-operative Regulator would "better protect investors, enhance Canada's financial services sector, support efficient capital markets, and manage systemic risk" and that it would help strengthen the economy, improve investor protection, and better respond to increasingly competitive global markets, as seen in the US.[277] What the release did not mention was that achieving these goals would require unprecedented cooperation between federal and provincial authorities, and these objectives could be jeopardized if broad provincial and territorial support was not secured. Much like the approach taken with the release of the Canadian Securities Act, the assumption of widespread provincial participation was implied, with no alternatives or contingencies explored if this did not occur. The AIP signatories largely ignored the possibility that major provinces, such as Quebec and Alberta, might not join the Co-operative Regulator.[278]

Nine more months of negotiations and significant financial incentives from the federal government were required, but by July 9, 2014, the original AIP signatories announced that Saskatchewan and New Brunswick had agreed to join. Some observers saw the inclusion of these provinces as a "tipping point," providing the initiative with the critical momentum needed to move forward. By September 8, 2014, this assessment was confirmed when the five participating jurisdictions signed a Memorandum of Agreement (MOA), committing to the launch of the Co-operative Regulator, despite the limited participation from other provinces.[279]

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[276] Ibid

[277] John Armou and Joseph A. McCahery, "After Enron: Improving Corporate Law and Modernising Securities Regulation in Europe and the US" Amsterdam Center for Law & Economics Working Paper No. 2006 – 07. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=910205

[278] Ibid

[279] J.G. MacIntosh, "Securities Regulation in Canada and the Quest for a National Securities Regulator" (2016) (49) (2) Canadian Business Law Journal 207-217

The main justification for pushing ahead with the Co-operative Regulator, despite strong provincial opposition, was that, with the addition of Saskatchewan and New Brunswick, the participating provinces now represented around 53% of Canadian public market capitalization. This statistic seemed to imply that market capitalization was a proxy for popular support, and that by surpassing 50%, majority support for the new securities regulatory model had been achieved.[280] However, this reasoning is flawed in two ways.

First, market capitalization only reflects one aspect of securities regulation—public market issuers—and overlooks other key stakeholders like investors, private issuers, investment funds, and registrants. Second, the Memorandum of Agreement (MOA) for the Co-operative Regulator sets out voting rules that require the support of at least 50% of the eligible jurisdictions for any decision. When the participating provinces committed to launching the regulator with support from just five of 14 potential jurisdictions, they ignored the very voting principle they had outlined in the MOA.[281]

Moreover, the commitment to move forward disregarded the fact that most provinces and territories chose not to join. The decision was made while the Co-operative Regulator was still incomplete, with many unresolved issues, some of which remain unsettled. There was also no evidence that the new hybrid regulator had been subjected to third-party evaluation or a comprehensive cost-benefit analysis before the commitment was made.[282] It seems the participating provinces unilaterally committed Canada to an untested hybrid regulatory model, despite the fact that its governance structure and accountability mechanisms were not fully developed, and the working relationship with non-participating provinces was not clearly

[280] Ibid
[281] D. Zaring, "The Systematic Justification for Financial Regulation" (2015) 99(3) Georgetown Law Journal 1047-1049
[282] Ibid

defined.[283] Without addressing these critical factors, the decision to proceed was premature, if not outright inappropriate.

Why commit to launch a still incomplete Cooperative Regulator without first exposing the proposed model to an independent assessment or third-party cost-benefit analysis? One possible explanation is an expectation on the part of the participating jurisdictions that additional provinces and territories would be motivated to join the Cooperative Regulator once it became operational. This "build it and they will come approach," if correct, would constitute a very risky tactic with limited upside.[284]

While some provinces or territories might be more inclined to join the Co-operative Regulator after its launch, it is unlikely that Quebec or Alberta will be among them.[285] Both provinces declined the chance to participate when they could have influenced the structure and legislation of the new regulator and have remained firm in their opposition. Moreover, since there have been no discussions about imposing penalties or sanctions on non-participating jurisdictions, there is no reason to believe that either province will be more motivated to join after the regulator is launched. Quebec and Alberta could find themselves in a situation similar to Ontario's with respect to the passport system: Ontario has worked cooperatively with the system for the past decade while remaining outside it to maintain its regulatory autonomy. It is easy to see Quebec and Alberta adopting a similar approach—cooperative yet autonomous—toward the Co-operative Regulator.

The difficulty of assessing the effectiveness of regulatory systems might also explain why participating jurisdictions have avoided conducting a thorough analysis of the Co-operative

[283] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) online: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf
[284] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) online: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf
[285] Leila Rafi and Samantha Gordon, "Cooperating to Create a National Securities Regulator in Canada" (2018) McMillan https://mcmillan.ca/insights/cooperating-to-create-a-national-securities-regulator-in-canada/

Regulator. Evaluating securities regulation outcomes—such as efficiency, accountability, competitiveness, enforcement, and investor protection—is inherently challenging because they cannot be easily or absolutely quantified. As a result, most assessments of Canada's securities regulatory models have relied on qualitative comparisons with other countries and evaluations by international organizations like the Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF).

Historically, proponents of a national regulator for Canada often pointed to examples like the United States and Australia, both federal systems with national securities regulators. However, after the global financial crisis, these examples have become less convincing.[286] The U.S. faced significant challenges during the crisis, and although Australia's banking sector held up relatively well, the country saw notable failures in investment companies and significant investor losses from structured products. Britain was also frequently cited as a model, particularly during the expert panel's discussions, but ironically, its performance during the global financial crisis was worse than Canada's. In the end, the international examples that once supported the argument for a national regulator in Canada no longer provide strong evidence to justify overhauling Canada's existing regulatory framework, let alone rushing to implement a new and untested model.[287]

International organizations like the OECD and the IMF have played a significant role in the debate over Canada's securities regulatory framework. Over the years, they have expressed their views on Canada's system in various country reports. Both organizations have consistently acknowledged that Canada's current regulatory model functions effectively, yet

[286] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) online: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_489.pdf
[287] Ibid. There have also been cases as regards the ability of states to regulate securities fraud under state laws in the United States. See Merrill Lynch, Pierce, Fenner & Smith Inc v. Dabit (2006) 547 US 71; SEC v. National Securities Inc (1969) 393 U.S. 453. The U.S. Supreme Court held that while states retained some regulatory authority over insurance, securities transactions involved in insurance company mergers fell under the SEC's jurisdiction.

they always recommend transitioning to a single national regulator. The frequency and consistency of these recommendations from the OECD and IMF lend them an air of authority that may not be entirely justified.[288] For instance, neither organization has conducted specific empirical assessments of Canada's securities regulatory environment to support their calls for a single national regulator. The only empirical analyses they provide regarding securities regulation are based on international rankings derived from surveys, in which Canada's existing regulatory system often ranks among the best.

Thus, it is a stretch to claim that the recommendations from these international organizations warrant an immediate overhaul of Canada's securities regulatory framework, especially when the proposed alternative is a hybrid regulator rather than the single national regulator they consistently advocate for. Furthermore, there appears to be no comparative analysis demonstrating the supposed advantages of the Co-operative Regulator over Canada's current model, and such analysis has not been reported.[289] Notably, the expert panel's final report and recommendations, which sparked the current regulatory reform efforts, were developed shortly after the introduction of the passport system. As a result, the recommendation for a single regulator was made while the passport system was still being established, and the process of harmonizing and integrating provincial regulators was only just beginning.[290]

Since then, provincial regulators, primarily through the Canadian Securities Administrators (CSA), have made significant strides in standardizing various aspects of securities regulation. Recently, areas that have been notoriously unharmonized, such as prospectus-exempt

[288] Anita Indira Anand Peter Charles Klein, "Inefficient and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda" (2005) online: https://tspace.library.utoronto.ca/bitstream/1807/88104/1/Anand%20Inefficiency.pdf
[289] Government of Canada, "Relationships with International Groups and Organizations" (2019) online: https://www.canada.ca/en/department-finance/corporate/transparency/transition-binders/2019/how-finance-works/relationships-international-groups-organizations.html
[290] E. Gozian, "Examining the Effectiveness of Co-Operative Capital Markets Regulatory System in Canada" (2023) (64) (1) Canadian Business Law Journal 23

financing, takeover tactics, and over-the-counter derivatives, have either been codified or are in the process of being codified into well-aligned national rules.[291] As a result, unlike nearly a decade ago when the expert panel released its report, Canada's current securities regulatory model, coordinated by the CSA, functions with a relatively high degree of collaboration and coordination among provinces and territories. Furthermore, despite ongoing claims that Canada's multi-jurisdictional regulatory model hampers the country's economic competitiveness and threatens its financial integrity, the evidence supporting these assertions is largely anecdotal and lacks substantial verification.[292]

