White-collar Crime: Criminal Fraud in Corporate Settings

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INTRODUCTION

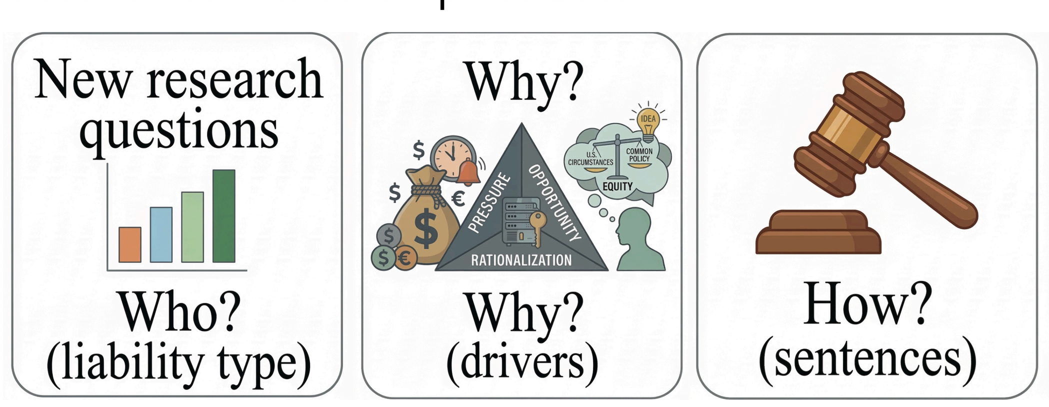
The challenge of corporate fraud

Canadian criminal law aims to ensure fairness, accountability, and public protection. These objectives are difficult to achieve when the wrongdoer is a corporate entity rather than a natural person. Corporate fraud presents unique challenges because harmful conduct is frequently diffused across multiple employees, departments, and levels of management. Because corporations lack physical bodies or minds, applying standard criminal concepts like *actus reus* (guilty act), *mens rea* (guilty mind), and traditional sentencing principles is conceptually difficult.

So, how do we know when the corporation is the wrongdoer or whether the individual within the corporation is the wrongdoer?

The legal landscape

To address the complexities of modern organizations, reforms such as Bill *C-45* (the *Westray Bill*) was introduced. These amendments expanded attribution rules such as, allowing the actions and intent of "senior officers" to be attributed to the corporation under section 22.2 of the *Criminal Code*. However, despite these legal frameworks, corporate fraud prosecutions remain relatively rare. When sentencing a guilty corporation, courts must balance general sentencing principles designed for individuals (such as denunciation, deterrence, and proportionality under s. 718 and s. 718.1) with the organization-specific factors outlined in s. 718.21. criminal offence of fraud is set out in section 380 of the Criminal Code, applying to both corporations and individuals. Where individuals are charged with fraud, the general sentencing principles of denunciation and deterrence will be emphasized.



METHODS

The Original Plan vs. The Pivot

- **Initial goal**: The project began as a pilot study in the summer of 2025 to compare how corporations were sentenced for fraud versus how individuals were sentenced.
- **The surprising finding:** Early case reviews revealed that individuals committing fraud within corporations (including officers and directors) were almost always being charged as individuals, rather than the corporation itself facing fraud charges.
- **The New Objective:** To understand why corporately-involved individuals are charged personally rather than the corporations they represent, and to identify themes that explain this legal reality.

