An Analytical Review of Fraud Over 5,000 Dollars Sentencing Decisions in Canada during 2012 and 2013

Research Project for Emerging Issues/Advanced Topics Course

Diploma in Investigative and Forensic Accounting Program

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TABLE OF CONTENTS

1.0 INTRODUCTION

By their very definition, forensic accountants participate in the administration of justice in Canada. The word ‘forensic’ literally means “to be related to, used in, or suitable to a court of law.”[1] This broad definition highlights the forensic accountant’s inseparable association with the courts.

To be relevant and valuable to a court of law, forensic accountants should be familiar with the history of the courts as it relates to their work and profession. Specifically, forensic accountants should have an understanding of how the courts have dealt with cases involving, or that reasonably could have involved, forensic accounting and, potentially, forensic accountants as expert witnesses. This knowledge will assist forensic accountants in understanding the various factors the courts review and use in executing their responsibility to render a decision in the case at hand.

The focus of this paper is specifically on charges of fraud over 5,000 dollars in Canada during 2012 and 2013. The objective of this paper is to perform a historical review of the sentencing decisions issued in these two years to provide information relevant to forensic accountants in the performance of their work. The rationale for this research is that by truly understanding the nature of the fraud cases successfully prosecuted, forensic accountants will be better suited to assist the courts with similar disputes in the future.

Furthermore, the information contained in these decisions will identify trends, statistics, and characteristics of fraud over 5,000 dollars cases in the previous two years. An understanding of this information will enable forensic accountants to discern red flags

[1] forensic. (n.d.). In Miriam-Webster. Retrieved May 24, 2014, from http://www.merriam-webster.com/dictionary/forensic

and factors of interest in fraud disputes they may be investigating. As well, an understanding of the information present in these cases, specifically related to sentences given, will provide the forensic accountant with a perspective on the potential outcomes of future cases in which they may be involved. Specifically, forensic accountants will realize what information they offer is typically deemed relevant by the courts in the provision of their decisions.

“The nature of fraud cases” is a broad concept; however, the present researcher has focused on segregating this concept into several particular components: the convicted, the fraud, the victim, and the sentencing. Specifically, this paper unfolds within the context of answering the following key questions:

1. Do the characteristics of the convicted suggest any particular factor may be predictive of fraud or frauds of larger magnitude?
2. How often did convicted offenders commit fraud from a position of trust? Does a breach of trust appear to have a bearing on the magnitude of the loss to the victim?
3. If the fraud is committed from a position of trust in an employment relationship, does the duration of that employment appear to influence the magnitude of the loss?
4. For offenders who were employees of their victim, what is the average length of employment prior to committing the offence?
5. How many offenders convicted of fraud have a previous record? Does a previous record appear to influence the magnitude of the loss?
6. What are the most common motivations to commit fraud?
7. Does the frequency of the various motivations to commit fraud change significantly when comparing male to female offenders?

8. Does the motivation of the convicted, as summarized in the sentencing decision, appear to influence the magnitude of the loss or the severity of the sentence given?
9. How many offenders entered a guilty plea? Does pleading guilty correlate with any other factors of the convicted, fraud, victim, or magnitude of the loss?
10. Does pleading guilty have a significant effect on the nature of the sentences given?
11. What is the average and median duration of the frauds? Does the duration of the fraud have a significant effect on the magnitude of the loss?
12. What is the average and median magnitude of the loss involved in the frauds? Are these figures similar across all types of fraud identified in the cases reviewed?
13. What types of fraud appear to result in the largest loss to the victim?
14. What type of victim appears to be the most common? Does the nature of the victim appear to have an effect on the magnitude of the loss?
15. What is the average and median sentence given for convictions of fraud over 5,000 dollars?
16. In how many sentencing decisions was the convicted ordered to pay some form of restitution?
17. How does the restitution ordered compare to the total value of the associated losses?
18. What are the most common aggravating factors cited by the sentencing judge in rendering their decision?
19. Are there any particular aggravating factors that appear to influence the sentence more heavily than others?
20. What are the most common mitigating factors cited by the sentencing judge in rendering their decision?

21. Are there any mitigating factors that appear to influence the sentence given more heavily than others?

2.0 SCOPE OF REVIEW AND METHODOLOGY

The content for this research was obtained by searching LexisNexis QuickLaw for all Canadian sentencing decisions for the charge of fraud over 5,000 dollars in the years 2012 and 2013. The search terms "fraud over" and "sentencing" were used to identify the cases. The cases that met the criteria for inclusion in this report and the total number of the convicted individuals are summarized as follows:

Table 1 - Cases Analyzed and Count of Convicted

	Total	2013	2012
Count of Convicted	83	45	38
Cases Analyzed	72	40	32

Several of the cases identified multiple individuals convicted of fraud over 5,000 dollars. Information on all of the convicted has been included in the research.

The researcher reviewed all the cases for specific information including:

- The number of the convicted;
- If the convicted were in a position of trust;
- If the convicted was a first time offender;
- The age of the convicted;
- The gender of the convicted;
- The number of years the convicted was employed by the victim, if applicable;
- Whether the convicted entered a guilty plea;
- The motivation of the convicted in committing the fraud, if identified;

- The monetary size of the fraud;
- The duration of the fraud;
- The classification of the fraud;
- The type of sentence given;
- The duration of the sentence;
- Whether the decision specifically identified probation for the convicted;
- The length of the probation, if applicable;
- Whether a form of restitution was imposed;
- The amount of restitution imposed, if applicable;
- The aggravating factors in the sentencing decisions;
- The mitigating factors in the sentencing decisions;
- Whether there was an indication that forensic accounting was used;
- The nature of forensic accounting used, if applicable;
- Whether the forensic accounting was viewed favorably, if applicable;
- The type of the victim;
- The monetary loss to the victim; and
- The province in which the sentencing decision was made.

The researcher entered this information into a database to summarize and analyze the information and develop statistics. The summary, analysis, and statistics form the basis of the findings and observations in this paper.

When calculating statistics, both the average and the median have been included. The average is a meaningful statistic in understanding total amounts involved. However, the average is affected heavily by outliers greatly different from typical amounts. For this reason, the median values have also been calculated. The median removes the outliers to give a more accurate picture of the typical figures involved.

When identifying the aggravating and mitigating factors in the sentencing decision, the researcher made an effort to restrict them to the factors accepted by the sentencing judge. In many cases the prosecution and defense suggested aggravating and mitigating factors, but the judge did not accept them. Consequently, the researcher excluded these factors from the analysis.

3.0 Scope Limitations

Several factors limit the scope of this research:

1. The time available to complete the research required that the review be limited to 2012 and 2013. It is difficult to identify meaningful trends with two years of data. Had it been possible, it would have been preferable to extend the research to a greater number of years.
2. The researcher included only successfully prosecuted cases that contained the search terms “fraud over” and “sentencing.” It is possible that other relevant cases exist. The results also exclude any potential frauds where there was a settlement before criminal charges were laid, charges were dropped, the accused obtained an acquittal, or the case has not been posted on LexisNexis.
3. The cases reviewed were sentencing decisions rendered in 2012 or 2013. In many cases, the fraud occurred several years prior. The research has not been segregated according to the dates of the fraud but rather by the dates of the sentencing decision. As a result, conclusions regarding time-sensitive information or trends about

sentencing decisions are possible but the same is not possible for *dates of the fraud*. Future research based on the *dates of the fraud* would also be useful to the profession.

4. Information contained in the sentencing decisions varies greatly. Some decisions are more informative and lengthy than others. The decisions include only what the judge thought was relevant to their decision. It is not certain the decisions include all relevant information to this research.
5. The original intention was to review the decisions for evidence of the use of forensic accountants in the cases at hand and provide feedback regarding the weight assigned to the forensic accountant's work, the nature of the forensic accounting, and any other characteristics relevant to the research. Unfortunately, the cases reviewed lacked much insight into the use of forensic accountants. There were three cases referring to forensic accounting and they were too vague to allow for any meaningful analysis of their implications to forensic accountants. To research further into this area, one would have to review the original decision in the trial for fraud over 5,000 dollars as opposed to the sentencing decision.

4.0 DETAILED FINDINGS

4.1 THE CONVICTED

4.1.1 GENDER

Table 2 - Summary of Convicted by Gender

Gender	Count	%	Sum of Losses	Median Loss	Average Loss
Female	22	27%	33,043,422.52	311,317.00	1,501,973.75
Male	61	73%	130,533,733.33	400,025.00	2,139,897.27
Total	**83**	**100%**	**163,577,155.85**		

Almost three times as many males were convicted of fraud over 5,000 dollars in 2012 and 2013. The losses to the victim in the frauds committed by males was almost four times the amount of the loss compared to frauds committed by females. The median losses in cases of frauds committed by females do not vary as much from the total or average losses as the variance identified in cases of frauds committed by males. This disparity means the results for frauds committed by males are being skewed by a small number of large frauds.

The significant difference in the number of males convicted identifies a possible area for further research. The cause of this difference is not clear. Given the limit of two years of data, it is possible that this trend would sustain over a longer period. Further research could identify whether this finding may be due to:

- More males are committing fraud.
- More males are in a position to commit fraud.
- More males are being charged with fraud.
- More males are being successfully convicted of fraud.

This finding is relatively consistent with the findings of the Association of Certified Fraud Examiners (ACFE) in their *2014 Report to the Nations on Occupational*

Fraud and Abuse[2] (Report to the Nations). This report found that 66.7% of frauds were committed by males and 33.3% by females.

