FROM NEXT BEST TO WORLD CLASS

The People and Events That Have Shaped the Canada Deposit Insurance Corporation 1967–2017

C. Ian Kyer

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C. Ian Kyer

Next Best to World Class: The People and Events That Have Shaped the Canada Deposit Insurance Corporation, 1967–2017

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Preface

As a young man in high school I thoroughly enjoyed Stephen Leacock's "My Financial Career." This humorous sketch, like all Leacock humour, is lightly disguised social commentary. It is the story of a young man's attempt to open an account at that most intimidating of financial institutions — a bank. It goes badly: "When I go into a bank I get rattled. The clerks rattle me; the wickets rattle me; the sight of the money rattles me; everything rattles me. The moment I cross the threshold of a bank and attempt to transact business there, I become an irresponsible idiot."

Leacock ends his brief tale of unease and trepidation with the words, "Since then I bank no more. I keep my money in cash in my trousers pocket and my savings in silver dollars in a sock."

Written in 1896 by a then twenty-seven-year-old master at Upper Canada College, it was first published in *Life* magazine in New York. In 1910, it was republished as the opening sketch in Leacock's *Literary Lapses*. It resonated with the general public and for decades it was one of Leacock's best-loved stories. In 1962, as I was preparing to enter high school, it was made into an animated short by

Canada's National Film Board.[1] I had a part-time job as an usher at the Lyric Theatre in Kitchener, Ontario, and I saw it many times, laughing every time.

When I went to open my first bank account in the summer of 1967, I had a much better experience. I was not afraid to leave my hard-earned dollars with the Bank of Montreal branch on King Street opposite Towne Bowling. It never occurred to me that I was lending this money to the bank or that I was an unsecured creditor who would be unable to recover my money on a failure if there were sufficient funds after the secured creditors had been paid. I did not think of banks as risky. If anything, I thought of banks as stable and secure. "Like money in the bank," my father used to say when he was talking of a sure thing. But even if I had contemplated a run on the Bank of Montreal or its failure, I was confident that my money would be safe. A tent card on the counter informed me that the newly created Canada Deposit Insurance Corporation (CDIC) would be insuring deposits up to $20,000, far in excess of what I expected to have in my account.

I had no appreciation then that the creation of CDIC a few months before had been a matter of much debate and that the whole concept of insured bank deposits had long been opposed by both the Canadian Bankers Association and a series of federal governments that had feared becoming too deeply involved in the world of private banking. I just knew that CDIC protection made me more comfortable in dealing with my bank.

I certainly had no inkling that fifty years later I would be writing the history of CDIC and its role in providing deposit insurance in Canada. I fully expected to be writing history — my career goal was to become a medieval historian — but I never expected to be writing the history of a Crown corporation that formed part of Canada's financial safety net.[2] Ironically, I got the opportunity to write this book

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1 David M Legate, *Stephen Leacock: A Biography* (Toronto, ON: Macmillan of Canada, 1970) at 32.

2 On the development and make-up of that safety net, see Walter Engert, "On the Evolution of the Financial Safety Net" *Financial System Review — June 2005*

because after thirteen years in university collecting four degrees (BA, MA, PhD, and LLB) I shifted from history to law. I ended up as an Information Technology (IT) lawyer in the Bay Street Toronto firm, Fasken & Calvin.[3] That firm did not then represent CDIC. In fact, my first professional encounter with CDIC was opposite them on a motion brought by Faskens on behalf of the ousted management and directors of Seaway Trust following the 1983 takeover of Seaway, Greymac and Crown Trust by the Ontario government.[4] As we shall see, that provincial takeover represented "a dramatic turn" in the fortunes of CDIC and was the forerunner of numerous failures of other troubled financial institutions in the 1980s and 1990s. A few years after that first encounter with CDIC, one of the senior partners at Faskens, Ron Robertson, was asked to help reshape CDIC by his friend and colleague Ron McKinlay. Robertson in turn asked me and Donald Milner to assist him. Donald handled insolvency and restructuring and I handled IT and other matters. Gradually over time, my role with CDIC broadened and so did my appreciation of the important place it holds in Canada's financial safety net. I came to know and appreciate the difficult situation CDIC is in when it comes to detailed discussions of what it does. CDIC is part of a government that wisely favours openness and transparency, but it is also bound by an Act that requires its management to keep confidential all that it learns of the affairs of its members.[5] In writing this book, dealing with this delicate balance was challenging.