4.3 Comparative Analysis of Securities Regulation

Canadian securities regulation has been referred to as a patchwork system consisting of a myriad of agencies in the regulatory ecosystem.[293] The jurisdictional uncertainties of regulation are based on the division of responsibilities among the Royal Canadian Mounted Police (RCMP), the provincial securities commissions, the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC). As known, there is no federal regulator for the securities market in Canada, and the duty of regulating the market lies with the RCMP, provincial securities commissions and specialty self-regulatory organizations (SROs), all of which are granted authority to regulate financial crimes within their borders.[294]. Provincial securities commissions and SROs convene administrative proceedings to address breaches in securities laws. Violators of securities laws can also be

[291] Ibid
[292] J. Voss, "Regulatory Innovations and Challenges in Canada's Securities Market" (2022) (78) (4) Canadian Financial Review 407-419
[293] Bhattacharya Uppal, "Enforcement and its Impact on Cost of Equity and Liquidity of the Market" (2006) online: https://ssrn.com/abstract=952698; Lokanan Mark, "Regulatory Capture of Regulators: The Case of Investment Dealers Association of Canada" (2018) (41) (15) International Journal of Public Administration 1243-1257
[294] Anand Anita, "The Enforcement of Financial Market Crimes in Canada and the United Kingdom" *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation,* edited by C. Alexander and D. Cumming, (Cornwall: Wiley; 2020) 507-520; Kempa Michael, "Combating White-Collar Crime in Canada: Serving Victim Needs and Market Integrity" (2010) (17) Journal of Financial Crime 257-264

deemed as quasi-criminal offences and tried in provincial courts. Sanctions vary by province but, in general, they are more severe than those applied by SROs and security commissions. However, SROs and security commissions are required to direct cases with evidence of criminal activity to RCMP-led Integrated Market Enforcement Teams (IMETs) responsible for the detection, investigation and deterrence of capital market fraud (Public Safety Canada, 2020). This fragmented structure is constantly criticized by experts as inefficient, lax, biased and prone to disputes regarding jurisdiction among the agencies.[295]

Canada's capital markets are closely integrated with those of the United States and United Kingdom and have closely followed their lead in legislative reforms.[296] Accordingly, they are good reference points to understand how the Canadian situation compares to other countries and whether those models offer more accountability and effectiveness than the Canadian model. The US model has been especially influential in shaping Canadian reforms.[297]

The US securities industry is regulated by the Securities and Exchange Commission (SEC) and an SRO called the Financial Industry Regulatory Authority (FINRA). The SEC is responsible for overseeing the activities of publicly traded companies and the financial markets, while FINRA focuses on regulating broker-dealers and other financial professionals. Even though Canadian securities laws provide several avenues for enforcement, enforcement has been less intense in Canada than in the US. The SEC aggressively pursues high-profile cases, whereas Canadian regulators focus enforcement activities on deterrence over punitive sanctions.[298] The Public Company Accounting Reform and Investor Protection Act of 2002'[299] which imposed

[295] Lokana,Mark, "An Update on Self-Regulation in the Canadian Securities Industry (2009 – 2016): Funnel In, Funnel Out and Funnel Away" (2019) (27) Journal of Financial Regulation and Compliance 324-344. https://doi.org/10.1108/JFRC-05-2018-0075
[296] Rioux William, "Securities Enforcement: An Evaluation of Recent Legislative Changes (Doctoral Dissertation, University of Toronto (Canada) https://www.proquest.com/docview/2139180295?pq-origsite=gscholar%26fromopenview=true
[297] Puri Poonam, "Securities Litigation and Enforcement: The Canadian Perspective" (2012) (37) Brooklyn Journal of International Law 967
[298] Ibid
[299] Commonly referred to the Sarbanes-Oxley Act

stricter reporting and disclosure requirements for publicly traded companies, also made it easier for the SEC to detect and pursue securities fraud cases.[300] These outcomes fostered a perception that securities enforcement in Canada is comparatively lax and less effective.[301]

In the UK, financial regulation is primarily handled by the Financial Conduct Authority (FCA), the Serious Fraud Office (SFO) and the Office of Financial Sanctions Implementation. The FCA has been a pioneer in risk management and consumer protection, and its approach influential in Canada.[302] These regulatory agencies are similar to the Canadian provincial securities commissions in that, ensuring that markets are fair and efficient, but they do not have the same power to impose sanctions. Instead, they "liaise with UK criminal law officials to investigate potential instances of financial market crime, evaluate wrongdoing, and impose punishment on offenders".[303] Even though financial crimes are typically prosecuted in the courts, enforcement rates are relatively low in the UK because of under-enforcement and the number of legislative loops involved in prosecuting a violation. Although the UK system is more integrated than Canada's, the former's reliance on multiple agencies is a weakness.[304]

The US market regulation appears to be more robust, whereas the fragmented approach to enforcement in Canada remains an obstacle to the successful persecution of financial crimes.[305] Nevertheless, researchers have been exploring alternative approaches, such as compliance-

[300] Gorshunov Mikhail, Archilles Armena, Hubert Field and Brian Vansat, "The Sarbanes Oxley Act of 2002: Relationship to Magnitude of Financial Corruption and Corrupt Organizational Cultures" (2020) (21) (2) Journal of Management 73-86
[301] Ford Christie, "Prospects from Scalability: Relationships and Uncertainty in Responsive Regulation" (2013) (7) (1) Regulation & Governance 14-29
[302] Ryder Nicholas, "Too Scared to Prosecute and Too Scared to Jail? A Critical and Comparative Analysis in the USA and the UK" (2018) (82) (3) Journal of Criminal Law 245-263
[303] Ibid
[304] Ryder Nicholas, "Too Scared to Prosecute and Too Scared to Jail? A Critical and Comparative Analysis in the USA and the UK" (2018) (82) (3) Journal of Criminal Law 245-263. See also Kent R. Weaver, and Bert, A. Rockman, *Do Institutions Matter?: Government Capabilities in the United States and Abroad* (Massachusetts: Brookings Institutions, 1993)
[305] Condon Mary, "A Pyramid or a Labyrinth? Enforcement of Registrant Misconduct Requirements in Canada" In C. Alexander and D. Cumming, *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation* (Cornwall: Wiley, 2020)

oriented enforcement[306] and early resolution offers (ERO).[307] Compliance-oriented enforcement is an alternative regulatory model that allows regulators and registrants to address misconduct through cooperation and compliance.[308] The compliance model focuses on regulating responsively to ensure that registrants comply with the rules and regulations rather than punishing them for violations.[309] EROs allow regulators to reach agreements with registrants without having to go through a formal hearing to ensure greater efficiency in enforcement.[310] In 2021, the IIROC released a formal statement that registrants can secure lighter punishment by settling their cases through EROs. Compliance-oriented enforcement and EROs represent a shift from costly and time-consuming litigation to remedial measures geared to improve regulatory outcomes and address investors' harm through voluntary compensation.

4.4 Canada's Decentralized Regulatory System

Arguments put forth by promoters of the uniformity and centralization of securities regulation in Canada rely essentially on the concept of the immediate effectiveness of such regulation: a single authority would be able to regulate the securities field in an optimal manner and at a lower cost, and perfectly homogeneous regulation would be preferable to the current situation.[311] The imposition of this homogeneous regulation by a central authority was

[306] Braithwaite John, "Flipping Markets to Virtue with Qui Tam and Restorative Justice" (2013) (38) (7) Accounting, Organizations and Society 458-468; Lookanan Mark, "Securities Regulation: Opportunities Exist for IIROC To Regulate Responsively" (2015) (50) (3) Administration and Society 402-428
[307] Ibid
[308] Ibid
[309] Ford Christie, "Prospects for Scalability: Relationships and Uncertainty in Responsive Regulation" (2013) (7) (1) Regulation & Governance 14-29
[310] Anand Anita, and Andrew Green, "Securities Settlements as Examples of Crisis-Driven Regulation" (2018) (55) International Review of Law and Economics 41-57; Rioux William, *Securities Enforcement: An Evaluation of Recent Legislative Changes* (Doctoral Dissertation, University of Toronto (Canada)). Online: https://www.proquest.com/docview/2139180295?pq-origsite=gscholar%26fromopenview=true
[311] A. Anand, "Harmonizing Canadian Securities Laws: Considering Alternatives" in *Globalization: Proceedings of the 8th Queen Annual Business Law Symposium* (Kingston: Queen's University, 2001) 9

described by Breton[312] as the strong harmonization method, a concept that contrasts with that of regulatory competition. Instead of monopolistic regulation, the defenders of this method propose a market approach to regulation, whether it concerns taxation, the environment, companies or financial markets. Some promoters of this approach contend that competition should lead to less complete and stable harmonization than that of imposed harmonization, but one which is more in accordance with the real needs of participants. Breton calls this approach weak harmonization.[313]

Canada's decentralized securities regulatory system is unique in its reliance on provincial and territorial authorities to oversee financial markets, with each region having its own regulatory body responsible for administering securities laws. This model is not similar to the centralized national regulators seen in other countries like the United States and presents both distinct advantages and significant challenges. A closer comparison of these systems reveals the impact of decentralization on efficiency, responsiveness, and effectiveness, as well as how this structure shapes regulatory oversight, market stability, and investor confidence.