4.1.2 Age

The following table arranges statistics and information on the frauds identified according to the age of the convicted. It groups the age of the convicted into bands beginning at age 18 through to 79. The youngest individual convicted was 22 and the eldest was 73.

Table 3 - Summary by Age of Convicted

Age	Count	%	Sum of Losses	Median Loss	Average Loss
18-29	5	6%	3,418,136.99	829,000.00	683,627.40
30-39	16	19%	21,821,683.77	1,045,850.00	1,363,855.24
40-49	21	25%	37,109,652.20	322,634.00	1,767,126.30
50-59	21	25%	11,035,502.38	237,156.44	525,500.11
60-69	11	13%	87,229,532.41	1,131,412.00	7,929,957.49
70-79	3	4%	1,674,381.00	220,000.00	558,127.00
Unknown	6	7%	1,288,267.10	190,000.00	214,711.18
Total	**83**	**100%**	**163,577,155.85**		

The majority of the convicted were middle-aged. There were 42 individuals aged 40 to 59. A further 11 were aged 60 to 69. No extreme concentration of the convicted exists in any one particular age range, but there appears to be an increase of fraud in the 20-year period prior to the typical retirement age of 65.

The ACFE's *Report to the Nations* found that "52% of perpetrators [were] between the ages of 31 and 45."[3] The findings based on the cases studied for this research are relatively consistent with that finding and show that 44% of perpetrators were between the ages of 30 and 49.

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[2] Association of Certified Fraud Examiners, Inc. (n.d.). *2014 Report to the Nations on Occupational Fraud and Abuse* (p. 49).

[3] Association of Certified Fraud Examiners, Inc. (n.d.). *2014 Report to the Nations on Occupational Fraud and Abuse* (p. 48).

One potential theory to explain this may be that individuals are beginning to think about their later stages of life, retirement, and the funds they have available to maintain the standard of life they desire. Although the collected data did not specifically identify this as a motivation for any of the frauds, it possible that individuals see criminal fraud as the only means available to them to reach the financial position they desire for retirement.

In support of this theory is the amount of the losses on frauds committed by individuals in the 60 to 69 age range. Both the median and the average loss are significantly higher in this age range.

This is also a stage of life where individuals may have a family to support. They have spent a significant amount of time in the workforce. If they find themselves in a position of financial hardship, they may view the potential for them to recover or change their situation as grim. This theory could be the subject of further research.

Individuals in the early and late stages of their career and life appear to commit frauds with lower losses. It is possible that individuals in the early stages of their career and life (i.e. 18 to 29) have less motivation to commit frauds or have a more difficult time rationalizing fraudulent behavior. A possible explanation for this is the potential negative effect such behavior would have on the remainder of their careers and lives. It could be that individuals in this age range are hesitant to commit fraud for fear of the repercussions. Furthermore, it is possible that individuals in this age range have not yet advanced in their careers and lives to a position where they have the trust of their employers or those with whom they come in contact. This may serve to reduce their opportunity to commit fraud.

Individuals in the later stages of their lives and career, if not retired, committed frauds with lower median and average losses. There were only three individuals in this age range (70 to 79) who were convicted of fraud. The relative lower representation of fraud in this age range could be due to several factors. First, it is possible that most individuals in this age range have retired from the workforce and are no longer in a position of trust that provides an opportunity to commit fraud.

Second, individuals in this age range may have spent the better part of their life developing a strong reputation in their communities, families, and the workforce. Tarnishing this reputation could be a significant deterrent to these individuals committing fraud.

Third, the number of individuals in Canada in this age range is likely lower than other ages, due to the mortality rate. Consequently, one would expect a corresponding lower ratio of Canadians in this age range to be sentenced for fraud over 5,000 dollars in any given year.

4.1.3 Motivation

In only one sentencing decision did the sentencing judge not discuss the motivation for the fraud. There were eight different motivations identified for the 83 individuals convicted, as Table 4 summarizes:

Table 4 - Summary by Motivation of Convicted

Motivations	Count	%	Sum of Losses	Median Loss	Average Loss
Drug Addiction	1	1%	181,000.00	181,000.00	181,000.00
Financial Hardship	7	8%	714,182.44	75,650.00	102,026.06
Gambling	4	5%	1,768,659.41	102,223.50	442,164.85
Greed	62	75%	104,026,942.39	568,507.67	1,677,853.91
Principles	3	4%	306,115.00	70,000.00	102,038.33
Relationship	2	2%	595,310.00	297,655.00	297,655.00
Support Failing Business	2	2%	55,646,946.61	27,823,473.31	27,823,473.31
Support Family - Health	1	1%	320,000.00	320,000.00	320,000.00
Unknown	1	1%	18,000.00	18,000.00	18,000.00
Total	**83**	**100%**	**163,577,155.85**		

Overwhelmingly, the most common motivation for the frauds was greed. One particular factor affecting the higher concentration of individuals motivated by greed is that the sentencing judges did not differentiate between individuals who were living beyond their means and individuals who were financially comfortable through other means but committed fraud nonetheless. In some cases, the phrase “financial hardship” described individuals who were struggling to live within their means; however, this appears to have been reserved for those who suffered financial hardship other than living an extravagant lifestyle they could not afford.

Separating individuals who were living extravagant lifestyles they could not afford from those who were motivated by greed despite their financial security would likely result in a much lower number of the convicted being identified as motivated by greed.

The sentencing judges viewed greed harshly and it appeared that it was a specific topic of discussion whenever the sentencing judge had identified it. Furthermore, the decisions specifically identified greed as an aggravating factor, in and of itself, for 34 of the convicted.

The results for the motivation “support failing business” are heavily skewed by one case[4] where the loss to the victim was 55,500,000 dollars. The only other case[5] where “support failing business” was cited as the motivation for the fraud had losses of 146,947 dollars. Excluding the 55,500,000 dollar loss from the calculations results in frauds motivated by greed being the most costly frauds with the highest median losses and average losses of approximately four times the next highest average.

This is consistent with expectations that other motivations for fraud would not continue to grow at the same pace as those motivated by greed. By its nature, greed implies that the individual continues to “want more.” The remaining motivations may have experienced lower losses because the individuals had a diminished ability to rationalize taking more money than was required to satisfy their motivation. In other words, they may have taken what they “needed” or rationalized, not according to an insatiable desire to always want more.

We further analyzed the motivations present in these cases to identify if there were any significant differences in motivations between male and female perpetrators. Table 5 summarizes motivations by gender:

[4] R. v. Paterson [2013] B.C.J. No. 71
[5] R. v. Maskwa [2013] S.J. No. 8

Table 5 - Motivations by Gender

Motivations	Males - Count	%	Females - Count	%	Total	%
Drug Addiction	1	2%	0	0%	1	1%
Financial Hardship	3	5%	4	18%	7	8%
Gambling	2	3%	2	9%	4	5%
Greed	49	80%	13	59%	62	75%
Principles	1	2%	2	9%	3	4%
Relationship	2	3%	0	0%	2	2%
Support Failing Business	2	3%	0	0%	2	2%
Support Family - Health	1	2%	0	0%	1	1%
Unknown	0	0%	1	5%	1	1%
Total	**61**	**100%**	**22**	**100%**	**83**	**100%**

Greed is the most common motivating factor for both males and females. Males were motivated by greed in 80% of the cases whereas females were motivated by greed in 59% of the cases. Females had four motivations identified compared to eight for males.

In terms of percentages, females were motivated by financial hardship almost four times as often as males. Females were motivated by financial hardship in 19% of the cases, compared to only 5% for males.

Males were motivated, in at least one case each, by funding a relationship, supporting a failing business, and supporting a family member who has health problems. There were no females identified as being motivated by any of these three factors in the cases reviewed.

Although the sample size, especially for females, is too limited to draw significant conclusions, this preliminary analysis does identify a divergence of males and females in their motivations for committing fraud over 5,000 dollars.

4.1.4 GUILTY PLEA

Table 6 - Summary by Plea

Guilty Plea	Count	%	Sum of Losses	Median Loss	Average Loss
Yes	48	58%	102,440,176.14	391,654.81	2,134,170.34
No	35	42%	61,136,979.71	400,000.00	1,746,770.85
Total	**83**	**100%**	**163,577,155.85**		

The accused entered guilty pleas in the majority of the cases. The split between guilty and not-guilty pleas is not significant enough to suggest a trend one way or the other.

The total and average losses were higher in frauds where a guilty plea was entered; however, the median losses were higher for not-guilty pleas. The results of this analysis are skewed heavily by the R. v. Paterson[6] case in which the accused pled guilty with losses of 55,500,000 dollars. The summary table has been recreated to remove this one case:

Table 7 - Summary by Plea with Outlier Removed

Guilty Plea	Count	%	Sum of Losses	Median Loss	Average Loss
Yes	47	57%	46,940,176.14	356,317.00	998,727.15
No	35	43%	61,136,979.71	400,000.00	1,746,770.85
Total	**82**	**100%**	**108,077,155.85**		

After removal of one large outlier, the median loss is relatively unchanged. However, the average losses show significantly higher values for frauds where the accused entered a not-guilty plea.

This may be due to the accused in frauds of larger dollar values having an increased incentive to see out a trial in which they hope to be found not guilty. Given the magnitude of the fraud, they may view potential punishment as being more severe and consider the cost of a trial to be worth a potential acquittal.