(23 June 2005), online: Bank of Canada http://www.bankofcanada.ca/2005/06/fsr-june-2005.

3 Faskens is not now, nor was it ever, the name of this law firm. It began as Beatty & Chadwick in 1863 and became Fasken Martineau DuMoulin LLP in 2000. In between those years, it had many names, but it is commonly known as Faskens. See CI Kyer, *Lawyers, Families and Businesses: The Shaping of a Bay Street Firm Faskens 1863–1963* (Toronto, ON: Osgoode Society and Irwin Law, 2013) at 255–56.

4 *Seaway Trust Company v Ontario* (1983), 143 DLR (3d) 252 (Ont HCJ) and *Re Seaway Trust Co et al and The Queen in right of Ontario et al* (1983), 41 OR (2d) 532 (CA).

5 This confidentiality requirement had always been implicit in CDIC's mandate, but it was made express in 1986. See RSC 1985, c 18 (3rd Supp), s 68.

Although I had become a lawyer, I never entirely abandoned my historical pursuits. Whenever I had time I researched and wrote about the history of the Faskens firm. Finally, in 2013, on its 150th anniversary, I published a history of that firm entitled *Lawyers, Families and Businesses: The Shaping of a Bay Street Law Firm, Faskens 1863–1963* (Irwin Law, 2013). I proudly presented a copy to Claudia Morrow, the vice-president, Corporate Affairs, at CDIC. She reminded me that CDIC would soon be celebrating its fiftieth anniversary and asked if I might tell its story. I was pleased to do so because I had long felt that CDIC was little understood. Few Canadians realize how fortunate we are to have the dedicated men and women of CDIC working on our behalf. It is a special challenge to spend your life preparing for the financial crisis that you hope never comes, but you know likely will.[6] And in its fifty years, CDIC has had to contend with many financial crises. As a result, its story is much more dramatic than people realize.

6 I owe this characterization of CDIC to Nancy Lockhart. Telephone interview with Nancy Lockhart, 24 November 2016.

Acknowledgements

There are many contributions to this book that need to be acknowledged. First and foremost, I must applaud the efforts of Claudia Morrow and Chantal Richer of CDIC's legal department in conceiving of and shepherding this project to completion with the expert help of Brad Evenson and Susan Kay. Alejandro Garcia, former director of emerging risks and data analytics at CDIC, was good enough to read an early draft and provide helpful comments. Dr Bruce Salvatore provided expert research assistance.[1] Thanks also to CDIC's Translation team of Élisabeth Valceschini and Florence Lehmann, along with Francine Watkins Translation Services, for their diligent work on the French adaptation. Kirsten Smith worked with CDIC to source the photos for this book. Former CDIC presidents JP Sabourin and Guy Saint-Pierre as well as former VP Tom Vice and current president Michèle Bourque agreed to be interviewed. Josée Ledoux was also able to arrange a series of enjoyable and enlightening

1 We were also working on another project, a singspiel entitled "Setting the Record Straight: Mozart and Salieri Redux." This work, with dialogue by us and featuring the music of Antonio Salieri and Wolfgang Amadeus Mozart, was premiered by the San Francisco Opera Center in April 2016.

interviews with former chairmen Grant Reuber and Bryan Davies and former *ex officio* directors Julie Dickson and David Dodge, and outside directors Nancy Lockhart, Colin MacDonald, Paul Morton, Tracey Bakkeli, and Shelley Tratch. Donald Milner and Douglas R Scott, my former Faskens partners, also shared their memories.