4.4.1 Efficiency of Canada's Decentralized Regulatory System

In a decentralized regulatory system like Canada's, each province operates its own securities commission. This can lead to significant inefficiencies, particularly in the duplication of processes and regulatory burdens. For instance, businesses seeking to raise capital or conduct cross-provincial operations must navigate different regulatory regimes. This increases compliance costs and administrative complexity, which can hinder the overall efficiency of the system.[314]

[312] A. Breton, "An Introduction to Decentralization Failure", Conference on Fiscal Decentralization. IMF Fiscal Affairs Department, Washington, D.C.http://www.imf.org/external/pubs/ft/seminar/2000/fiscal/Breton.pdf
[313] Ibid
[314] Gilly Griffin and Paul Locke, "Comparison of the Canadian and US Laws, Regulations, Policies and Systems of Oversight for Animals in Research" (2016) (57) ILAR Journal 271-284

A notable example is the prospectus approval process for companies issuing securities. In Canada, a company issuing securities across the country must gain approval from the regulator in each province or territory in which it seeks to operate. While the Canadian Securities Administrators (CSA) has implemented a "passport system," where one province's approval extends to others, this system is not completely seamless.[315] For example, Ontario does not participate fully in this passport system, meaning companies that seek to operate in Ontario and other provinces must still go through additional steps to gain approval from the Ontario Securities Commission (OSC), adding another layer of complexity.[316]

In comparison, the United States operates under a single national securities regulator, the SEC. The SEC's centralized structure allows for the streamlined oversight of all securities activities within the U.S. market. Businesses in the U.S. benefit from uniform rules and regulatory processes across states, leading to lower compliance costs and greater regulatory efficiency.[317] When compared to Canada's decentralized approach, the SEC's uniformity in rules fosters a smoother regulatory landscape, reducing administrative burdens and enhancing market fluidity.[318]

4.4.2 Responsiveness in the Provincial System vs. National Systems

While the decentralized nature of Canada's system can lead to inefficiencies, it also provides certain advantages in terms of responsiveness. Each province has the ability to craft regulations that are tailored to its own unique economic and market conditions. This allows provincial regulators to be more nimble in addressing specific local issues and emerging risks within their jurisdiction. For instance, Québec's Autorité des marchés financiers (AMF) has introduced

[315] Jean-Francois Tremblay, *Canada: Handbook of Fiscal Federalism* (Palgrave MacMillan Cham, 2023) 102
[316] J.E. Tremblay, *Fiscal Problems, Taxations Solutions: Options for Reforming Canada's Tax and Transfer System.* (Toronto: Mowat Centre for Policy Innovation, School of Public Policy and Governance, University of Toronto, 2012) https://tspace.library.utoronto.ca/bitstream/1807/99229/1/Tremblay_2012_Fiscal_Problems.pdf
[317] Gilly Griffin and Paul Locke, "Comparison of the Canadian and US Laws, Regulations, Policies and Systems of Oversight for Animals in Research" (2016) (57) *ILAR Journal* 271-284
[318] Ibid

specific regulations tailored to Québec's distinct linguistic and cultural context, allowing for more direct engagement with market participants.

In Alberta, where the energy sector plays a central role in the province's economy, the Alberta Securities Commission (ASC) has crafted specific regulations to address the financing and operations of companies in that sector. This localized focus allows provincial regulators to respond to market dynamics more effectively than a national regulator that may have to address the interests of a broader, more diverse economy.[319]

By contrast, the centralized SEC in the U.S. is responsible for overseeing all financial markets across a vast and diverse economy. While this centralized control allows the SEC to ensure uniformity and comprehensive oversight, it may lack the flexibility to quickly address region-specific issues or emerging risks in certain sectors. A national regulator must balance the needs of various industries and regions, which can delay the implementation of new policies or reforms that could benefit specific sectors.[320]

However, the responsiveness of provincial regulators also has its limits. The fragmented nature of the Canadian system means that coordination between provinces can be slow, especially when facing nationwide issues. In times of financial crisis, such as the 2008 global financial meltdown, the ability to quickly implement widespread regulatory changes across all provinces can be hindered by the need for consensus among different provincial bodies.[321] However, the

[319] David Waddington, "Challenges of Canada's Decentralized Education System" (2021) online: https://files.eric.ed.gov/fulltext/EJ1180308.pdf
[320] Government of Canada, "Technology-Led Innovation and Emerging Services in the Canadian Financial Services Sector" (2017) online: https://competition-bureau.canada.ca/how-we-foster-competition/consultations/technology-led-innovation-and-emerging-services-canadian-financial-services-sector#section2_1
[321] World Law Group, "Canada: Securities Law Considerations for Decentralized Autonomous Organizations" *World Law Group,* (2021) online: https://www.theworldlawgroup.com/membership/news/whose-efforts-are-they-anyway-securities-law-considerations-for-decentralized-autonomous-organizations

SEC's centralized structure allowed for swift nationwide responses, such as the implementation of a temporary ban on short selling during the crisis, which helped stabilize U.S. markets.[322]

4.4.3 Effectiveness in Regulatory Enforcement and Investor Protection

The effectiveness of Canada's decentralized regulatory system can be both an asset and a liability when it comes to enforcement and investor protection. Each provincial regulator is responsible for enforcing securities laws within its own jurisdiction, which allows them to be more directly involved in monitoring local markets. Local regulators can focus on region-specific risks and market practices, leading to more effective oversight in addressing local issues. For example, the AMF in Québec has taken an aggressive stance on investor protection, focusing on specific risks in Québec's markets and conducting localized investor education programs.[323]

However, the effectiveness of the provincial model can be limited by the lack of uniformity across jurisdictions. Each province may have different enforcement priorities and resources, leading to inconsistencies in how securities laws are applied across Canada.[324] For instance, a company committing fraud in multiple provinces may face different penalties and enforcement actions depending on where the infraction occurred. This lack of consistency can undermine the overall effectiveness of the regulatory system and erode investor confidence, as investors may perceive different levels of protection depending on the province.[325]

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[322] Lecours Andre. "Dynamic De/Centralization in Canada, 1867-2010" (2017) (49) (1) *The Journal of Federalism* 57-83

[323] Bruce Doern, "Understanding and Improving Regulatory Oversight: Canadian Systems and Experiences" (2017) online: https://www.oecd-ilibrary.org/deliver/9789264280366-6-en.pdf?itemId=/content/component/9789264280366-6-en&mimeType=application/pdf

[324] Ibid

[325] Ana Carvajal and Jennifer Elliott, "The Challenge of Enforcement in Securities Markets: Mission Impossible?" International Monetary Fund Working Paper, (2019) online: https://www.imf.org/external/pubs/ft/wp/2009/wp09168.pdf

The centralized SEC model in the U.S. ensures consistent enforcement of securities laws across all states. The SEC's national reach allows it to pursue large-scale investigations and enforcement actions that cross state lines, ensuring that investors are protected regardless of where they are located.[326] The SEC's ability to uniformly apply securities laws enhances investor confidence, as market participants know that there is a single standard for enforcement across the entire country.[327]

Systemic Risk Management and Market Stability

Systemic risk management is a key component of effective securities regulation. In the aftermath of major financial crises, the ability of a regulator to identify and mitigate systemic risks is crucial. In Canada, the provincial system necessitates coordination among multiple regulators to address risks that transcend provincial borders. Effective systemic risk management requires close coordination and the ability to respond quickly to risks that may affect the entire financial system. In Canada's decentralized system, provincial regulators must work together to manage systemic risks that could impact the national economy.[328] The CSA plays a crucial role in coordinating efforts among the provinces, but this coordination is not always smooth, particularly when rapid action is required.