[6] R. v. Paterson [2013] B.C.J. No. 71

There is insufficient information available in the sentencing decisions to analyze the psychological factors at play in the minds of the accused. However, an area for potential further research would be the relationship between the psychological disposition of the accused and the likelihood of a guilty plea. Specifically, further research might discover whether offenders predisposed to not-guilty pleas and who do not accept responsibility for their actions are statistically more likely to commit frauds of higher dollar amounts. Should there be more extensive information on this available and more sufficient time to perform the research, the results of such an analysis and study would be very informative for Investigative and Forensic Accountants (IFA) investigating frauds.

If more time had been available, this research would have been enhanced by the ability to analyze the number of fraud cases where the accused entered a not-guilty plea and was acquitted of the charges. A comparison of the characteristics of those cases to the ones at hand could also provide valuable information for IFAs.

4.1.5 Position of Trust

Table 8 - Summary of Position of Trust

Position of Trust	Count	%	Sum of Losses	Median Loss	Average Loss
Yes	49	59%	80,922,343.12	301,900.00	1,651,476.39
No	34	41%	82,654,812.73	870,466.00	2,431,023.90
Total	**83**	**100%**	**163,577,155.85**		

Whether or not the convicted was in a position of trust plays a significant role in the sentencing decisions. Sentencing judges consider a breach of trust a grave aggravating factor in handing down their decisions. While the number of convicted in a position of trust exceed the number of convicted who were not, the total value of the losses was relatively similar. In other words, it required 49 individuals in a position of trust to defraud the same amount as 34 people not in a position of trust.

The expectation prior to analyzing these cases was that frauds involving a breach of trust would, on average, result in comparatively higher losses to the victims. The researcher based this expectation on the reasoning that individuals in a position of trust would have increased opportunity to commit frauds, potentially more time to commit the frauds before detection, and access to more funds with which to create losses. The results of this analysis have shown the opposite.

The median and average losses in frauds where the individuals were not in a position of trust are significantly higher than those where the individuals were in a position of trust. This difference is even more significant when the R. v. Paterson[7] case is excluded from the data for frauds where the convicted was in a position of trust. The table, revised for the exclusion of this case is as follows:

Table 9 - Summary by Position of Trust with Outlier Removed

Position of Trust	Count	%	Sum of Losses	Median Loss	Average Loss
Yes	48	59%	25,422,343.12	300,950.00	529,632.15
No	34	41%	82,654,812.73	870,466.00	2,431,023.90
Total	**82**	**100%**	**108,077,155.85**		

Once the outlier is removed, the median loss is relatively similar to the previous calculations; however, the average loss is approximately four times higher in frauds where the convicted was not in a position of trust. The underlying cause for this is not clear given the information available in the sentencing decisions.

One potential area for further research would be the evaluation of whether the position of trust itself somewhat mitigated the extent of the fraud. In other words, are individuals who commit fraud from a position of trust more likely to commit frauds of lower dollar values because they are in less of a position to rationalize the fraud? It is

[7] R. v. Paterson [2013] B.C.J. No. 71

possible that individuals are hindered by their desire not to betray the trust placed in them to a level where losses would be comparable to individuals that are not faced with rationalizing their breach of trust.

An additional theory is that the processes involved in determining whether to put someone in a position of trust are effective in preventing individuals with a propensity for more significant frauds from occupying such positions. This is another area where further research could provide valuable information to IFAs who investigate frauds.

4.1.6 First Time Offender

Table 10 - Summary by First Time Offender

First Time Offender	Count	%	Sum of Losses	Median Loss	Average Loss
Yes	65	78%	134,357,811.86	390,000.00	2,067,043.26
No	17	20%	12,219,343.99	400,025.00	718,784.94
Unknown	1	1%	17,000,000.00	17,000,000.00	17,000,000.00
Total	**83**	**100%**	**163,577,155.85**		

The majority of the convicted individuals were first time offenders with no previous criminal record. This would not include individuals investigated for fraud but not convicted, charged with fraud but acquitted, or who have committed fraud without detection. It is possible that some of these individuals have committed frauds in the past but that information is not publicly available or documented.

Median losses between frauds perpetrated by first time offenders versus repeat offenders are not significantly different.

The finding that the majority of individuals convicted of fraud are first time offenders is consistent with the thought that a previous record reduces the opportunities for individuals to commit another fraud. Once the information concerning a fraud conviction becomes public record, additional potential victims can identify individuals as a previous offender and avoid putting them in a position where opportunity for fraud exists.

That a convicted individual was a first time offender was often cited as a mitigating factor by the sentencing judge (Section 4.4.5). This was not consistent across all cases reviewed as some judges identified that the lack of a criminal record is a factor that significantly contributed to the convicted individual's ability to commit the fraud for which he or she is being sentenced. In other words, some sentencing judges considered the lack of a criminal record to be a factor that *allowed* the crime and therefore these judges did not assign any mitigating weight to first time offences.

4.1.7 Years with Employer

Only 24 of the 82 people convicted of fraud over 5,000 dollars were identified as being employed with their victim or the entity used to commit the fraud.

Table 11 - Summary by Years with Employer

Years w Employer	Count	%	Sum of Losses	Median Loss	Average Loss
1 Year or Less	1	4%	7,367.00	7,367.00	7,367.00
1 Year to 2 Years	1	4%	850,000.00	850,000.00	850,000.00
3 Years to 5 Years	8	33%	4,009,362.36	356,654.81	501,170.30
6 Years to 10 Years	3	13%	197,212.58	10,492.00	65,737.53
11 Years to 15 Years	5	21%	1,069,665.38	146,946.61	213,933.08
16 Years to 20 Years	4	17%	56,306,595.59	313,578.22	14,076,648.90
21 Years to 25 Years	1	4%	300,000.00	300,000.00	300,000.00
26 Years or More	1	4%	41,000.00	41,000.00	41,000.00
Total	**24**	**100%**	**62,781,202.91**		

The majority of the convicted individuals who were employed by the victim or entity used to commit the fraud had been with the company between 3 and 20 years (84%). The ACFE's *Report to the Nations* found that 40.7% of perpetrators had been employed for one to five years.[8] This is consistent with the finding that 37% of the convicted individuals in this study were employed for one to five years.

This analysis showed that there is a general trend towards higher losses the longer the convicted individual was employed with the company. This could be because the longer an individual is employed, the more seniority and authority they possess within the organization. This tenure and position allows them to commit frauds of greater magnitude. The highest losses emerged in frauds where the convicted individual was employed for 16 to 20 years.

In addition to seniority and authority within the organization, the convicted individual is also likely to obtain ever-increasing knowledge about the organization as their tenure with the company increases. For this reason, it is possible that employees who have been with the organization longer have the requisite knowledge to know:

- how to defraud the organization;
- how to avoid detection for greater periods of time; and
- how to obtain the most funds.

4.2 THE FRAUD

4.2.1 MONETARY SIZE OF THE LOSS

[8] Association of Certified Fraud Examiners, Inc. (n.d.). *2014 Report to the Nations on Occupational Fraud and Abuse* (p. 52).

Table 12 - Summary of Monetary Size of the Loss

Monetary Size of the Loss	Count	%	Sum of Losses	Count of Imprisonment Sentences	Count of Conditional Sentences
$5,000 to $10,000	4	5%	29,567.00	4	0
$10,001 to $25,000	6	7%	115,330.58	5	1
$25,001 to $50,000	5	6%	185,747.77	2	3
$50,001 to $100,000	6	7%	409,645.00	2	4
$100,001 to $200,000	9	11%	1,477,539.34	6	3
$200,001 to $300,000	7	8%	1,657,233.44	5	2
$300,001 to $400,000	6	7%	2,127,843.62	5	1
$400,001 to $500,000	2	2%	900,025.00	2	0
$500,001 to $750,000	8	10%	4,427,649.50	5	3
$750,001 to $999,999	5	6%	4,500,811.00	4	1
$1,000,000 to $1,500,000	6	7%	7,063,928.21	6	0
$1,500,001 to $2,000,000	8	10%	13,605,533.39	6	2
$2,000,001 to $3,000,000	1	1%	2,165,327.00	1	0
$3,000,001 to $5,000,000	4	5%	15,630,853.00	4	0
$5,000,001 to $7,500,000	1	1%	5,100,000.00	1	0
$7,500,001 to $10,000,000	2	2%	17,680,122.00	2	0
$10,000,001 to $20,000,000	2	2%	31,000,000.00	1	1
Greater than $20,000,000	1	1%	55,500,000.00	1	0
Total	**83**	**100%**	**163,577,155.85**	**62**	**21**

The monetary size of the loss was a factor considered in every sentencing decision reviewed. The *Criminal Code* of Canada states “when a person is prosecuted on indictment and convicted of one or more offence referred to in subsection (1), the court that imposes the sentence shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars.”[9] Because of this requirement, it is imperative that the actual value of the fraud be established.

The data identified 70% of the frauds reviewed were less than 1,000,000 dollars and the frauds were fairly even distributed over the monetary bands established.

[9] Criminal Code, R.S.C 1985, c. C-46, s.380(1.1), <http://canlii.ca/t/52668> retrieved on 2014-05-28

The monetary size of the loss was of particular relevance to this research as it was so readily available in each of the cases reviewed and provides the most appropriate basis upon which all cases can be compared.

The researcher reviewed the monetary size of the loss to determine any apparent relationships between the monetary size of the loss, the length of the sentence, and whether a conditional sentence was appropriate.

Of the 83 individuals convicted of fraud over 5,000 dollars, 25 (30%) of them committed frauds of 1,000,000 dollars or greater. Of these, three were given conditional sentences. The researcher reviewed these three cases in further detail to determine why conditional sentences were appropriate, given that the individuals appear to be subject to the minimum sentence of two years imprisonment.