I owe a large debt to two people no longer with us, Dick Humphrys and Ron Robertson. Both grew up in Western Canada during the Great Depression, and they each came to appreciate what can happen in the absence of a financial safety net. That appreciation infused their work for CDIC. Fortunately, each left a "memoir" of a sort. As the superintendent of insurance, Humphrys not only helped create CDIC in 1967, but he oversaw much of its activities for the next eighteen years. After he retired in 1984, the board of CDIC called upon him to share his experience and expertise with them, which he did in a series of memos in 1985 and in a brief history of CDIC that he wrote in 1991. Ron Robertson's involvement with CDIC began as Humphrys's was ending. Robertson became one of the first independent, outside directors of CDIC in 1987 and subsequently became CDIC's primary legal adviser, and in 1999, its seventh chairman. At my urging, he gave a set of extensive interviews as part of the Osgoode Society Oral History program.[2] Robertson's interviews and Humphrys's memos and history provided details and insights that helped me better tell this story.

I was also the beneficiary of a number of constructive comments and suggestions from those attending a session of the Osgoode Society Legal History Forum where I presented what became Chapter 2 of this history. I would like to thank Professor Jim Phillips for permitting me to make a presentation to the group.

Once again, I benefitted from the expert assistance of Jeff Miller of Irwin Law publishing and his able and helpful staff including Lesley Steeve as editor, Heather Raven in layout and design, and Britanie Wilson, who did the comprehensive index.

While I greatly appreciate the assistance of these people, needless to say, I am solely responsible for what I have written.

2 The oral history collection is described and indexed at www.osgoodesociety.ca/oral-history.

Acronyms and a Note on Terminology

CBA	Canadian Bankers Association
CDIC	Canada Deposit Insurance Corporation
FDIC	Federal Deposit Insurance Corporation (US)
FIRP	Federal Institution Restructuring Provisions (the provisions of the *CDIC Act* that permit CDIC to restructure an institution)
FISC	Financial Institution Supervisory Committee (senior representatives of the institutions forming Canada's financial safety net, chaired by SOFI)
IADI	International Association of Deposit Insurers
OIGB	Office of the Inspector General of Banks (1923–1987)
OSFI	Office of the Superintendent of Financial Institutions (1987–present)
SAC	Senior Advisory Committee (same membership as FISC but chaired by the deputy minister of finance)
SOFI	Superintendent of Financial Institutions

In writing this book I have tried to limit my use of acronyms and to avoid jargon as much as possible. This is a real challenge in a field that relies upon abbreviations and draws on the jargon of economics, law, accounting, and banking.[1] Some technical terms like insolvency and winding-up have been used but I have tried to explain these terms when first used.

1 For a good insider's look at deposit insurance that uses both extensive abbreviations (118 of them) and jargon, see Nikoletta Kleftouri, *Deposit Protection and Bank Resolution* (Oxford, UK: Oxford University Press, 2015).

Introduction

CANADA DEPOSIT INSURANCE CORPORATION, or CDIC as it is widely known, may be only fifty years old, but it has faced numerous challenges, been much studied, and been through many transformations. It has been an eventful fifty years. Today "the deposit protection system has become a well-established component of prudential bank regulation,"[1] but it was not always so. CDIC's mandate and even its existence have been the subject of much debate. It has regularly been the object of criticism, and its mandate and powers have been regularly rethought. It was created amidst controversy and federal provincial wrangling in 1967, much tested in the financial crises of the early 1980s, intensely studied in the mid-1980s, significantly reshaped in the late 1980s, and tested again by the financial failures of the early 1990s, following which, it was once again critically scrutinized and reshaped. In 2004, Ron Robertson characterized it as a tale of "costly and bitter

1 Nikoletta Kleftouri, *Deposit Protection and Bank Resolution* (Oxford, UK: Oxford University Press, 2015) at 1 [Kleftouri].

experiences."[2] CDIC can certainly be said to have evolved, as the Canadian government has tried to benefit from those experiences and adapt CDIC and the other members of Canada's financial safety net to changing times. The success of Canada's regulatory regime was much in evidence (and much praised) during the financial crisis of 2007–2009. By that time, CDIC had become an exemplar and a mentor to numerous deposit insurers in other countries around the world. That crisis brought a renewed focus on CDIC and then a new role and a further reshaping as Canada's resolution authority for a new interconnected market in a digital world. It has been anything but a smooth, easy ride, and it has certainly been eventful.