During the 2008 financial crisis, Canada's provincial regulators had to work together through the CSA to address emerging risks. While the Canadian financial system remained relatively stable during the crisis, the fragmented nature of the regulatory framework made it difficult to implement swift, cohesive responses.[329] This stands in contrast to the U.S., where the SEC, working with other federal agencies like the Federal Reserve, was able to implement

[326] Ibid
[327] Merritt B. Fox, "Securities Disclosure in a Globalizing Market: Who Should Regulate Whom?" (1997) 95 Michigan Law Review 2498
[328] Nicholas Le Pan, "Opportunities for Better Systematic Risk Management in Canada, (2017). C.D. however institute commentary, C.D. Howe institute, issue 490, September.
[329] Chun Li, and Hector Perez-Saiz, "Measuring Systemic Risk Across Financial Market Infrastructures" (2018) (34) Journal of Financial Stability 1-11

nationwide policies to stabilize markets, such as injecting liquidity and imposing temporary restrictions on certain trading activities.

The lack of a central regulatory authority in Canada can also make it more difficult to monitor and address systemic risks that span multiple provinces. For example, large financial institutions that operate across several provinces may be subject to different regulatory requirements in each jurisdiction, making it harder to identify and mitigate risks that could have a national impact.[330] In the U.S., the SEC's national jurisdiction allows it to monitor and address systemic risks more effectively, contributing to greater market stability.[331]

Market Stability and Investor Confidence

A well-functioning regulatory system should promote market stability and protect investors. Canada's provincial securities regulation model can enhance investor protection through local oversight, ensuring that regulations are adapted to the unique characteristics of regional markets. However, the lack of uniformity in regulations across provinces may result in confusion or unequal protection for investors in different regions.

Investor confidence is a critical factor in the success of financial markets, and regulatory structure plays a significant role in shaping investor perceptions.[332] In Canada's decentralized system, investors may perceive inconsistencies in regulation and enforcement across provinces, leading to concerns about the overall fairness and transparency of the market. While provincial regulators work to maintain investor protection, the lack of a single national authority can create confusion and uncertainty, particularly for investors operating in multiple provinces.[333]

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[330] Ibid
[331] Ibid
[332] Greg R. Bell, Igor Filatotchev and Ruth V. Aguilera, "Corporate Governance and Investors' Perceptions of Foreign IPO Value: An Institutional Perspective" (2013) 57: 1 Academy of Management Journal https://doi.org/10.5465/amj.2011.0146
[333] Bank of Canada, "The Bank of Canada's Risk-Management Standards for Designated FMIs" https://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/

On the other hand, the centralized SEC model in the United States provides investors with a clear, uniform regulatory framework, enhancing confidence in the consistency and fairness of the market.[334] Investors in the U.S. know that the same rules apply across all states, and that the Securities and Exchange Commission (SEC) is responsible for enforcing those rules on a national scale. This uniformity contributes to a perception of stability and reliability, which is crucial for attracting and retaining investment in the financial markets.

While these advantages make the U.S. model appealing, an important consideration is whether such a model could realistically be adapted to Canada's unique federal structure. In the United States, although powers are shared between the federal government and individual states, the federal government retains primary authority over securities regulation, allowing the SEC to act as a unified national body. In contrast, Canada's Constitution assigns securities regulation to the provinces, making the prospect of full centralization far more complex from both a legal and political standpoint. [335]

Therefore, while the U.S. model offers lessons in coherence and national coordination, any attempt to replicate it in Canada would need to navigate significant constitutional hurdles and provincial autonomy concerns. A more feasible path may lie in a hybrid or cooperative approach that respects provincial jurisdiction while striving for greater national harmonization.

4.5 Regulatory Responses to Major Financial Events in Canada

It is pertinent to note that Canada has experienced challenges during the global financial crisis, just like other nations, for example, the United States. This section provides how Canada, with its decentralized provincial regulatory system have responded to major financial events, with a

[334] Ibid
[335] Government of Canada, "Managing Risks to Financial System Stability" https://www.canada.ca/en/news/archive/2007/11/managing-risks-financial-system-stability.html

focus on Canada's specific challenges and achievements. This will be done in comparison to other nations that adopt a centralized securities regulation.

4.5.1 Regulatory Responses During the 2008 Global Financial Crisis: Canada's Resilience

The 2008 global financial crisis is often seen as a critical event that tested financial regulatory systems worldwide. Canada's response to the crisis is widely regarded as more successful than that of many other developed economies, particularly the United States. This outcome was largely attributed to Canada's strong banking sector, conservative lending practices, and regulatory coordination, though challenges arose from the decentralized nature of the country's securities regulation.[336]

Canada's financial system, primarily overseen by provincial securities regulators, was relatively insulated from the worst effects of the crisis. The Canadian Securities Administrators (CSA), a coordinating body for provincial and territorial securities regulators, played a significant role in organizing regulatory responses.[337] However, the decentralized structure presented challenges in coordinating a swift, unified response. Since each province has its own securities laws and enforcement mechanisms, regulatory interventions had to be negotiated among the different provinces. This resulted in slower, sometimes fragmented, responses compared to the U.S., where the SEC had the authority to take nationwide actions swiftly.[338]

One key example of Canada's response to the 2008 crisis was the CSA's harmonization of rules concerning credit rating agencies. Prior to the crisis, there were no consistent national standards governing the operation of these agencies, which played a role in the global financial

[336] Christain Calmes and Raymond Theoret, "Bank Systematic Risk Macroeconomics Shock: Canadian and U.S. Evidence" (2014) (40) Journal of Banking & Finance 388-402
[337] Viral V. Acharya, Lasse H. Pedersen, Thomas Philippon, Matthew Richardson, "Measuring Systemic Risk" (2017) (30) (1) *The Review of Financial Studies* 42-47
[338] Ibid

collapse by assigning overly optimistic ratings to complex financial products.[339] The CSA acted to bring more uniformity by introducing National Instrument 25-101 in 2012, which set consistent standards across provinces for the conduct of credit rating agencies. This harmonized approach, although effective, highlighted the inherent delays in responding to systemic risks in a decentralized regulatory system where agreement across multiple jurisdictions is required.[340]

In comparison, the U.S. SEC was able to implement more immediate and broad-reaching measures. For instance, in the early stages of the financial crisis, the SEC imposed a temporary ban on short selling financial stocks to stabilize markets, which it could do with nationwide authority. Canada, lacking a single national securities regulator, could not implement such measures across all provinces simultaneously, relying instead on coordination through the CSA.[341] This difference underscores one of the key limitations of Canada's decentralized system in responding to systemic risks: while each province can tailor its responses, the overall speed and cohesion of national measures are often compromised.[342]

Canada's decentralized system places a high premium on regulatory coordination, especially during times of crisis. The CSA serves as the primary mechanism for ensuring that provincial regulators work together on issues that have national or systemic implications.[343] In times of financial instability, the CSA acts to harmonize rules and facilitate coordinated actions, but the

[339] International Organization of Securities Commission, "Mitigating Systemic Risk: A Role of Securities Regulators" (2019) online: https://www.iosco.org/library/pubdocs/pdf/ioscopd347.pdf
[340] Christian Calmes, "Bank Systemic Risk and Macroeconomic Shocks: Canadian and U.S. Evidence" (2013) (40) (1) Journal of Banking and Finance 129-139
[341] Masahiro Kawal and Michael Pomerleano, "Regulating Systemic Risk" ADBI Working Paper Series (2010) https://www.adb.org/sites/default/files/publication/156044/adbi-wp189.pdf
[342] Poonam Puri, "Enforcement Effectiveness in the Canadian Capital Markets" Osgoode Hall Law School of York University (2005) (12) (1) online: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1002&context=reports&httpsredir=1&referer=
[343] Mark Lokanan and Kush Sharma, "From IDA to IIROC: Has Self-Regulation in the Canadian Investment Industry Evolved?" (2023) (66) (3) Canadian Public Administration 366-389

speed and effectiveness of this process depend on the willingness and ability of the provincial regulators to cooperate.[344]