The first case identified, R. v. Kanagarajah[10], involved four offenders, two of whom were involved to a lesser extent. Although these two less culpable individuals were involved in a fraud in excess of 1,000,000 dollars, the sentencing judge determined the portion of the losses attributable to these two individuals was less than 1,000,000 dollars. As a result, these two convicted individuals were eligible for conditional sentences.

The second case, R. v. Abedi[11], deals with similar circumstances. The convicted individual in this case was involved in a mortgage fraud scheme with several other individuals. The judge determined the total losses in the fraud to be 14,000,000 dollars; however, the judge was satisfied the portion of those losses attributable to Abedi were limited to 850,000 dollars.

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[10] R. v. Kanagarajah [2013] O.J. No. 258
[11] R. v. Abedi [2012] O.J. No 4029

After reviewing the circumstances of all cases, the research has confirmed that no individuals committing a fraud in excess of 1,000,000 dollars received a conditional sentence.

Using the concept of correlation, the researcher evaluated the effect of the size of the monetary loss on the length of the imprisonment sentences. He calculated the correlation coefficient for the relationship between the monetary size of the loss and the length of the imprisonment sentences in months. The higher the correlation coefficient as a positive number, the more one can expect each number to increase. The higher the correlation coefficient as a negative number, the more one can expect one variable to decrease as the other increases.

The correlation coefficient was 0.39 for all cases. This suggests that both variables increase; however, the relationship is quite weak. The variables do not increase at the same rate. This would be the expectation in this calculation as the magnitude of the losses for the frauds are not limited whereas there was a maximum sentence of 120 months (10 years) for frauds beginning prior to September 15, 2004[12] and 168 months (14 years) for frauds on or after September 15, 2004[13]. A great deal of the cases involved frauds beginning prior to September 15, 2004. To add to the complexity, the R. v. Paterson[14] case, which has losses of 55,500,000 dollars and a sentence of 72 months imprisonment, has a significant effect on the calculation of this figure. Removing this case, and leaving the maximum loss at 17,000,000 with a 120 month sentence, the correlation coefficient is affected significantly. Calculated this way, the correlation

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[12] Criminal Code, R.S.C. 1985, c. C-46, s.380(1), <http://canlii.ca/t/hzb5>, retrieved on 2014-05-29

[13] Criminal Code, R.S.C. 1985, c. C-46, s.380(1), <http://canlii.ca/t/hzb6>, retrieved on 2014-05-29

[14] R. v. Paterson [2013] B.C.J. No. 71

coefficient is 0.63. This suggests the size of the fraud has a much stronger influence on the sentencing. Appendix A depicts graphically the relationship of these variables for all cases reviewed. The trendline present on this graph shows the effect of the correlation coefficient and provides a general understanding of how the two variables are expected to increase. The more one reduces the maximum fraud loss, the stronger the correlation becomes as it reduces the effect of the imposed maximum value for the sentencing.

This analysis supports the position that the magnitude of the monetary loss from the fraud has a strong effect on the severity of the sentence given.

4.2.2 *Classification of the Fraud*

Table 13 - Summary of Frauds by Classification

Classification	Count	%	Sum of Losses	Median Loss	Average Loss
Cash Misappropriation	6	7%	2,612,082.17	199,719.58	435,347.03
Cheque Tampering	6	7%	712,023.16	100,680.79	118,670.53
Credit Card Fraud	4	5%	7,056,504.00	1,764,126.00	1,764,126.00
Debit Card Fraud	2	2%	166,300.00	83,150.00	83,150.00
False Loans	1	1%	390,000.00	390,000.00	390,000.00
False Refunds	1	1%	41,993.00	41,993.00	41,993.00
False Representations	2	2%	55,562,000.00	27,781,000.00	27,781,000.00
Fraudulent Billing	9	11%	2,525,354.00	301,900.00	280,594.89
Fraudulent Concealment of Property	1	1%	70,000.00	70,000.00	70,000.00
Fraudulent Donations	1	1%	7,500.00	7,500.00	7,500.00
Fraudulent Expenses	6	7%	1,251,118.77	143,040.50	208,519.80
GST Fraud	2	2%	11,144,975.00	5,572,487.50	5,572,487.50
Insurance Fraud	3	4%	720,700.00	81,000.00	240,233.33
Inventory Misappropriation	1	1%	10,492.00	10,492.00	10,492.00
Investment Fraud	10	12%	5,693,530.00	230,500.00	569,353.00
Loan Fraud	2	2%	14,237,156.44	7,118,578.22	7,118,578.22
Misappropriation of Public Funds	1	1%	850,000.00	850,000.00	850,000.00
Mortgage Fraud	10	12%	20,768,374.15	1,566,702.50	2,076,837.42
Payroll Fraud	4	5%	2,815,033.95	754,896.17	703,758.49
Payroll Remittance Fraud	2	2%	5,500,000.00	2,750,000.00	2,750,000.00
Ponzi Scheme	2	2%	11,400,000.00	5,700,000.00	5,700,000.00
Tax Evasion	7	8%	20,042,019.21	500,000.00	2,863,145.60
Total	**83**	**100%**	**163,577,155.85**		

The following fraud schemes all resulted in median losses in excess of 1,000,000 dollars:

- Credit card fraud;
- False representations;
- GST fraud;
- Loan fraud;
- Mortgage fraud;
- Payroll remittance fraud; and
- Ponzi schemes.

In these schemes, it is safe to say that, more often than not, a perpetrator who is caught and convicted is going to be facing at least a two-year term of imprisonment based on the requirements of the *Criminal Code*[15].

The following fraud schemes showed the lowest median losses with median losses less than 100,000 dollars:

- Debit card fraud;
- False refunds;
- Fraudulent concealment of property;
- Fraudulent donations;
- Insurance fraud; and
- Inventory misappropriation.

Only nine of the 83 individuals convicted were involved in the fraud schemes listed as having median losses less than 100,000 dollars.

Mortgage fraud and investment fraud saw the highest number of frauds with 10 cases of each identified. The 10 mortgage frauds reviewed were very similar in nature. In

[15] Criminal Code, R.S.C 1985, c. C-46

all of the cases, the general scheme was the same. The Honourable Mr. Justice E.F. Macklin, in rendering his decision in R. v. Semeret[16], summarized it best:

The scheme is "known as an "Oklahoma Flip." In this scheme, a residence that is valued at below the neighbourhood average value is located and purchased. The house is then "sold" on paper and the title is transferred in quick succession with the value of the residence being falsely inflated with each transfer. Once the value of the property has reached an artificially high enough figure, a straw buyer is found and convinced to apply for a mortgage to "buy" the residence at the inflated value. In Mr. Semeret's case, he would be intentionally registered on title as the last owner before the straw buyer and, as the last person on title, he was then paid the inflated amount obtained by way of the mortgage."

The "Oklahoma Flip," or a slight variation, was used in each of the 10 mortgage frauds. In addition to being a common scheme, the losses generated by these mortgage frauds were significant in comparison to other frauds. Median losses were in excess of 1,500,000 dollars.

Further research into mortgage fraud is warranted. There appears to be a significant number of these frauds occurring with significant losses. Additional research into this area could assist in identifying commonalities between each of the frauds. This could subsequently be used by financial institutions or forensic accountants hired by financial institutions to identify mortgage transactions that could be involved in mortgage fraud schemes.

The 10 investment frauds reviewed were also very similar in nature. At their simplest form, they can be described as schemes in which the perpetrator convinced

[16] R. v. Seremet [2013] A.J. No. 476

individuals to invest funds. This typically came along with the promise of returns significantly better than market rates. In the end, the perpetrator makes no investments and simply spends the money invested.

One reason why these frauds are the most common may be because they are often affinity frauds. In other words, they are perpetrated against people whom the perpetrator has a close relationship with or people who have placed their trust in the perpetrator. Without this relationship, many individuals would be skeptical of the claims being made and inclined to do more significant due diligence into the opportunity.

Although more common, investment fraud does not represent a type of fraud with the highest losses. Relatively speaking, the losses experienced in these frauds are modest. Nevertheless, these frauds are of concern to the public as those losses, although smaller, often represent the life savings or retirement plan of the victims. The financial blow is significant, not to mention the non-financial impact being a victim of this type of crime has on an individual. For these reasons, it is troubling that investment frauds were the most commonly perpetrated scheme.

Schemes involving false representations primarily involved an officer of a public company knowingly providing deceptive information to the public and the company's shareholders. In this study, this particular fraud appears to be the most costly, primarily due to a single fraud with losses totaling 55,500,000 dollars. If one were to factor in to this loss the loss in value of the share price associated with the fraud, the total loss would actually be 260,500,000 dollars[17]. This demonstrates the significant evaporation of wealth and damage that can result from a fraud of false representations perpetrated on behalf of a public company.

[17] R. v. Paterson [2013] B.C.J. No. 71

This fraud represents the largest total loss, regardless of which of the two variations discussed above one adopts. Yet, oddly enough, this was the only case in which the sentencing judge made a point of stating that he believed the perpetrator had noble intentions when the fraud was initiated. In other words, malicious frauds are not always the most expensive and frauds resulting from good intentions but bad execution can be extremely costly.

4.2.3 DURATION OF THE FRAUD

The duration of the fraud provides several useful pieces of information to IFAs to understand the importance of prevention, early detection, and expedient investigations. The following table summarizes the average and median duration of the frauds reviewed:

Table 14 - Average and Median Duration of Frauds

Average Duration of Frauds (in Months)	40.27
Median Duration of Frauds (in Months)	36.00

The researcher further analyzed the cases to determine the effect the duration of the fraud had on the monetary losses.