Although this is an institutional history, it looks at that history through the people, events, and ideas that have shaped CDIC[3] — and that shaping started long before that institution even existed. CDIC may have been born in 1967, but it had a long and difficult gestation period.[4] During the previous 100 years, Canada's federal government, whether Conservative or Liberal, had consistently sought to distance itself "from demands for assistance from weak banks and their victims — depositors, note holders and investors."[5] The business of

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2 Letter from Ron Robertson to Ralph Goodale, the minister of finance (22 July 2004) [unpublished].

3 When writing this book, my working title was *From Paybox to Key Player*. This was drawn from a letter that Mitchell Sharp wrote to CDIC's chairman, Ronald N Robertson, on 17 April 2002. As the minister of finance in the Pearson government, Mitchell Sharp oversaw the 1967 creation of CDIC. Thirty-five years later, he wrote to congratulate CDIC on growing from a "small 'paybox' that existed to pay depositors of failed institutions" into "a player in the federal financial safety net." I decided to adopt the title *From Next Best to World Class* because of a comment from Alejandro Garcia of CDIC who thought my working title suggested "a type of book that is less interesting to read, i.e., one that only focuses on the evolution of the business model of CDIC."

4 There is a good summary of the evolution of the Canadian Banking System including CDIC in Appendix A to the *Report of The Commission of Inquiry into the Collapse of the Canadian Commercial Bank (CCB) and the Northland Bank* (Ottawa, ON: Minister of Supply and Services, August 1986) at 349-66 [Estey Report].

5 John Anthony Turley-Ewart, *Gentlemen Bankers, Politicians and Bureaucrats: The History of the Canadian Bankers Association, 1891–1924* (PhD thesis, University of Toronto, 2000) at ii [unpublished] [Turley-Ewart]. At the same time, the Bank Act was revised to create a Bank Circulation Redemption Fund

banking, it was thought, was best left to the bankers themselves. To do otherwise could make the federal government liable in the event of a failure.[6] It was for this reason that the federal government encouraged the formation of the Canadian Bankers Association in 1891. Initially the CBA had an informal mandate from the government to deal with its weak members, but a decade later it was given a formal role in bank monitoring and the handling of bank failures.[7] This belief in bank self-regulation was not shared by many and attracted much criticism. Despite its efforts to insulate itself, the federal government was regularly called upon to intervene when a bank was in difficulty. Over time, the federal government reluctantly assumed a larger role in monitoring and supervising banks.

Deposit insurance was proposed several times in parliamentary debates during Canada's first century. In 1912 when the Borden government moved to make external bank audits a requirement,[8] the opposition asked why the government could not establish a fund to protect depositors. Finance Minister Sir William Thomas White replied that the way to protect depositors was to encourage bankers to act with integrity and to establish monitoring and effective

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to guarantee bank notes that all banks supported by depositing with the finance department an amount equal to 5 per cent of their annual circulation (at 59).

6 Byron Lew & Alan J Richardson, "Institutional Responses to Bank Failure: A Comparative Case Study of the Home Bank (1923) and the Canadian Commercial Bank (1985) Failures" (1992) 3 *Critical Perspectives on Accounting* 163–183 at 169.

7 In 1900, the CBA was incorporated and given supervisory responsibility for banking standards and was mandated to assist in the winding-down of any failed banks. See Turley-Ewart, above note 5 at 118.