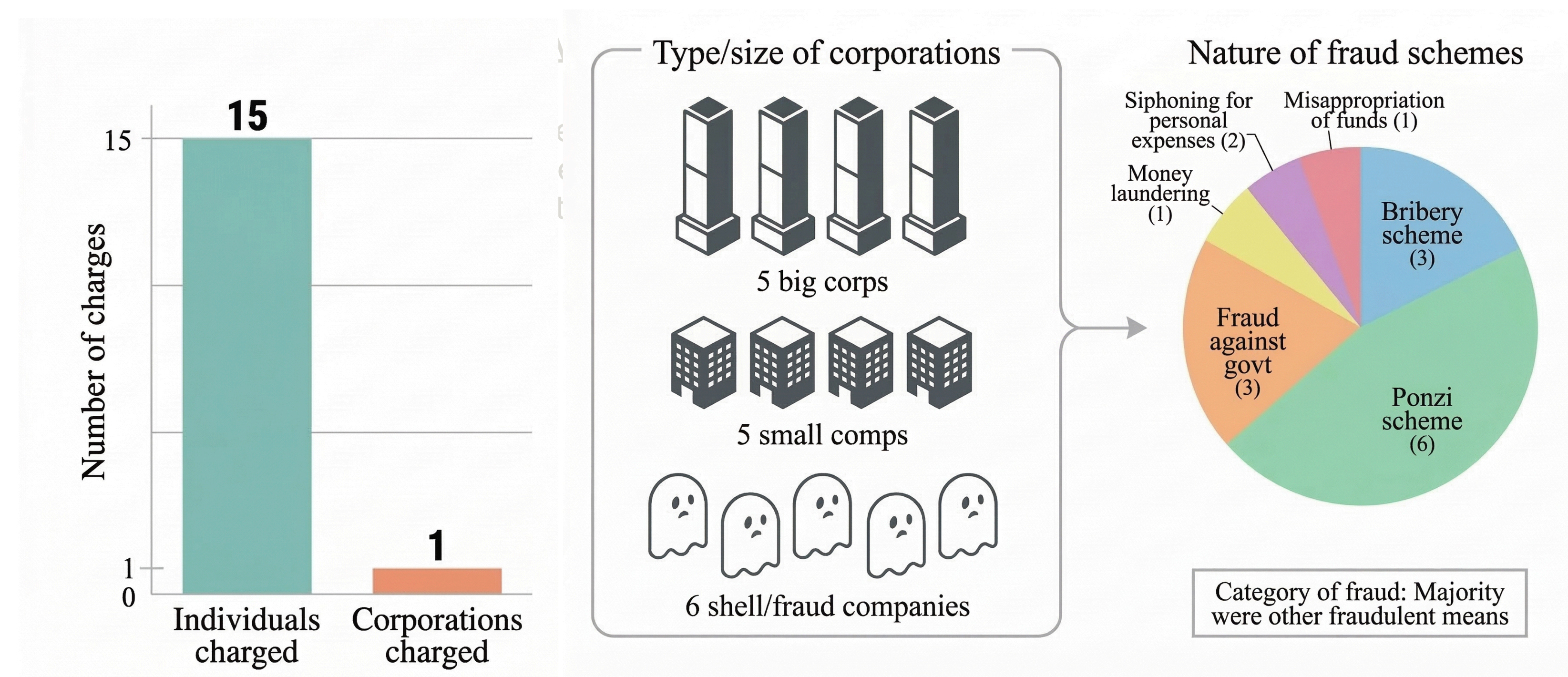
Research Questions & Analytical Templates

To answer this new objective, the research focus shifted to three core questions, analyzed using three specific coding templates:

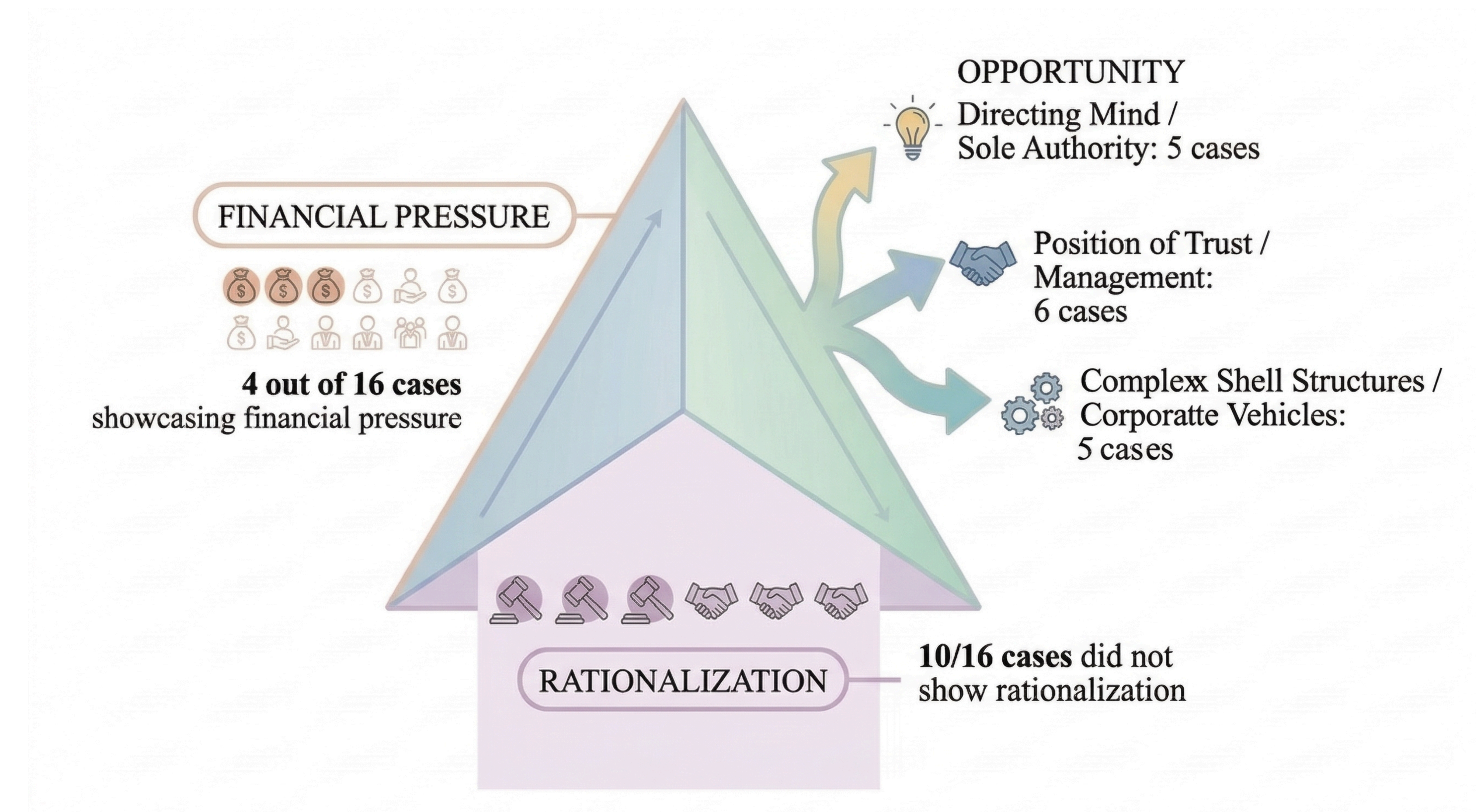
1. **Frequency & characteristics (Template 1):** What is the relative frequency of individual versus corporate liability, and what distinguish the cases where individuals are tried instead of the corporation?
   - Template Focus: Factual elements (who was charged; type/size of corporation; nature of fraud; any key terms from decisions).
2. **The "why" of corporate fraud (Template 2):** Why do individuals or corporations commit fraud?
   - Template Focus: Donald Cressey's fraud triangle, assessing the presence of non-shareable financial pressure, opportunity from corporate structure, and rationalization.
3. **Sentencing Outcomes (Template 3):** How are general and organization-specific sentencing principles applied, and what are the final outcomes?
   - Template Focus: Application of Criminal Code principles (s. 718 and s. 718.21) and the type of sentence imposed.