Table 15 - Summary by Duration of the Fraud

Duration of Fraud	Count	%	Sum of Losses	Median Loss	Average Loss
6 Months or Less	9	11%	751,406.58	70,000.00	83,489.62
7 Months to 1 Year Less a Day	4	5%	1,029,607.00	12,680.00	257,401.75
1 Year to 2 Years Less a Day	8	10%	2,937,778.00	263,972.00	367,222.25
2 Years to 5 Years Less a Day	40	48%	124,771,872.35	507,808.59	3,119,296.81
5 Years to 10 Years Less a Day	12	14%	14,678,591.92	1,663,404.99	1,223,215.99
10 Years to 15 Years Less a Day	1	1%	9,700,000.00	9,700,000.00	9,700,000.00
Unknown	9	11%	9,707,900.00	514,000.00	1,078,655.56
Total	**83**	**100%**	**163,577,155.85**		

The expectation was that the value of the frauds would increase as the duration increased. This is partly because if someone was defrauding the same dollar value at set intervals that loss would be higher as time progressed. In addition, this expectation was based on the theory that the dollar value of each fraudulent transaction would be more likely to increase than decrease over time. It has been the experience of the researcher that individuals committing fraud seldom decrease the amounts of their transactions, on average, over time.

The analysis revealed that median losses generally increased as the duration of the fraud increased. Still, it was to a less significant extent than expected. The frauds that ceased within seven months to one year had a lower median loss than those that ceased within six months.

The larger median losses for frauds that lasted six months or less, when compared to those that were seven months to one year, may be explained by the two types of approaches to fraud:

- The “one and done”; or
- Progressive and continuing fraud.

The “one and done” is meant to represent frauds where the perpetrator identifies an opportunity to defraud but it can only be executed once. Other fraud in this category would include those that are committed on a victim who immediately identifies what has occurred. The theory is that perpetrators who are aware that their fraud will be brief, prior to committing it, are more likely to commit a fraud of a higher dollar value to balance the associated risks.

Median losses for frauds that ceased within one year were 70,000 dollars or less. This is significantly less than the median losses for any other range of time examined. This provides persuasive support for companies and IFAs to support the implementation of internal controls designed to detect fraud. If the fraud can be detected and stopped within one year, this significantly mitigates losses to the victim.

The highest number of frauds and the second highest average losses occurred through frauds that continued for two to five years. Almost half of the frauds committed were terminated in this range. The cases reviewed provided very little information to indicate why such a large number of cases ceased in a similar timeframe. Further research might reveal what variables contribute to this finding.

Only one fraud continued in excess of 10 years; however, the loss of 9,700,000 dollars from this fraud was one of the highest reviewed.

If the cases that were documented in this research are representative of fraud in Canada, even that which is not detected or successfully prosecuted, these findings would suggest that very few frauds are able to continue for 10 years or more prior to being detected. It also would suggest the majority of frauds have been continuing for five years or less.

This information can be used by IFAs in their work to focus their efforts in places that are statistically more likely to lead the IFA to the issues in the matter.

For example, an IFA may want to review trends and financial information in their engagement going back at least six years. This would ensure that, for the majority of frauds, they would capture the period in which the financial impact of the fraud would be seen in the books and records of the victim. This of course would need to be tempered with professional skepticism; however, it provides the IFA with a logical starting point.

Furthermore, if an IFA was involved in an engagement to investigate fraud and indications of fraud have been discovered in the most recent year, the IFA would often be asked by their client to investigate further until the full extent of the fraud is known. In these cases, IFAs are often asked to estimate what it will take in terms of fees and time for them to complete their work. This is a notoriously difficult question to answer when the IFA is unaware of the extent of the fraud he or she is investigating. By using the information identified on the duration of frauds, there is persuasive evidence to support the IFA going back five years from the date of the fraud indicators already uncovered. The IFA can determine whether it appears the fraud was occurring at this point and then move forward or backward in time, depending on the findings. This approach would enable IFAs to get to the position where the temporal boundaries of the fraud are known more quickly and with less work redundancy.

4.3 THE VICTIM

Table 16 - Summary by Type of Victim

Victim	Count	%	Sum of Losses	Median Loss	Average Loss
Company - Employer	19	23%	6,133,279.55	205,310.00	322,804.19
Company - Third Party	7	8%	2,875,576.58	81,000.00	410,796.65
Financial Institution	15	18%	29,912,524.61	1,470,000.00	1,994,168.31
Government - Federal	18	22%	54,440,158.96	772,555.61	3,024,453.28
Government - Provincial	5	6%	2,452,995.00	514,000.00	490,599.00
Individual(s)	16	19%	8,339,121.15	230,500.00	521,195.07
Public	3	4%	59,423,500.00	3,916,000.00	19,807,833.33
Total	**83**	**100%**	**163,577,155.85**		

The researcher's analysis of the frauds by victim resulted in all victims fitting into one of seven categories:

- Company employer – if the victim was a company or organization and the convicted individual abused their employment to commit the fraud.

- Company – third party – if the victim was a company or organization that had no employment relationship with the convicted individual. This specifically excluded financial institutions, which justified a stand-alone category.
- Financial institution – this category was for fraud perpetrated against financial institutions but specifically excluded any cases where the fraud was by an employee. Those cases have been included in "Company – Employer." The frauds captured in this category represent individuals who committed frauds against the bank in the bank's capacity as a service provider to the public.
- Government – federal – any fraud against a government entity (e.g. crown corporation, Ministry, income tax evasion, etc.). This category would include any fraud involving income taxes, sales taxes, payroll remittances, or social benefits administered federally.
- Government – provincial – any fraud against a provincial government entity.
- Individual(s) – any frauds committed against individuals where the individual(s) could be specifically identified.
- Public – any frauds committed against the public as a whole. This category was applicable when the fraud was perpetrated by setting up a scheme in which the perpetrator profited from individuals; however, the individuals are difficult to count or identify (e.g. ponzi schemes, public company frauds affecting shareholders, etc.).

Frauds committed against the public were the least numerous with only three frauds; however, the total, average, and median losses were the most significant. The three individual frauds were in the amount of 7,500 dollars, 3,916,000 dollars, and

55,500,000 dollars. Based on this data, public frauds appear to be less common but more costly. One fraud has the potential to affect a great number of individuals and even the financial markets when the victim is a public company with a large number of shareholders and outstanding share capital.

The most commonly victimized entity was companies who employed the convicted individual. These cases represented 23% of the cases reviewed. Although the most common, these frauds were also among the least costly to the victim. The second lowest median losses and the lowest average losses were experienced by this type of victim.

This is an area that would lend itself very well to future research. There are many potential explanations for these findings, including:

- By their nature, companies must have a certain level of trust in a select group of employees to function. Companies cannot be run solely on automation and internal controls. This results in a fraud risk that can never be eliminated.
- Perpetuating a fraud against an employer requires the perpetrator to be capable of exhibiting no red flags significant enough for anyone to notice and investigate. It would be expected that this is a stressful and difficult situation and that many individuals could not keep up the facade indefinitely.
- The energy and attention required to both perpetrate a fraud and to conceal it sufficiently to avoid detection is in direct competition with the time required for an individual to satisfy their standard job requirements. As a result, some frauds may be caught early or at lower dollar values as the perpetrator fails to adequately cover their tracks or underperforms in their regular duties.

- Employed individuals devote a significant amount of time to their employers. It is a situation where the emotions and feelings of an employee can be easily offended – causing tension between them and the employer. Inevitably, some individuals who feel spurned by their employers are going to use those feelings to rationalize fraud or use fraud to "get even."

Should more information have been able, further analysis into these theories would have possible. One particular missing piece of information from the cases analyzed is direct responses or explanations from the convicted individuals. Actual feedback or comments from convicted individuals would be the primary source to identify rationale or psychological factors that contribute to the higher volume of fraud and lower losses in this area.

The federal government was the victim in 22% of the frauds reviewed. These frauds consisted primarily of tax evasion, payroll remittance fraud, GST fraud, mortgage frauds where losses were insured by the Canadian Mortgage and Housing Corporation (CMHC), and fraudulent expenses of federal politicians.

The cases reviewed included three tax evasion schemes that were very similar. In these scenarios, a tax preparer professional (sometimes a designated accountant) would abuse their position as an advisor to their client to either make changes to their tax returns without their knowledge or obtain their consent to be used in the fraudulent scheme. The schemes involved the tax preparer altering the expenses or donations on the tax returns to obtain inflated returns from the federal government. The tax preparer would then intercept the inflated return and take a portion or the client would knowingly split the proceeds with the tax preparer.

The schemes observed were so similar that the question must be asked how often these types of frauds are being perpetrated against the government, and ultimately, all Canadian taxpayers. If possible, further research into the number of these types of frauds uncovered by Canada Revenue Agency (CRA), regardless of prosecution, would be useful. This information would be possessed by CRA by way of their procedures for auditing taxpayers.

Financial institutions were victimized in 18% of the frauds reviewed. Of the 15 convicted individuals, six committed mortgage frauds, six committed frauds involving debit or credit cards (four of which were the all involved in the same fraud), two committed frauds involving loans (other than mortgages), and one involved both a ponzi scheme and mortgage fraud.