8 Initially each bank's audit was done internally — there was no review by an external auditor. All of these documents were prepared by the bank's management, and although they had to be approved by the directors of the bank, those directors lacked the opportunity or the ability to delve into them deeply. See HC Mcleod, *Bank Inspection: The Necessity for External Examination, Second Edition* (Toronto, privately published pamphlet, 1909) and Joseph Schull & J Douglas Gibson, *The Scotiabank Story: A History of the Bank of Nova Scotia 1832–1982* (Toronto, ON: Macmillan of Canada, 1982) at 96–99.

oversight by the bank's shareholders and its board of directors.[9] Deposit insurance came up again in 1923 when Home Bank failed and more than 50,000 Canadians lost much of the money that they had deposited in that institution. Although the president of the Bank of Montreal downplayed the importance of this failure, saying that the attention that it was receiving was "out of all proportion to its effect on Canada's financial structure,"[10] it was a matter of concern to many. The Parliamentary committee that studied the Home Bank failure recommended that Canada consider the use of deposit insurance as a way of protecting those who put their money in banks.[11] Again the federal government was reluctant to intervene. Despite intense pressure[12] and evidence that the minister of finance had ignored indications that Home Bank's management was engaged in improper dealings,[13] Mackenzie King's government declined to act on this recommendation. Instead they improved bank supervision, creating the Office of Inspector General of Banks.[14] Even when the House of Commons passed legislation to reimburse depositors for some of their lost money, Mackenzie King worked

9 *House of Commons Debates*, 12th Parl, 2nd Sess, Vol 1 (17 December 1912) at 1285 (Sir William Thomas White).

10 Merrill Denison, *Canada's First Bank: A History of the Bank of Montreal*, vol 2 (Toronto, ON: McClelland & Stewart, 1967) at 350 [Denison].

11 House of Commons, Select Standing Committee on Banking and Commerce, *Proceedings (revised) of the February-July Session* (1924).

12 Many people petitioned King and the CBA. Dr A MacDonald of Khedive, Saskatchewan, wrote the CBA, saying that the failure of the Home Bank had crippled his town and the neighbouring town of Amulet. From Robert MacIntosh, *Different Drummers Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 59: "A number of farmers were hailed out in 1923 — had only received their hail insurance and deposited same in the Home Bank, where they lost it all. There were a number of sad cases. One case was a poor old man and his wife who had saved up $1,200 all his life from repairing shoes. He had his son deposit it in the Home Bank. The bank's failure left him without a cent. He is now 68 years of age and unable to do much."

13 Parliament, "Interim Report: Royal Commission re Home Bank" by Harrison Andrew McKeon in *Sessional Papers*, No 1924-100d (1924) at 9–10 [McKeown Commission Report].

14 On the development of the Inspector General of Banks, see Denison, above note 10 at 348–50.

with the Senate to reduce the compensation and only reimburse a very limited number for a relatively small amount.[15] Yet again in 1933, when the US Congress created the Federal Deposit Insurance Corporation (FDIC) to insure US bank deposits,[16] RB Bennett's government declined to follow suit.[17] Instead, Bennett appointed a royal commission to study "the organisation and working of our entire banking and monetary system [and] to consider the arguments for or against a central banking institution . . . ." That royal commission, led by England's Lord Macmillan, recommended that a central bank be established. The Bank of Canada was duly created to play a role in the management of the Canadian economy. Significantly, in keeping with Canada's laissez-faire tradition, the legislation that created the Bank made it a privately owned institution, not owned or controlled by the federal government[18] — that only changed when Mackenzie King became prime minister.

Another three decades passed before Canada adopted deposit insurance. The *Canada Deposit Insurance Corporation Act* of 1967 (the *CDIC Act*) drew upon the US experience with the FDIC,[19] but

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15 *Home Bank Creditors Relief Act*, SC 1925 (15-16 Geo V), c 45. See also Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 62.