During the 2008 financial crisis, the CSA worked to enhance collaboration among provinces, ensuring that key reforms, such as enhanced disclosure requirements and tighter regulation of asset-backed commercial paper (ABCP), were implemented consistently across jurisdictions. The ABCP crisis, which occurred in Canada in 2007 before the full onset of the global financial crisis, highlighted the limitations of the decentralized system. ABCP was widely sold to retail investors without sufficient transparency regarding the risks, leading to a near collapse of the market. Provincial regulators, particularly in Ontario and Québec, were slow to address the issue, and their disparate approaches created confusion among investors and market participants.[345]

The eventual resolution of the ABCP crisis involved a major restructuring process coordinated by the CSA, but the fragmented regulatory oversight initially allowed the problem to worsen. The experience highlighted how Canada's decentralized model, while capable of resolving issues through cooperation, can also lead to delayed and inconsistent responses when immediate action is required.[346] The lack of a single national regulator meant that investors in different provinces were subject to different levels of protection, further complicating the crisis response.[347]

However, there have been varying responses to systemic risk management in other countries. For example, the European Union's response was more centralized. Also, the United States

[344] Ibid
[345] Anand Anita, "The Enforcement of Financial market Crimes in Canada and the United Kingdom" In C. Alexander and D. Cumming, *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation,* (Cornwall, UK: Wiley; 2020) 604
[346] Puri Poonam, "Securities Litigation and Enforcement: The Canadian Perspective" (2012) 37 Brooklyn Journal of International Law 967
[347] Rioux William, "Securities Enforcement: An Evaluation of Recent Legislative Changes (Doctoral Dissertation, University of Toronto, Canada" (2022): http://www.proquest.com/docview/21/39180295?pq-orgsite=gscholar&fromopenview=true

was able to implement coordinated responses more rapidly. The U.S. government's Troubled Asset Relief Program (TARP), which provided emergency liquidity to financial institutions, was an example of a quick, unified response that had national coverage.[348] The SEC's centralized structure allowed it to implement blanket regulatory reforms, such as increased oversight of credit rating agencies and the introduction of the Volcker Rule, which limited certain speculative investments by banks. These measures were designed to stabilize the financial system and prevent a recurrence of the crisis, and the SEC's authority allowed for more consistent and immediate implementation across the country.[349]

4.5.2 Post-Crisis Reforms and the Decentralized Canadian Model

Following the 2008 crisis, Canada and other countries implemented significant reforms to strengthen their regulatory frameworks. In Canada, the crisis prompted renewed calls for the creation of a national securities regulator.[350] Proponents of a centralized system argued that a single regulator would have been able to respond more effectively to the crisis by implementing uniform rules and enforcement across the country. In 2010, the federal government introduced legislation to create a national securities regulator, but the initiative was met with opposition from several provinces, particularly Québec and Alberta, which viewed the move as an infringement on their constitutional jurisdiction over securities regulation.[351]

Despite these efforts, Canada has yet to establish a fully centralized regulator. Instead, it has moved toward a cooperative model, with the creation of the Cooperative Capital Markets Regulatory System (CCMR), which aims to bring together participating provinces under a

[348] Nicholls Christopher, *Financial Institutions – The Regulatory Framework* (Toronto: LexisNexis, 2008)
[349] Ibid
[350] International Monetary Fund, "Canada: Financial Sector Assessment Program: Detailed Assessment of the Level of Implementation of the IOSCO Principles and Objectives of Securities Regulation" https://www.elibrary.imf.org/view/journals/002/2008/061/article-A001-en.xml
[351] Ibid

single framework while allowing them to retain some control over local regulation.[352] However, not all provinces have joined, and the system remains a work in progress, with key jurisdictions like Ontario still operating largely independently.[353] This reflects the ongoing tension between the desire for a more unified regulatory approach and the provinces' insistence on maintaining control over their own markets.

4.5.3 Canadian Regulatory Responses to Other Major Financial Events

Beyond the 2008 crisis, Canada's decentralized regulatory system has been tested by other significant financial events. For example, the collapse of Bre-X Minerals Ltd. in 1997, a high-profile gold mining fraud, highlighted weaknesses in the enforcement of securities laws across provinces.[354] The Bre-X scandal involved fraudulent claims of a major gold deposit in Indonesia, which led to significant investor losses. The scandal exposed gaps in the regulatory oversight of mining companies, particularly in Alberta, where Bre-X was based.

In response, provincial regulators strengthened disclosure requirements for mining companies and improved enforcement mechanisms, but the fragmented nature of the response illustrated the challenges of coordinating regulatory reforms across multiple jurisdictions. In the U.S., a similar scandal would have likely been addressed more swiftly through the SEC's national authority, but in Canada, the Bre-X case highlighted the limits of provincial oversight and the need for stronger coordination among regulators.[355]

Similarly, the 2012 collapse of Sino-Forest Corp., a China-based forestry company listed on the Toronto Stock Exchange, raised questions about the ability of provincial regulators to

[352] Johanne Polrier, "The 2018 Pan-Canadian Securities Regulation Reference: Dualist Federalism to the Resecue of Cooperative Federalism" (2020) 94 Supreme Court Law Review 86-87
[353] Public Safety Canada, "Securities and Organized Crime" http://www.publicsafety.gc.ca/cnt/rsrcs/pblc/tns/rgnzd-crm-brf-26/-eng.pdf
[354] Ibid
[355]Lokanan Mark, "Regulatory Capture of Regulators: The Case of the Investment Dealers Association of Canada" (2018) (41) (15) International Journal of Public Administration 1243-1257

oversee companies with international operations. The Ontario Securities Commission (OSC) ultimately pursued enforcement actions against Sino-Forest, but the case highlighted the challenges of regulating complex, cross-border financial activities in a decentralized system.[356]

In view of this thesis, it is pertinent to note that Canada's regulatory responses to major financial events reveals both the strengths and weaknesses of its decentralized model. While the system allows for localized, tailored responses to specific market conditions, it also presents challenges in terms of coordination, speed, and consistency, especially during times of financial crisis. [357] The CSA plays a crucial role in harmonizing rules and ensuring cooperation among provinces, but the lack of a single national regulator can delay critical responses and create fragmentation in the regulatory landscape.[358]

In comparison, the U.S. centralized SEC model offers a more streamlined and cohesive approach to managing financial crises and systemic risks. The SEC's ability to implement nationwide reforms and coordinate with other federal agencies ensures a faster and more uniform response, contributing to market stability and investor confidence. Canada's ongoing debate over the creation of a national regulator reflects the ongoing challenges of balancing local control with the need for greater coordination in an increasingly interconnected global financial system.

4.6 Potential Reforms to Improve Regulatory Efficiency and Effectiveness in Canada

As seen from previous discussions above, Canada's securities regulatory framework, while resilient, faces ongoing challenges due to its decentralized, provincial-based system. Over the years, there have been continuous debates about the need for reform to streamline operations,

[356] Lokanan Mark, "Securities Regulation: Opportunities Exist for IIROC to Regulate Responsively" (2015) (50) (3) Administration and Society 402-428
[357] Ibid
[358] Lokanan Mark, "Self-Regulation in the Canadian Securities Industry: Funnel In, Funnel Out, or Funnel Away?" (2015) (43) (4) International Journal of Law, Crime and Justice 456-480

enhance coordination between provincial regulators, and better equip the system to address emerging risks in financial markets. Thus, there is a need to enact potential reforms that could improve the efficiency and effectiveness of Canada's securities regulation, considering how these changes could strengthen the country's ability to manage systemic risks and adapt to the evolving financial landscape.

The Need for a National Securities Regulator

One of the most persistent reform discussions in Canada has been the call for the establishment of a national securities regulator. Currently, Canada remains one of the few major developed economies without a single national body governing securities regulation, instead relying on a decentralized model where each province and territory regulates its own capital markets.[359] While the CSA acts as a coordinating body among the provincial regulators, there are still inefficiencies, duplications of efforts, and potential gaps in oversight that arise from this fragmented system.

A national securities regulator would centralize regulatory authority, providing a more streamlined approach to policymaking, enforcement, and compliance monitoring. Proponents argue that this could lead to several key benefits: A national regulator could craft and implement securities laws and policies that apply uniformly across all provinces and territories.[360] This would reduce the current duplicative efforts of provincial regulators who often work to harmonize their rules through the CSA, a process that can be slow and inconsistent.