The costs of these frauds will ultimately affect all Canadians who participate in the banking system. The frequency and magnitude of these frauds has direct costs to the financial institutions. The banks will most likely seek to recoup those losses through increased fees and increased costs for services provided to their customer base. In addition, the requirement for mortgage transactions to involve insurance is at least partially attributable to the knowledge of financial institutions that this type of conduct is occurring. Additional research into this area to identify the extent to which financial institutions realize they are victimized by this type of fraud and what they do to prevent it would be valuable. This research could focus on determining the risk acceptable to the financial institutions and the cost benefit analysis required to reduce that risk further. This is an area where forensic accountants have the potential to provide tangible benefits to a large industry. The potential cost savings would ultimately benefit a large number of Canadians.

4.4 THE SENTENCING

4.4.1 TYPE OF SENTENCE

Table 17 - Summary by Type of Sentence

Type of Sentence	Count	%	Sum of Losses	Median Loss	Average Loss	Median Sentence (in Mths)	Average Sentence (in Mths)
Conditional Sentence Order	21	25%	21,579,908.38	159,000.00	1,027,614.68	20	19
Imprisonment	62	75%	141,997,247.47	507,808.59	2,290,278.19	27	35
Total	**83**	**100%**	**163,577,155.85**				

Three quarters of the individuals convicted of fraud over 5,000 dollars were sentenced to terms of imprisonment. The median sentence given was 27 months and the average 35 months. The maximum sentence given was 10 years. The current maximum sentence is 14 years.[18]

The remaining quarter of individuals received conditional sentences to be served in the community. The median conditional sentence was 20 months and the average 19 months. The longest conditional sentence given was 36 months.

Conditional sentences are not available to all individuals convicted of fraud over 5,000 dollars. The larger number of imprisonment sentences is not a surprising finding. To be given consideration for a conditional sentence, the convicted individual must have committed the offence prior to November 6, 2012. On November 6, 2012, the *Safe Streets and Communities Act*[19] came into force. This removed conditional sentences as an option for charges with a maximum sentence of 14 years or life imprisonment, including

[18] Criminal Code, R.S.C 1985, c. C-46, s.380(1), <http://canlii.ca/t/52668> retrieved on 2014-05-28
[19] Safe Streets and Communities Act (S.C. 2012, c. 1), <http://laws-lois.justice.gc.ca/eng/annualstatutes/2012_1/>, retrieved on 2014-05-28

fraud over 5,000 dollars. Until this point in time, conditional sentences were permitted if the judge was satisfied the following criteria from s. 742.1 of the *Criminal Code*[20] were met:

- the offence for which the person has been convicted must not be punishable by a minimum term of imprisonment;
- the sentencing judge must have determined that the offence should be subject to a term of imprisonment of less than two years;
- the sentencing judge must be satisfied that the sentence in the community would not endanger the safety of the community; and
- the sentencing judge must be satisfied that the conditional sentence would be consistent with the fundamental purposes and principles of sentencing set out in sections 718 to 718.2 of the *Criminal Code*.

Even prior to the removal of conditional sentences as an option altogether, there were still fairly strict conditions that must be met.

4.4.2 Length of Sentence

The researcher analyzed the length of the sentence given for both conditional sentences and sentences of imprisonment to discover the most common sentence to be given for a fraud over 5,000 dollars conviction. Although the results in 2012 and 2013 may, viewed in isolation, fail to give an accurate estimate of sentences that could be expected in the future, it is nonetheless the most predictive information currently available. The results of the sentencing decisions in 2012 and 2013, if they reasonably predict future sentences, indicate individuals convicted of fraud over 5,000 dollars could

[20] Criminal Code, RSC 1985, c C-46, s, 742.1 <http://canlii.ca/t/51x1x>, retrieved on 2014-05-28

expect to receive, on average, a sentence of between 12 months and 36 months imprisonment.

Table 18 - Summary by Length of Sentence

Length of Sentence	Count - Imprisonment Sentences	Count - Conditional Sentences	Total	%
6 Months or Less	10	1	11	13%
7 Months to 1 Year Less a Day	2	0	2	2%
1 Year to 2 Years Less a Day	12	11	23	28%
2 Years to 3 Years Less a Day	11	9	20	24%
3 Years to 4 Years Less a Day	4	0	4	5%
4 Years to 5 Years Less a Day	10	0	10	12%
5 Years to 6 Years Less a Day	6	0	6	7%
6 Years to 7 Years Less a Day	4	0	4	5%
7 Years to 8 Years Less a Day	0	0	0	0%
8 Years to 9 Years Less a Day	1	0	1	1%
9 Years to 10 Years Less a Day	1	0	1	1%
10 Years	1	0	1	1%
Total	**62**	**21**	**83**	**100%**

Sentences of between 12 months and 36 months imprisonment represent 37% of the imprisonment sentences given. If conditional sentences are included in the figures sentences in the range of 12 months and 36 months represent 52% of the sentences given. Sentences of less than one year were given in 15% of the cases examined.

The longest sentence given was 10 years and there were three cases with sentences in the range of 8 years to 10 years, representing only 3% of the cases reviewed.

This analysis shows that each sentencing decision is unique and largely dependent on the circumstances of the particular case at hand. However, the results also show that unless there are extraordinary circumstances for or against the convicted individual, they can reasonably expect to be sentenced to between one year and five years' imprisonment. This range of sentences captured 69% of the cases reviewed.

4.4.3 Restitution

Table 19 - Summary by Restitution Order

Restitution Ordered	Count	%	Sum of Losses	Median Loss	Average Loss	Total Restitution	Median Amount of Restitution	Average Amount of Restitution	Restitution as % of Total Losses
Yes	51	61%	76,931,768.67	322,634.00	1,508,466.05	25,992,713.57	205,310.00	509,661.05	34%
No	32	39%	86,645,387.18	664,500.00	2,707,668.35		N/A	N/A	N/A
Total	**83**	**100%**	**163,577,155.85**						

Restitution was ordered in 61% of the cases. Total court-ordered restitution was 25,992,714 dollars on 76,931,769 dollars of fraud. Restricted solely to cases where restitution was ordered, that restitution only represents 33.8% of the victims' losses. Factor in the cases where restitution was not ordered and restitution represents 15.9% of the total victims' losses. It is clear that the primary purpose of prosecuting fraud over 5,000 dollar charges is not to "make whole" the victim(s) of the crime.

Furthermore, information is not available regarding how much of the restitution ordered by the sentencing judges was ultimately made by the convicted. It is unlikely that all the convicted individuals complies with the restitution orders so the actual number of restitution to be received by the victims is likely somewhere between nothing and the full amount. Additional research may reveal how much restitution victims of fraud over 5,000 dollars actually receive from the perpetrators following a successful conviction and restitution order.

The researcher found that the most significant factor judges considered to determine whether or not to order restitution was to ensure the concept that "crime should not pay" is upheld. In other words, if the sentencing judge was not satisfied that the use of the funds had clearly been proven, and it was not clear whether the convicted retained possession of those funds, whether it be in a monetary or other form, then the judge was more likely to order restitution. This restitution appeared to be for the purpose of ensuring the convicted individual was deprived of the profit from the fraud. In cases where this was the approach to restitution, the restitution was often given in the form of a "fine in lieu of forfeiture." These fines were levied when the profits of the fraud could not be forfeited or the courts were not clear on where these funds are or went. This form of restitution has defined consequences in the *Criminal Code* for defaulting[21]. The penalties for defaulting are in the form of additional months of imprisonment *consecutive* to any sentences already being served. The duration of the additional term of imprisonment increases with the amount of fines in default.

To the researcher, this mechanism seemed to be used in several cases for the sentencing judge to impose a variable sentence. Rather than only to be used because the proceeds of the crime could not be forfeited, it appeared being used to allow for reduced terms of imprisonment if the convicted repaid the losses. Conversely, it also allows for sentences ultimately in excess of the maximum penalty for fraud over 5,000 dollars in the *Criminal Code*. If a judge were to impose the maximum sentence of 14 years and also a fine in lieu of forfeiture, and the convicted were to default on that fine, the global sentence served by the convicted in relation to the fraud over 5,000 dollars charge would be in excess of the maximum penalty. This particular set of circumstances did not occur in the cases researched. Additional research in this area could identify whether this has occurred before or after the period reviewed for this paper and whether this is a circumstance that would be acceptable to the courts.

4.4.4 Aggravating Factors

There were 36 different aggravating factors identified in the sentencing decisions reviewed:

[21] Criminal Code, R.S.C. 1985, c. C-46, s.462.37(4), <http://canlii.ca/t/52668>, retrieved on 2014-05-28

Table 20 - Summary of Aggravating Factors

Aggravating Factor	Count	% of Cases Present
Magnitude of Loss	60	72%
Breach of Trust	47	57%
Duration of Fraud	44	53%
Planned and Deliberate Fraud	43	52%
Scope of Fraud (i.e.Number of Transactions)	40	48%
Greed	34	41%
Sophistication of Fraud	34	41%
Impact on Victims	31	37%
Public Nature	22	27%
No Restitution to Date	20	24%
Gravity of Offence	17	20%
Signigicant Role in Fraud	17	20%
Low Possibility of Restitution	15	18%
Used Professional/ Community Status to Commit Fraud	14	17%
Repeat Offender	13	16%
Intervention Stopped Fraud	13	16%
Attempted Concealment	13	16%
Number of Victims	12	14%
Involvement of Others	10	12%
Personal Profit	10	12%
Vulnerable Victims	8	10%
Committed Offence on Probation / Conditional Sentence Order	6	7%
Lack of Remorse	5	6%
Offenders Part of Criminal Organization	3	4%
Fled Authorities	2	2%
Addiction Issues (Non-Gambling)	2	2%
Willing Involvement	2	2%
Endangerment of Others	1	1%
Involvement of Police	1	1%
Lying Under Oath	1	1%
Gambling Addiction	1	1%
Rationalized Criminal Behaviour	1	1%
Risk to Reoffend	1	1%
Absence of Addiction Issues	1	1%
Financial Independence Stopped Fraud	1	1%
Used the Internet for the Crime	1	1%

The *Criminal Code* specifies several factors that, if present, must be considered aggravating[22]:

- the magnitude of the fraud was significant;

[22] Criminal Code, R.S.C. 1985, c. C-46, s.380.1(1), <http://canlii.ca/t/52668>, retrieved on 2014-05-28

- the complexity of the fraud was significant;
- the duration of the fraud was significant;
- the degree of planning for the fraud was significant;
- the offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;
- the offence involved a large number of victims;
- the offence had a significant impact on the victims given their personal circumstances including their age, health and financial situation;
- in committing the offence, the offender took advantage of the high regard in which the offender was held in the community;
- the offender did not comply with a licensing requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject-matter of the offence; and
- the offender concealed or destroyed records related to the fraud or to the disbursement of the proceeds of the fraud.