16 The US Federal Deposit Insurance Corporation (FDIC) was created in 1933, but deposit insurance in the United States has a much longer history. Deposit insurance of various forms had been enacted well before the Civil War in six states (successfully in Indiana, Ohio, and Iowa, and unsuccessfully in New York, Vermont, and Michigan). Then in the decade following the bank panic of 1907, eight other states adopted similar legislation. See Charles W Calomiris & Eugene N White, "The Origins of Federal Deposit Insurance" in Claudia Goldin & Gary D. Libecap, eds, *The Regulated Economy: A Historical Approach to Political Economy* (Chicago, IL: University of Chicago Press, 1994) at 147.

17 Charles W Calomiris and Stephen Haber provide an insightful account of the difference between banks and government in the United States and Canada in their book *Fragile by Design: The Political Origins of Banking Crises and Scarce Credit* (Princeton, NJ: Princeton University Press, 2014), ch 9.

18 The story of the creation of the Bank of Canada is told in the biography of its first governor. See Douglas H Fullerton, *Graham Towers and His Times* (Toronto, ON: McClelland & Stewart, 1986).

19 Dick Humphrys would later say that "[t]he details of the plans operating in the United States were available and these were taken into account

it arose out of a particularly Canadian problem. The *British North America Act* (now part of the *Constitution Act*) that gave birth to the Canadian Confederation clearly assigned responsibility for banking (including currency and savings banks) to the federal government. Nevertheless, from the very beginning, provincially incorporated mortgage and loan companies had accepted deposits from the public. Over time these provincial institutions and their affiliated trust companies became deposit-taking lending institutions that were so bank-like that they were dubbed "near-banks." It was the failure of some of these provincial "near-banks" in the early 1960s and the need for a set of consistent regulatory standards across Canada that led some critics to suggest that the federal government ought to exert its constitutional power over banks and banking. They wanted the federal government to require "near-banks" to apply for a federal bank charter or abandon their bank-like operations. But the provinces, led by Quebec, would have challenged any such move.[20] Rather than face years of constitutional litigation with no certainty of success, Prime Minister Pearson's government chose the carrot over the stick. They decided to entice provincial regulators and near-banks into voluntarily accepting federal oversight and regulation. Deposit insurance offered through CDIC was the carrot.

Canada's Centennial Year, 1967, was a year of national celebration highlighted by Expo 67 in Montreal. But despite the celebratory mood of Canada's one-hundredth birthday, there was much that worried Canadians and their political leaders. This was an economically troubled era that included the 1965 failure of the Atlantic Acceptance Corporation and the near failure of the British Mortgage and Trust Company of Ontario. This was followed in 1966 by the failure of Prudential Finance, a federal investment company. The provincial governments of Ontario and Quebec were concerned

in designing the Canadian plan." See Discussion Papers Prepared by Mr R Humphrys, 6 March 1985, in the files of CDIC at Tab 1 p 5.

20 Langevin Cote, "Trust Brief Urges Quebec Fight Federal Involvement in Near-Banks" *Globe and Mail* (18 November 1964) B4, and Langevin Cote, "Defer Action on Trust Companies Till Jurisdiction Settled: Faribault" *Globe and Mail* (19 November 1964) at 35.

enough to appoint commissions to look into financial regulation, as did the federal government. It was in this context that the Pearson government decided to use the *CDIC Act* to accomplish federal oversight of provincial loan and trust companies.

The banks were none too pleased with the creation of CDIC. They railed against it, arguing that there was no need for deposit insurance in Canada's banking industry and bitterly complained that their premiums would subsidize their competition. They noted that premiums based on the amount of deposits held by an institution meant that the large chartered banks, which presented the least risk, would be carrying the bulk of the financial load. It was simply unfair, they argued. To some extent the banks were right — they would be subsidizing their competition, but to the federal government, that was not a bad thing. That government wanted to encourage competition in financial services and that was hard to do if people feared putting their money on deposit with smaller, less well-established institutions. For about a decade between 1986 and 1996, fostering competition was expressly made a part of CDIC's mandate,[21] but it was implicit in its creation.