[359] David L. Johnston, and Kathleen Rockwell, "National and Coordinated Approaches to Securities Regulation" in David Johnston, Kathleen Rockwell & Cristie Ford, *Canadian Securities Regulation* (Markham: LexisNexis, 2014) 631

[360] Institute for Research on Public Policy, "Securities Regulation in Canada: The Case for Effectiveness" https://irpp.org/research-studies/securities-regulation-in-canada/

In times of financial crisis, a national regulator would be able to respond more swiftly and with more cohesive measures than a decentralized system. Instead of relying on coordination across multiple jurisdictions, a national body would have the authority to implement emergency measures uniformly, enhancing the country's ability to stabilize markets and protect investors.[361]

A centralized regulator could also enhance Canada's global competitiveness by providing a consistent and predictable regulatory environment.[362] International investors often prefer markets where there is a single, clear regulatory authority, as this reduces complexity and compliance costs. By creating a unified regulatory framework, Canada could attract more foreign investment, which is critical in an increasingly interconnected global financial system.

However, efforts to establish a national securities regulator have faced significant opposition from several provinces, particularly Québec and Alberta, which argue that securities regulation falls under provincial jurisdiction according to Canada's constitution.[363] These provinces view a national regulator as a potential infringement on their autonomy and a threat to their ability to tailor regulation to local market conditions.

Enhancing the Cooperative Capital Markets Regulatory System (CCMR)

In response to opposition to a fully national securities regulator, Canada has moved toward a middle ground with the creation of the Cooperative Capital Markets Regulatory System (CCMR). The CCMR is designed to create a collaborative framework where participating

[361] Ibid
[362] Deloitte, "Competitiveness is Key to Economic Prosperity" https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/finance/ca-en-making-regulation-comp-advantage-pov-aoda-v2.pdf
[363] Harvey Naglie, "Not Ready for Prime Time: Canada's Proposed New Securities Regulator" (2017) https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary489.pdf

provinces and territories work together under a single regulatory body, while still retaining some local authority.[364]

The CCMR is seen as a potential solution to Canada's fragmented regulatory landscape, but its success depends on broader participation. As of now, not all provinces have joined the CCMR, with key players like Québec and Alberta opting out.[365] Expanding the CCMR to include more provinces would be a significant step toward improving regulatory efficiency and effectiveness.

Key reforms to strengthen the CCMR include:

Incentivizing Broader Participation: To encourage more provinces to join the CCMR, the federal government could offer incentives such as increased funding for regulatory enforcement, or more control over specific areas of local interest.[366] Finding a balance between national oversight and provincial autonomy will be crucial to expanding participation. The national oversight refers to federal government's role in addressing systemic risks, ensuring market stability, and maintaining international competitiveness in capital markets. Provincial autonomy recognizes the provinces' established jurisdiction over securities regulation, which aligns with their constitutional authority over property and civil rights under Section 92 of the Constitution Act, 1867. Balancing these elements involves creating a regulatory framework where the federal government can address national concerns without encroaching unnecessarily on provincial powers or imposing a one-size-fits-all approach. This balance is crucial as it helps to respective provincial jurisdiction, and tailored regulation for local needs.

[364] Government of Canada, "Agreement in Principle to Move Towards a Cooperative Capital Markets Regulatory System" https://www.canada.ca/en/department-finance/programs/agreements/agreement-principle-cooperative-capital-markets-regulatory-system.html
[365] Ibid
[366] Ibid

Strengthening Decision-Making Mechanisms: The CCMR could benefit from clearer decision-making processes that reduce the need for prolonged negotiations among provinces. Currently, the system requires significant coordination and agreement among participating jurisdictions, which can slow down the implementation of important regulatory changes.[367]

Creating Specialized Task Forces: To address emerging risks in financial markets, the CCMR could establish specialized task forces focused on areas such as cybersecurity, fintech, and climate-related financial risks. These task forces would work across provincial boundaries to identify risks early and propose regulatory solutions that can be implemented consistently across participating jurisdictions.

Federal systems like Canada often face jurisdictional challenges when it comes to centralizing regulation in constitutionally provincial domains.[368] Notably, Australia provides a useful precedent. In the areas of liquor licensing and electricity regulation, the Australian federal government assumed greater control through voluntary intergovernmental agreements, even though these were originally under the purview of the states.[369] These arrangements were not imposed constitutionally, but rather negotiated through state consent, allowing for national coordination without constitutional amendment.[370] This demonstrates that a shift toward central regulation is possible in federal systems, provided there is political will and cooperative federalism.

[367] Sarah Firestone, & Lawrence E. Ritchie, "Ontario Capital Markets Modernization Taskforce Elicits Potential Enforcement Changes in Proposed Capital Markets Act" https://www.osler.com/en/insights/blogs/risk/ontario-capital-markets-modernization-taskforce-elicits-potential-enforcement-changes-in-proposed-c/
[368] The Canadian Encyclopedia, "Federalism in Canada" (2006) <https://www.thecanadianencyclopedia.ca/en/article/federalism> accessed 12 April 2025
[369] Steven J. Howard, Ross Gordon, and Sandra, C. Jones, "Australian Alcohol Policy 2001 – 2013 and Implications for Public Health" (2014) (14) BMC Public Health 848
[370] Ibid

A similar dynamic can be seen in Canadian healthcare, where the federal government plays a significant role in shaping healthcare outcomes, despite it being a provincial responsibility.[371] Through conditional funding and the Canada Health Act, Ottawa influences provincial healthcare delivery while respecting constitutional boundaries.[372] This model shows how functional centralization can occur without formal constitutional change, offering insights into how Canada's securities regulation might evolve through cooperative or incentive-based mechanisms rather than outright legal centralization.

Enhancing Regulatory Coordination and Information Sharing

In Canada's decentralized system, the success of regulatory oversight depends heavily on the coordination and collaboration between provincial regulators. The CSA has made significant strides in harmonizing securities laws and promoting cooperation.[373] However, there is still room for improvement, particularly in areas such as information sharing and enforcement.

One way to enhance information sharing among provincial regulators is to create a centralized data repository where regulators can access and share real-time information on market participants, transactions, and enforcement actions. This would reduce the duplication of data collection efforts and allow regulators to identify potential risks more quickly.[374]

While the CSA facilitates some level of cross-provincial enforcement, there are still barriers to seamless enforcement actions across jurisdictions. Strengthening legal frameworks that allow

[371] Harald Kristian Heggenhougen, "Canada's Health System" (2008) (26) Elsevier 381-391
[372] Colleen, M. Flood, William Lahey, and Bryan P. Thomas, "Federalism and Healthcare in Canada: A Troubled Romance? (2017) *Schulich Law Scholars* <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?params=/context/scholarly_works/article/2204/&path_info=SSRN_id2978138.pdf>
[373] Bruce Doern, "Understanding and Improving Regulatory Oversight: Canadian Systems and Experiences with a Focus on the Treasury Board Secretariat as Central Oversight Agency" https://www.oecd-ilibrary.org/understanding-and-improving-regulatory-oversight-canadian-systems-and-experiences-with-a-focus-on-the-treasury-board-secretariat-as-central-oversight-agency_5jfqc6kx646g.pdf?itemId=%2Fcontent%2Fcomponent%2F9789264280366-6-en&mimeType=pdf
[374] Julia Black and Stephane Jacobzone, "Tools for Regulatory Quality and Financial Sector Regulation: A Cross-Country Perspective" https://www.oecd-ilibrary.org/tools-for-regulatory-quality-and-financial-sector-regulation_5ks5gw3w5l9v.pdf

provincial regulators to take enforcement actions in other provinces would ensure that bad actors cannot exploit regulatory gaps. This could involve developing more formalized agreements between provinces on how enforcement actions are handled in cross-border cases.

Adapting to Emerging Risks: Cybersecurity, Fintech, and ESG

As financial markets evolve, regulators must adapt to new risks that arise from technological innovations, changing investor preferences, and global challenges. Canada's decentralized regulatory system must be flexible enough to address these emerging risks, but the current model may struggle to keep pace with the rapid changes in areas like cybersecurity, fintech (financial technology), and environmental, social, and governance (ESG) issues.

With the increasing digitization of financial markets, cybersecurity has become a critical area of concern for regulators. A national or more coordinated regulatory system could develop comprehensive cybersecurity standards for financial institutions and market participants. These standards would ensure that all provinces are held to the same level of vigilance, reducing vulnerabilities across the market.

Fintech companies, which often operate across multiple jurisdictions, present a challenge for Canada's provincial regulators.[375] The fragmented system means that fintech firms must navigate a patchwork of regulations, which can stifle innovation and limit their growth. A more centralized regulatory framework, or at least a harmonized national approach to fintech regulation, would provide clearer guidance and promote innovation while ensuring adequate oversight.[376]

[375] Deloitte, "Closing the Gap: Encouraging Fintech Innovation in Canada" https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/financial-services/CA-2017-FSI-EN-Closing-the-gap-AODA.PDF
[376] Ibid

Investors are increasingly demanding that companies disclose their environmental, social, and governance (ESG) practices. However, there is no consistent framework for ESG reporting across Canada's provinces.[377] A national regulator could establish clear, uniform ESG disclosure requirements that apply across the country, aligning Canada with global best practices and enhancing investor confidence in the transparency of Canadian markets.