The factors outlined above comprise the majority of the most common aggravating factors in the cases researched. That judges are required to consider these factors which inevitably contributed to their more frequent inclusion in the sentencing decisions.

The *Criminal Code* establishes that it is mandatory to consider the value of the fraud an aggravating factor when it exceeds 1,000,000 dollars[23]; however, it does not establish any threshold up to which the value of the fraud is *prohibited* from being considered aggravating. The judge retains the ability to determine if the value of the fraud is aggravating at amounts under 1,000,000 dollars. The sentencing judges determined that the magnitude of the loss was aggravating in the sentencing of 60 of the 83 (72%) convicted individuals. The smallest loss that a sentencing judge considered aggravating was 17,860 dollars. The average loss to be considered aggravating was 2,687,039 dollars. The difference between these two figures highlights the large range of values that could be considered aggravating. Judges did not often elaborate on the reasons supporting the factors they accepted versus rejected; they simply stated the amount of the loss was an aggravating factor.

Breach of trust was a heavily considered factor by the sentencing judges. It was identified that 57% of the convicted were in positions of trust. Sentencing judges were consistent in their treatment of this factor and clearly ordered more severe sentences when it was present. It is noted that the judges typically highlighted in the decisions the need for denunciation of crime and deterrence, both for the specific offender before the courts and prospective offenders. The severity with which judges treated a breach of trust appears to be to balance the risk that exists by the nature of positions of trust. In other words, individuals in a position of trust will always have the opportunity to defraud. To mitigate this risk the consequences of breaching that trust must be severe.

[23] Criminal Code, R.S.C 1985, c. C-46, s.380.1(1.1), <http://canlii.ca/t/52668> retrieved on 2014-05-28

Similar to a breach of trust, sentencing judges typically made a point of stating whether there was greed involved in the case or not. When greed was noted, it was clearly a factor in the judge ordering a more severe sentence. Greed was identified in 41% of the cases researched. The treatment of perpetrators who exhibited greed is similar to breach of trust in that sentences given appear to be more severe to denounce and deter.

Seventeen individuals were noted as having a previous criminal record; however, only 13 of them had their prior record cited as an aggravating factor when sentenced. Judges issuing the sentencing decisions were inclined to exclude this as an aggravating factor if the offences were committed a long time in the past or if the prior record was for unrelated crimes.

Numerous aggravating factors were identified which were cited in 10 or less cases; however, the researcher noted they were present in a far greater number. The sentencing decisions are not clear regarding why excluded aggravating factors were excluded. For example, two decisions cited "willing involvement" in the fraud as an aggravating factor. When the cases for all 83 convicted individuals are reviewed, not one of them documented a valid argument that the convicted individual was forced, to any extent, to participate in the fraud. From this, the research is inclined to conclude that all 83 convicted individuals willingly participated in the fraud for which they were convicted. For 81 of these individuals, that was not considered aggravating. It is understandable why "willing involvement" would not always be cited as it would be logical to assume that in order for an individual to be culpable for a charge of fraud over 5,000 dollars they would had to have participated willingly. One would hope if the participation of an individual was forced, that the courts would consider that in their decision of whether or not to convict. As a result, this would be more of a requisite factor than an aggravating factor.

Other inconsistencies in the aggravating factors were noted. For example, in one case the convicted individual had a gambling addiction which had a bearing on their commission of the offence. This was cited as an aggravating factor the judge relied on to give a more severe sentence. There were a total of four individuals convicted who had "gambling addiction" cited as their motivation. The researcher cannot discern why the remaining three individuals did not have their gambling addiction also cited as an aggravating factor. Furthermore, in four instances having an "addiction as a motivation" for the fraud was cited as a *mitigating* factor. Based on the current data the researcher can't reconcile the inconsistency of the inclusion of addiction related issues in both aggravating and mitigating factors.

4.4.5 Mitigating Factors

There 39 different mitigating factors identified in the sentencing decisions reviewed:

Table 21 - Summary of Mitigating Factors

Mitigating Factor	Count	% of Cases Present
First Offender	50	60%
Guilty Plea	47	57%
Showed Remorse	29	35%
Supportive Family/ Community	20	24%
Cooperated with Investigation	19	23%
High Potential for Restitution	16	19%
Acceptance of Responsibility	15	18%
Stability of Employment Since Offence	11	13%
Adhered to Terms of Release	11	13%
Low Risk to Reoffend	10	12%
Publicly Shamed	8	10%
High Prospects for Rehabilitation	7	8%
Older Offender	7	8%

Mitigating Factor	Count	% of Cases Present
Supports Family	7	8%
Favourable Pre-Sentence Report	6	7%
Mental Health Issues	6	7%
Not Leader/ Originator of Fraud	5	6%
Educated	5	6%
Addiction as Motivation	4	5%
No Addiction Issues	4	5%
Positive Psychological Assessment	4	5%
Did Not Profit to the Full Extent of the Loss	3	4%
Aboriginal Offender	3	4%
Young Offender	3	4%
Suffered Oppression as a Factor Leading to Fraud	3	4%
Not Involved in All Acts	2	2%
Short Duration	2	2%
No Personal Injury	2	2%
Health Issues (Other than Mental)	2	2%
Voluntarily Ceased Fraud	2	2%
Minimal Personal Profit	1	1%
Long Time Employee	1	1%
Some Payments Proven Legitimate	1	1%
Assaulted in Prison	1	1%
Relatively Modest Magnitude of Fraud	1	1%
Fraud Lacked Complexity	1	1%
No Attempt to Conceal Fraud	1	1%
Resident in Canada for Lengthy Period	1	1%
Accused Learned to Speak French	1	1%

Ten mitigating factors were present in 10 or more cases. The remaining 29 factors were present in eight or less cases.

The itemization of the mitigating factors in Table 21 makes the weighting of each mitigating factor by sentencing judges relatively clear. The judges unanimously showed consideration of whether there was a guilty plea, if it was a first time offence, and if the offender showed remorse. In the cases where this was not cited as a mitigating factor, the judge documented their consideration of whether or not it was present.

The researcher found a high degree of subjectivity in the identification of mitigating factors across the cases reviewed. It is clear the law allows a significant degree of judgment in determining what factors contribute to a mitigated sentence. The researcher found this variability to undermine the strength of the sentencing process. In several cases, factors that appear to be relatively unrelated to the principles of sentencing were considered with little to no explanation.

For example, in one case the convicted individual was given a mitigated sentence for having been resident in Canada for a long period and for having learned to speak French. It would be safe to assume that this one convicted individual is not the only sentenced individual in these cases with the ability to speak French or the only individual to have been in Canada for a long period of time. There is no clear explanation for the relevance of these factors to the appropriate sentence for the convicted.

There is contradictory evidence of the treatment of addictions in the sentencing of an individual convicted of fraud over 5,000 dollars. Specifically, in four cases the convicted was given mitigating credit for being motivated by their addictions. However, in a different four cases the convicted was given mitigating credit for not having any addiction issues. If examined logically, you could identify any one individual as either "being motivated by addiction" or "being free from addiction issues." Why all 83 convicted individuals weren't placed in one of these categories is unclear; however, it highlights the inconsistency in applying mitigating factors.

In two cases the mitigating factor "no personal injury" was cited. The researcher can offer no explanation, as it was not documented in the sentencing decisions, why in financial crime sentencing there would be consideration given to the lack of personal injury. One would expect that the minimum and maximum sentence applied to financial crimes would already reflect that they are not typically violent crimes. Furthermore, had personal injury occurred would it not be addressed through separate charges?

5.0 CONCLUSIONS

The research summarized in this paper yields a great many observations and potential avenues for additional research. Much of the discussion in the detailed findings of this paper revolves around speculation and theories regarding the potential causes of the findings. Unfortunately, due to the relative limited scope of the research it is not possible to draw hard conclusions on the bulk of these questions and theories.

The purpose of this conclusion is to summarize for the reader the characteristics and statistics from the researcher that are potentially relevant to IFAs in the execution of their work. Following the summary of information supported by the cases researched, there will be a discussion of areas for potential further research.

Males were convicted of 73% of the frauds included in the research. The frauds committed by males had median losses relatively similar to those committed by females; however, the average loss for frauds committed by males was significantly higher than frauds committed by females.