Since CDIC's creation, forty-three of its member financial institutions have failed. The 1970s saw the failure of Commonwealth Trust Company (1970) and Security Trust Company Limited (1972), but it was the decade of the 1980s that presented the greatest challenge. Twenty-three institutions failed in that decade, most between 1980 and 1986. These failures led to much thinking about CDIC and its mandate. There were several sensationalist books about greed and government ineptitude, and numerous scholarly articles about the "moral hazard" of deposit insurance,[22] which was said to erode market discipline and facilitate undue risk-taking and even fraud. More importantly for CDIC, several studies were commissioned, and CDIC was reshaped as a result. It was given new management, broader powers, and a much larger staff.

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21 See RSC 1985, c 18 (3rd Supp), s 49. Fostering competition was later removed in SC 1996, c 6, s 22.

22 On "moral hazard," see Kleftouri, above note 1 at 28–34.

CDIC's new management, led by an activist chairman, wanted an emphasis on remediation rather than liquidation. There were lots of opportunities for remediation in the late 1980s, culminating in the huge and very challenging Central Guaranty deal with Toronto-Dominion Bank. That transaction motivated the federal government of the 1990s to pause and rethink CDIC's structure and approach under a new and more sceptical chairman. But as CDIC was being transformed yet again, it had to deal with another eight failures. Slowly the organization's new emphasis on working with both federal and provincial regulators to anticipate and prevent failures began to have the desired effect; the last failure occurred in 1996. But CDIC's proactive approach and its development of a set of business standards to be followed by its members created friction between CDIC and the Office of the Superintendent of Financial Institutions (OSFI). Some Canadian politicians and bureaucrats began to question whether CDIC needed to be a separate Crown corporation.

That was not a question that was being asked internationally. Canada's success with CDIC was widely heralded and many countries around the world began to study and emulate it. CDIC became a key player in the creation and operation of the International Association of Deposit Insurers. It also played a key role in the development of the Basel international standards for deposit insurers.

The financial crisis of 2007–2008 made people realize that even very large financial institutions can fail and put their depositors at risk. The enormous challenges presented by mammoth financial institutions operating globally in a digital economy spurred CDIC to retool to meet those modern-day challenges. As a result, the fifth decade of CDIC's existence has been one of intensive activity, despite the fact that there have been no failures. It has seen CDIC create a major failures division; work with Canada's big six banks after their designation by OSFI as "systemically important"; become Canada's resolution authority; develop legislation increasing its toolkit, including the concept of the bridge bank; work with the Department of Finance on "bail-in" legislation; and adopt a data requirements bylaw. Much of this was done in response to or in conjunction with

the development of international standards for deposit insurance and failure resolution. Canada was a contributor to such standards, and CDIC was a key player in that contribution.

The institution that I am chronicling is a Crown corporation and just one strand in Canada's financial safety net.[23] CDIC's story is heavily influenced by political events and by the actions of the other strands in that net: the Bank of Canada and Canada's financial regulators. To tell the story properly, one cannot focus exclusively on CDIC. That would be like doing a history of a second baseman on a baseball team without mentioning the other players on the team or the league in which he or she played. Of necessity, this book is to some extent the history of how Canada has regulated deposit-taking institutions and of how it has dealt with failures of those institutions. CDIC was created to facilitate federal regulation of the provincial "near-banks," and its evolution has been in conjunction with the development of OSFI and the other elements of Canada's financial safety net. It is a tale of Canada's changing political views of regulation and government intervention, and its efforts to find the right balance between a free, innovative marketplace and a stable, risk-reduced financial services sector.