Addressing Systemic Risks in the Canadian Financial System

Systemic risk—defined as the risk of collapse in an entire financial system or market due to the failure of a single entity or a chain reaction of failures—poses significant threats to economic stability. In Canada, addressing systemic risk is a constitutional matter that the federal government can legitimately tackle under its general trade and commerce power. This principle was affirmed by the Supreme Court of Canada in the 2011 Reference re Securities Act decision. The Federal government's constitutional authority under Section 91(2) of the Constitution Act, 1867 allows it to legislate on matters related to general trade and commerce. In the 2011 *Reference re Securities Act*, the Supreme Court recognized that systemic risk transcends provincial boundaries and falls under the federal government's purview because it affects stability and integrity of the national economy.

While the Supreme Court rejected the idea of the federal government taking over all securities regulation, it affirmed that addressing systemic risks is a distinct and constitutionally valid objective for federal legislation. Examples of the federal roles include monitoring and mitigating cross-provincial risks, centralized data collection and analysis, crisis management and intervention and alignment with global standards.

[377] ESG Report, "Navigating ESG in Canada: Key Insights and Best Practices" (October 7, 2024) https://esgthereport.com/navigating-esg-in-canada-key-insights-and-best-practices/

. While the CSA plays a crucial role in coordinating efforts to mitigate systemic risks, the lack of a national regulator means that Canada may not always respond to systemic threats as quickly or comprehensively as other countries with centralized regulators.[378]

The Bank of Canada and provincial securities regulators need to work closely to monitor and manage systemic risks. Strengthening macroprudential oversight by enhancing the Bank of Canada's role in securities regulation could help mitigate risks that cut across provincial boundaries. The creation of a national regulatory body could also streamline these efforts, ensuring that systemic risks are addressed more consistently across the entire country.[379]

During times of financial instability, a decentralized regulatory system can lead to delays in implementing crisis management measures. Canada could benefit from harmonizing crisis management protocols across provinces to ensure that responses to systemic risks, such as financial contagion or liquidity crises, are swift and coordinated.

Increasing Accountability and Investor Protection

While Canada’s provincial regulators have been effective in many areas, the decentralized nature of the system can lead to uneven enforcement and gaps in investor protection. To improve accountability and protect investors more consistently, potential reforms could include:

[378] Anita Anand & Maziar Pelhani, “Regulating Systemic Risk in Canada” in Douglas W. Amer et al., *Systemic Risk in the Financial Sector: Ten Years After the Great Crash* (Waterloo: Centre for International Governance Innovation, 2019) 11

[379] The Bank of Canada adopted the PFMIs into its risk-management standards for designated systemically important FMIs (systemic FMIs) the same year. The designated systemic FMI have been expected to observe all the principles since December 31, 2016. PFMI (Principles for Financial Market Infrastructures) refers to a set of international standards developed by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO). These principles provide a comprehensive framework for the risk management and oversight of financial market infrastructures (FMIs) to enhance their safety, efficiency, and resilience. See Bank of Canada, “The Bank of Canada’s Risk Management Standards for Designated FMIs” https://www.bankofcanada.ca/core-functions/financial-system/bank-canada-risk-management-standards-systemic-fmis/

Creating a National Ombudsman for Investor Complaints: Establishing a national ombudsman or a centralized dispute resolution body for investor complaints would ensure that all investors, regardless of their province, have access to the same level of protection.[380] This body would handle grievances related to securities violations, ensuring that investors have a clear and consistent recourse mechanism across the country.

Standardizing Disclosure Requirements: While the CSA has made progress in harmonizing disclosure requirements,[381] more work is needed to ensure that companies across all provinces are held to the same standards. There is a need therefore to create a single set of national disclosure requirements as this would increase transparency and make it easier for investors to make informed decisions, thereby enhancing market integrity.

4.7 Conclusion

In conclusion, reforming Canada's securities regulatory system will require a careful balance between centralization and provincial autonomy. While there are clear advantages to creating a more unified regulatory framework—such as improved efficiency, stronger investor protection, and enhanced ability to address systemic risks—provinces are unlikely to relinquish their control over securities regulation easily. The Cooperative Capital Markets Regulatory System (CCMR) represents a step in the right direction, but further reforms are needed to ensure that Canada's regulatory framework can keep pace with the rapidly evolving global financial markets. By focusing on enhancing coordination, addressing emerging risks, and improving investor protection, Canada can build a more effective and responsive regulatory system. Whether through further development of the CCMR or the eventual creation of a

[380] United Nations Conference on Trade and Development, "Investor-State Disputes: Prevention and Alternatives to Arbitration" UNCTAD Series on International Investment Policies for Development (2010) https://unctad.org/system/files/official-document/diaeia200911_en.pdf
[381] ISS Corporate, "Canada Pushes Forward with Sustainability Disclosure Standards" (June 14, 2024) https://www.iss-corporate.com/library/canada-pushes-forward-with-sustainability-disclosure-standards/

national securities regulator, these reforms will be critical in ensuring the stability and competitiveness.

CHAPTER FIVE

SUMMARY, RECOMMNDATIONS AND CONCLUSION

5.1 Summary

This thesis has discussed extensively on securities regulators in Canada, with a short comparative element considering the United States. The first chapter provided an in-depth introduction to the thesis, by stating its scope, justification, methodology, literature review and structure. The second chapter provided a comprehensive overview of the development and evolution of securities regulation in Canada. The chapter explored the foundational debates surrounding Canadian securities regulation, emphasizing the long-standing connection between federal and provincial authorities over regulatory jurisdiction. From the examination of the history of Canadian securities regulation, it was observed that the evolution of Canadian securities regulation was marked by the establishment of provincial securities commission and the gradual development of the Canadian Securities Administrators (CSA). The CSA is an informal organization comprising the securities regulators from each province and territory, which emerged as a collaborative body to streamline and harmonize regulatory practices across jurisdictions. Despite the CSA's efforts to improve coordination, Canada continued to lack a cohesive national regulator, resulting in varied regulatory frameworks which often created inefficiencies and inconsistencies in the market. The chapter illustrated the historical context that shaped Canada's unique approach to securities regulations, and revealed the challenges of balancing regional autonomy with the need for national coordination. It also examined the arguments regarding proponents and critics of the national regulator, noting that proponents argue that a single regulator could enhance investor protection, reduce regulatory duplication and improve Canada's competitive position in the global market. However, resistance from certain provinces, particularly Quebec and Alberta, has stalled these efforts, with critics

expressing concerns over loss of provincial autonomy and the suitability of a one-size-fits-all approach. The research indicates that while efforts towards harmonization have made some progress, the absence of a single regulatory authority continues to present challenges in terms of regulatory efficiency and investor protection. The research revealed that Canada is weak on the international level and that there is a need to speak with one voice because of market globalization.

The third chapter provided an in-depth analysis of Canada's provincial securities regulatory model, highlighting its distinct advantages, inherent challenges and the ways in which it differs from the centralized approach of the United States. The thesis found that one of the most notable strengths of the Canadian provincial regulatory model is its flexibility, which allows each province to develop regulations that is tailored to its unique economic and market conditions. This localized oversight enables provincial regulators to respond more effectively to regional needs and to foster innovation and competition within their jurisdictions. Additionally, the provincial model promotes regulatory diversity, allowing for a range of perspectives and strategies that can collectively enhance the resilience of Canada's financial markets. Other advantages include proximity and responsiveness to local market participants, preservation of constitutional balance, and compatibility with diverse economic structures.

Despite these advantages, the decentralized nature of Canada's provincial securities regulation also presents significant challenges. A major limitation of this approach is the fragmentation it creates, resulting in inconsistencies across provincial regulations that can complicate compliance for companies operating nationally. This lack of uniformity has led to inefficiencies and redundancies, making it difficult to establish a cohesive national strategy for investor protection and market stability. Furthermore, the decentralized approach limits Canada's capacity to respond swiftly and uniformly to systemic risks and emerging threats in an increasingly interconnected global market. Also, the approach was shown to generate problems

for the marketplace and self-regulatory organizations. The research found that there is a need for a responsive and resilient framework which will be able to evaluate and adapt to the changes in the marketplace and securities industry in a coordinated way to ensure that regulations remain responsive to the then-current conditions. In an increasingly global capital market, there is a growing call for Canada to present a cohesive and authoritative stance. This would ensure strong representation of Canadian interests in international forums that shape global capital market policies, and in discussions with key foreign agencies like the U.S. Securities and Exchange Commission (SEC).