The age of the convicted individual had a clear impact on the extent of the losses of the fraud. There is a notable increase in the number of individuals being convicted of fraud over 5,000 dollars who are of an age between 45 and 65. This represents the 20-year period prior to the typical retirement age of 65. Convicted individuals between the ages of 30 and 49 represent 44% of all the individuals convicted in the cases reviewed.

Frauds committed by individuals aged 60 to 69 had median and average losses significantly higher than any other age range.

Convicted individuals in the age range of 18 to 29 were responsible for frauds with lower losses than any other age range studied. Individuals in the age range 70 to 79 represented the second lowest losses of the age ranges studied. The losses categorized according to the age of the convicted appear to follow a bell curve distribution.

The sentencing judge specifically considered and identified the motivation of the convicted individual in committing the fraud in all but one of the cases. Out of the 83 individuals convicted of fraud over 5,000 dollars, there were only eight motivations identified. Greed was identified as the motivation for 34 of the individuals convicted and was the most common motivation for both males and females.

Frauds motivated by greed were the most costly frauds and represented the highest median and average losses. Average losses of frauds motivated by greed are approximately four times the next highest average losses.

Although the sample size is too small to draw definitive conclusions, the results of the research indicate there is a divergence of males and females in their motivations for committing fraud over 5,000 dollars.

Average losses where the convicted entered a not-guilty plea are significantly higher than average losses on frauds where the convicted pled guilty.

When the fraud was committed from a position of trust the average and median losses were lower than frauds that were not committed from a position of trust. This finding is contrary to the expectations of the researcher. The total losses on 49 frauds by individuals in a position of trust are roughly equivalent to the total losses on frauds committed by 34 people who were not in a position of trust.

The majority of the convicted individuals were first time offenders. Median losses by first time offenders were not significantly different than median losses on frauds committed by repeat offenders.

Of the 24 individuals who were employed by the company they defrauded, 37% were employed between one and five years. The longer the convicted individual was employed, the higher the average and median losses. The highest losses were observed in frauds committed by individuals who were employed by the victim between 16 and 20 years.

Frauds under 1,000,000 dollars represent 70% of the cases reviewed. There is a weak but positive correlation between the monetary size of the loss and the duration of the sentence. Although to less of an extent than expected, the higher the amount of the loss, the longer the convicted individual is likely to be imprisoned.

Mortgage fraud, specifically the “Oklahoma Flip,” appears to be on the rise in Canada. Mortgage frauds were both the most common fraud scheme noted and the most costly. Median losses on mortgage frauds reviewed were in excess of 1,500,000 dollars.

On average, the frauds reviewed continued for 40 months before being detected. Median losses increased as the duration of the fraud increased. The majority of frauds ceased within two years to five years from their inception. These frauds represent the second highest average losses. The cases researched suggest that very few frauds are able to continue up to 10 years prior to their detection.

Companies that employed the convicted individual were the most common type of victim and represented 23% of the cases reviewed. These frauds were the lease costly when compared to frauds perpetrated against all other types of victims.

The federal government was the victim in 22% of the frauds reviewed and financial institutions were the victims in 18% of the fraud reviewed.

Three quarters of individuals convicted of fraud over 5,000 dollars were sentenced to terms of imprisonment with a median sentence of 27 months. The remaining one quarter of individuals received conditional sentences that had median terms of 20 months. A single individual received the maximum sentence, in effect at the time they committed the fraud, for fraud over 5,000 dollars.

Sentencing decisions are highly unique and largely dependent on the circumstances of each individuals case. In the absence of extraordinary circumstances the average sentence appears to be between one year and five years’ imprisonment.

Restitution was ordered in 61% of the cases; however, it represents only 15.9% of the total losses. Furthermore, it is unknown how much of this restitution is eventually paid to the victim.

The magnitude of the loss was considered an aggravating factor in 72% of the cases reviewed and for frauds ranging from 17,860 dollars to 55,500,000 dollars. The convicted individuals held positions of trust in 57% of the cases reviewed. Greed was an aggravating factor in 41% of the cases researched and contributed significantly to the severity of sentences. Although 17 individuals had a previous criminal record, this was cited as an aggravating factor for only 13 of them.

In determining mitigating factors, judges unanimously showed consideration of whether there was a guilty plea, if the crime was a first time offence, and if the offender showed remorse. Beyond these factors, there was a high degree of subjectivity shown in the identification of mitigating factors. In several cases, factors that appear irrelevant to the principles of sentencing were given consideration with little to no explanation. The researcher found an inconsistency in the application of mitigating factors.

Throughout the completion of this research, numerous areas of potential research were identified:

- Factors and causes leading to the over representation of males convicted and sentenced for fraud over 5,000 dollars.
- Potential causes or factors leading to frauds committed by individuals aged 60 to 69 being greater, on average, than frauds committed by other age ranges.
- Factors contributing to the difference in motivations for males and females who commit fraud over 5,000 dollars.
- The relationship between the psychological disposition of the accused and the likelihood of a guilty plea.
- Whether a perpetrator of fraud being in a position of trust serves to mitigate the extent of the fraud by factors attributable to the position of trust itself.
- Whether the processes used by companies or individuals in determining whether to put someone in a position of trust effective in excluding individuals with a propensity to commit higher dollar frauds.

- The relative increase of mortgage fraud in Canada year over year. The extent to which mortgage fraud is being committed across the country.
- What factors contribute to lower average losses in frauds committed against employers versus any other type of victim? Is this finding accurate?
- What is the extent of tax evasion committed through the falsification of donations in personal tax returns submitted to CRA?
- To what extent do financial institutions realize they are victimized by mortgage fraud and what is done to prevent it?
- How many individuals who are issued fines in lieu of forfeiture default on those payments and serve additional jail time?

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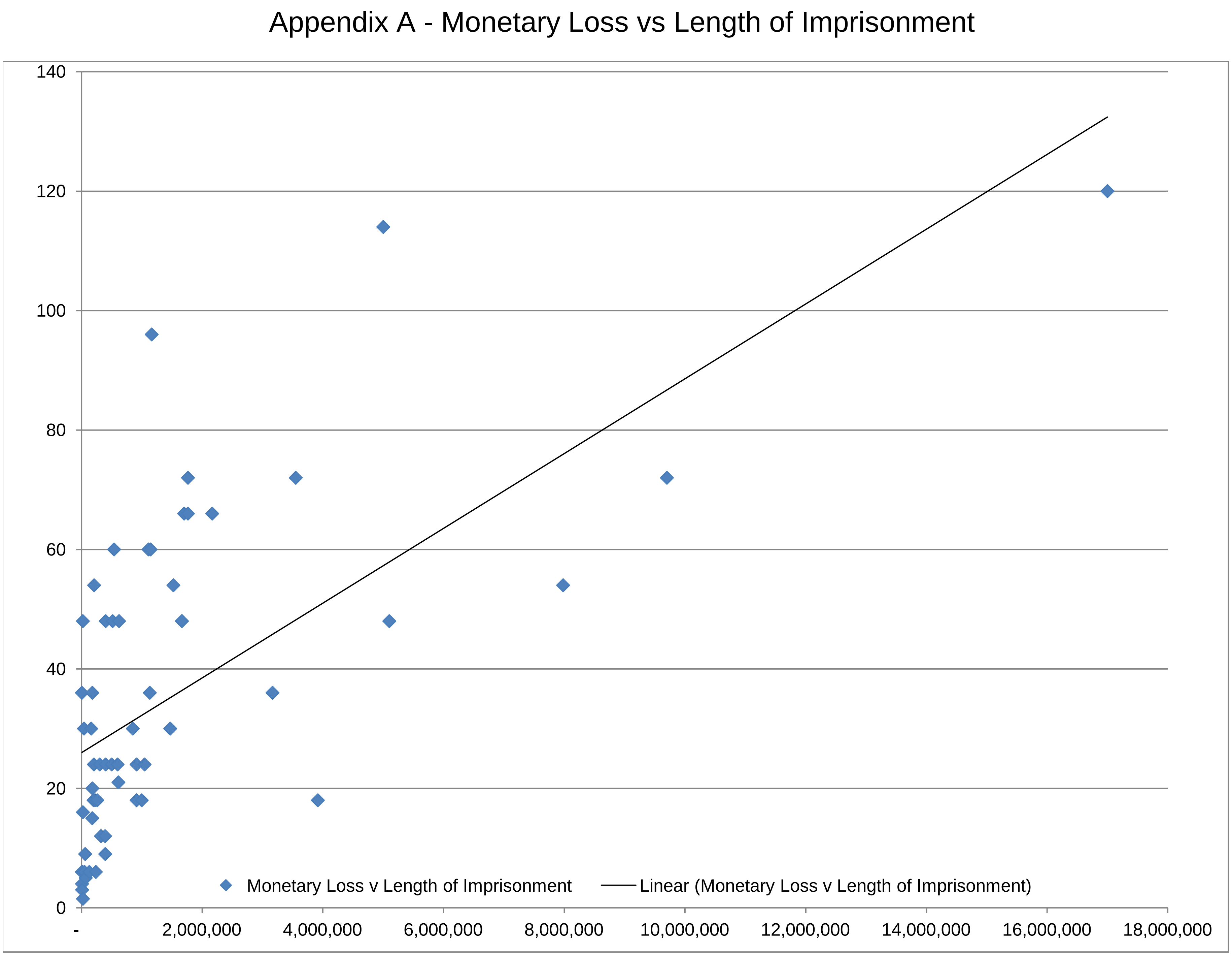
Appendix A - Monetary Loss vs Length of Imprisonment
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