RESULTS

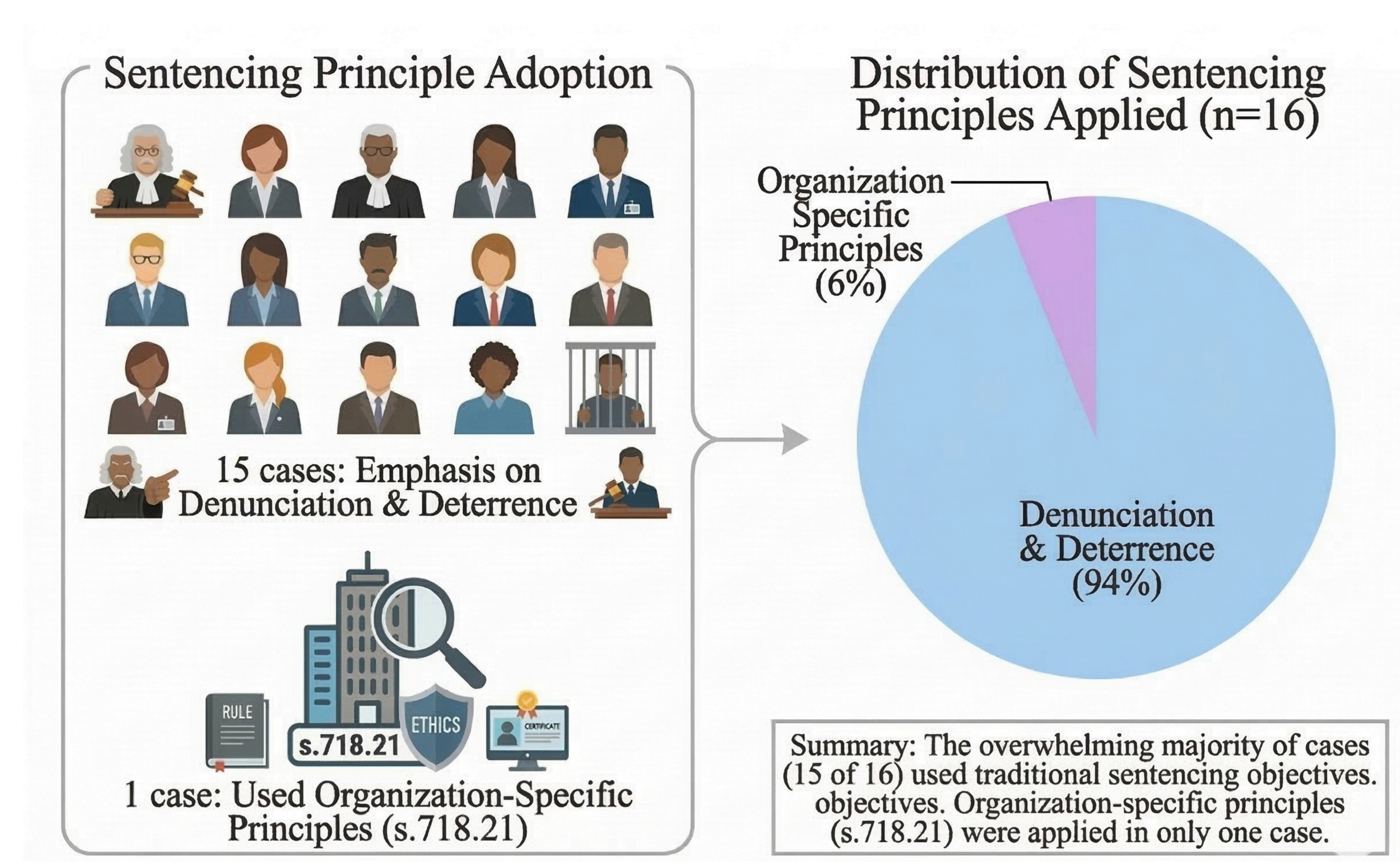
RESEARCH QUESTION 1: WHO IS CHARGED?



RESEARCH QUESTION 2: THE FRAUD TRIANGLE



RESEARCH QUESTION 3: SENTENCING OUTCOMES



IMPLICATIONS OF THE RESEARCH

- **Abuse of Corporate Form:** Complex and simple corporate structures hide and enable the crime, and corporate sentencing is rarely applied.
- **Policy Gaps:** Need practical policies to bar or ban offenders who use corporate structures as an opportunity to perpetuate the crime of fraud.
- **Corporate veil:** Sentences must denounce hiding behind corporate veil.
- **The Triangle:** Cressey's Fraud Triangle doesn't apply in this context as greed and position-based opportunity drive these crimes, not financial pressure. While financial pressure and opportunity do not apply, 10 out of 16 cases display the offenders rationalize their behavior.
- **Universal Harm:** White-collar crime is not victimless; it defrauds citizens, communities, and the government.

CONCLUSION

Sentencing of corporations for criminal fraud remains exceptionally rare, while the general sentencing principles disproportionately target the denunciation and deterrence of involved individuals. The justice system requires improved policies and a clearer understanding of corporate *mens rea* to effectively address and sentence corporate entities for fraudulent acts.