Chapter four delved into the efficiency, responsiveness, and effectiveness of Canada's decentralized securities regulatory system. It evaluates how the Canadian model compares to more centralized regulatory frameworks, particularly focusing on the U.S. Securities and Exchange Commission (SEC), and examines the implications for market stability, investor confidence, and systemic risk management. The chapter began by comparing Canada's decentralized provincial system with a more unified regulatory approach. Findings suggest that while Canada's provincial model provides regional flexibility and customization, it often lacks the efficiency and uniformity of a centralized system. The decentralized nature can result in regulatory duplication and operational inefficiencies, which may hinder rapid response to cross-provincial or national market threats. In contrast, centralized models like the SEC can facilitate faster, more coordinated responses, as they provide a single point of decision-making authority, which is particularly valuable during financial crises.

Further analysis in this chapter highlights the role of regulatory structure in fostering market stability and investor confidence. Canada's provincial model was found to be effective in some respects, as it allowed for tailored regulations that meet the unique needs of provincial markets. However, the variability across provinces may complicate compliance for businesses operating nationally, potentially reducing investor confidence in the consistency and predictability of

Canada's securities regulation. By comparison, a unified approach, as seen with the SEC, provides a standard regulatory environment that may enhance investor confidence through uniform protections and oversight. The chapter also discussed systemic risk management and regulatory coordination challenges in both Canada and the United States. Findings indicated that Canada's fragmented regulatory model can complicate coordinated responses to systemic risks, particularly in cases requiring swift, cohesive action across provinces. This contrasts with the U.S. model, where the SEC's centralized authority has facilitated more streamlined regulatory actions during times of crisis. However, the SEC has faced limitations in adapting quickly to localized market issues, an area where Canada's provincial regulators may hold an advantage.

In examining regulatory responses to major financial events, this chapter assessed how Canada's decentralized system has managed crises, including cross-provincial collaborations and instances where regulators had to act independently. While Canada's model has shown adaptability in managing region-specific financial disruptions, it has struggled with unified responses to larger, systemic threats. By contrast, the SEC's centralized structure allowed it to implement consistent, nationwide responses to the 2008 financial crisis, enhancing the U.S. financial system's resilience during a period of significant turmoil.

Thus, in view of these various stances, the research supports the need to adopt a centralized approach in Canada regulatory market. Thus, the study considered potential reforms aimed at enhancing regulatory efficiency and effectiveness within Canada. Recommendations include strategies to improve inter-provincial coordination, such as establishing a centralized regulatory body or an inter-provincial council for joint decision-making on systemic risks. The study also suggested implementing standardized regulations across provinces to reduce fragmentation, simplify compliance, and boost investor confidence. Additionally, reforms

proposed enhancing technological innovation within regulatory frameworks to address emerging market risks more effectively.

5.2 Conclusion

This dissertation has highlighted the dynamics, strengths and limitations of Canada's unique regulatory framework. Canada's securities regulation model, which possesses a decentralized provincial structure was shown to offer certain advantages in terms of tailored, region-specific oversight. However, it also faces challenges related to efficiency, coordination, and consistency. From the study, it was evident that the decentralized system also leads to regulatory inconsistencies across provinces, higher compliance costs for cross-jurisdictional operations, and slower national responses to systemic risks. It was shown that the Canadian model evolved amidst intense federal-provincial debates, leading to the structure that balances provincial autonomy with attempts at harmonization through competitive initiatives such as the Canadian Securities Administrators (CSA). The study also finds that this model has managed to preserve local oversight, enabling provinces to regulate in accordance with their specific market environment, yet it also results in regulatory fragmentation that can complicate compliance and enforcement efforts.

The study also found that Canada's fragmented regulatory system presents obstacles to effective systemic risk management, with coordination challenges across provinces sometimes leading to deyaled or inconsistent responses. In comparison with the U.S. Securities and Exchange Commission (SEC) it was observed that there benefits associated with the centralized authority as it aids a more coordinated, rapid response during financial crises and ensures uniform investor protections. In contrast, Canada's provincial approach can hinder national-level coordination and undermine investor confidence due to its lack of uniformity. As global financial markets become increasingly interconnected, the study highlights the

importance for Canada to establish a cohesive regulatory stance that balances regional autonomy with national consistency.

Thus, Canada's securities regulation framework has developed to balance provincial control with the need for national coordination, yet it faces ongoing pressure to adapt to a rapidly changing financial landscape. The current financial innovations, cybersecurity threats, and globalized markets shows that this method faces new risks that challenge the current system's ability to act cohesively. To address these challenges, potential reforms aimed at enhancing cooperation among provinces, through a stronger Cooperative Capital Markets Regulatory System (CCMR), will streamline regulatory processes, improve investor protection, and strengthen Canada's competitive position globally. As Canada navigates these reforms, it is pertinent to maintain a balance between regional flexibility and national consistency so as to build a securities regulation framework that can effectively safeguard Canada's financial markets, foster investor confidence, and support sustainable economic growth.

5.3 Recommendations

The following recommendations are provided to improve the efficiency, responsiveness, and effectiveness of securities regulation in Canada:

1. A unified regulatory authority would provide Canada with a cohesive national framework, addressing the longstanding issue of fragmentation across provinces. A central regulator could harmonize standards, eliminate regulatory duplication, and facilitate a more coordinated response to financial crises and systemic risks. Moreover, it would strengthen Canada's voice in international regulatory forums and help ensure a consistent national stance on capital market issues. However, while the benefits of a centralized model are well-recognized — and clearly illustrated by the U.S. Securities and Exchange Commission (SEC) — the issue is not merely administrative or

economic, but fundamentally constitutional. In Canada, securities regulation falls under provincial jurisdiction. Therefore, without a constitutional amendment, the creation of a single national regulator remains largely theoretical.

2. Given the constitutional and political realities, a more feasible and legally sound path forward is to support and expand the Cooperative Capital Markets Regulatory System (CCMR). This initiative represents a pragmatic compromise, aiming to harmonize regulation while respecting provincial autonomy. The CCMR provides a framework for national coordination without infringing on constitutional boundaries, allowing willing provinces and territories to participate voluntarily in a unified regime. This model retains regional representation through a council of ministers and combines the benefits of standardization and flexibility. Expanding and enhancing the CCMR could serve as an important transitional step toward national regulation — one that is more likely to gain political traction and withstand constitutional scrutiny.
3. If a fully centralized regulator is not feasible, there is need to enhance the CSA's role. Expanding the CSA's authority and resources to act as a central coordinating body could improve regulatory alignment across provinces and territories, facilitating joint decision-making for addressing systemic risks. Regular inter-provincial meetings and shared regulatory policies through the CSA could foster greater consistency and uniformity without infringing on provincial autonomy.
4. To address inconsistencies in securities regulations, Canada should pursue standardized regulatory practices. Establishing baseline regulations for critical areas, such as investor protection, disclosure requirements, and enforcement standards, would simplify compliance for businesses operating nationally. This harmonization would not only ease the regulatory burden on companies but also reinforce investor confidence in a predictable and stable regulatory environment.

5. Leveraging technology in the regulatory framework could help Canadian regulators better monitor and manage emerging risks. Innovations such as regulatory technology (RegTech), data analytics, and artificial intelligence could streamline regulatory processes, enhance real-time market monitoring, and improve response capabilities to fast-evolving financial market conditions. Such tools would also support a more efficient, proactive approach to risk identification and management across Canada's capital markets.
6. Canada should establish a crisis management protocol within its regulatory framework, ensuring that provincial regulators can coordinate effectively during financial disruptions. This mechanism could include clear protocols for communication, decision-making authority, and resource allocation during a crisis. Such a framework would enable a swift, coordinated response across provinces, reducing the negative impact of market shocks and protecting investor confidence.
7. In the context of global market integration, Canada should enhance its participation in international regulatory forums and partnerships. By aligning with global standards and collaborating with international bodies, Canadian regulators can strengthen cross-border cooperation, ensuring that Canadian interests are represented in shaping global financial policies. A unified voice in international discussions would also enhance Canada's credibility and competitiveness in global markets.

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