Because CDIC's mandate has focused on troubled financial institutions, it is a tale of fraudulent or improvident lending practices causing the loss of much money deposited with banks and other financial institutions. It is also the story of the efforts of bankers, alone and through the CBA, as well as politicians and bureaucrats to prevent and, where that proved impossible, to deal with the consequences of such practices. It is a tale of trust and distrust, security and anxiety, happiness and despair. It is a story of people who worked hard to maintain the stability of Canada's financial system, but it also has its share of characters who sought personal financial

23 "[D]epositor protection schemes, and specifically deposit insurance systems, do not exist in a vacuum, but rather are components of an overall financial safety net." See Joseph J Norton, Rosa M Lastra, & Douglas W Arner, "Legal Aspects of Depositor Protection Schemes: Comparative Perspective" (Report delivered at the International Seminar on Legal and Regulatory Aspects of Financial Stability, Basel, Switzerland, 21–23 January 2002).

gain at the expense of those who entrusted their savings to their financial institution. It is a good story and certainly one worth telling.

Chapter One

A Century Without CDIC, 1867–1967

The security of depositors rests more upon the integrity and ability of directors and officers of the bank than upon anything else.

— FINANCE MINISTER SIR WILLIAM THOMAS WHITE, 1912

CANADA'S CENTENNIAL YEAR WAS only eleven days old when Mitchell Sharp, Canada's minister of finance, rose in the House of Commons to introduce the legislation that would create the Canada Deposit Insurance Corporation. It was to be a time of celebration but the failure of several prominent financial service companies threatened the confidence of many in Canada's financial services sector. Sharp was quick to point out that deposit insurance was not the answer to all of the problems involving the supervision of financial institutions, but it would protect small, less sophisticated depositors who were not usually in a position to judge the soundness of the institutions to which they entrusted their savings.

Although the CDIC proposal was new, the concerns that it was intended to address were at least as old as Confederation itself. When Canada's first Parliament opened in November 1867, the impact of a bank failure on the economy and bank depositors was on everyone's mind. In mid-September 1867, Canada's first minister of finance, Alexander Tilloch Galt, received a telegram at his home in Sherbrooke, Quebec. It was from Luther Holton, the Liberal MP for

Montreal, asking to see him on public business.[1] Galt was a shrewd politician and an experienced businessman who knew Holton well;[2] in the 1850s they had partnered with Casimir Gzowski in the development of a trans-provincial railway that ran between Montreal and Kingston, which became part of the Grand Trunk Railway.[3] Holton had also been the finance minister just a few years before in the pre-Confederation government of Sandfield Macdonald in the United Canadas.[4] Galt agreed to meet Holton in Sherbrooke the next day. At that meeting, Galt learned that there had been a partial run on the Kingston-based Commercial Bank of the Midland District (Commercial Bank) and that its largely Montreal-based board of directors were concerned that the bank might fail despite its $7.4 million in assets.[5] Those directors had asked Holton to seek a deposit of government funds to provide an additional reserve.

As Galt was well aware, Holton knew banking. He had been one of the founders of the Montreal City and District Savings Bank (now known as the Laurentian Bank of Canada). Ironically, in 1849 when that savings bank had faced financial difficulty, Holton had developed a successful rescue plan that had included assistance from the Commercial Bank, the very bank that he was now trying to save.[6]

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1 Much of the following account is based on the speech made by Galt to the House of Commons on 12 December 1867. It was published as *The Statement of the Honorable A. T. Galt in Reference to the Failure of the Commercial Bank* (Ottawa, ON: Hunter, Rose & Co, 1867). It also draws on OD Skelton, *The Life and Times of Sir Alexander Tilloch Galt* (Toronto, ON: Oxford University Press, 1920) at 421–29.

2 Jean-Pierre Kesteman, “Galt, Sir Alexander Tilloch” in *Dictionary of Canadian Biography*, vol 12 (Toronto, ON: University of Toronto/Université Laval, 1990).

3 Henry C Klassen, *Luther H Holton: A Founding Canadian Entrepreneur* (Calgary, AB: University of Calgary Press, 2001) at 61–98. See also HC Klassen, “Holton, Luther Hamilton” in *Dictionary of Canadian Biography*, vol 10 (Toronto, ON: University of Toronto/Université Laval, 1972).

4 Klassen, above note 3 at 127–53.

5 *Report of the Proceedings of the Special Meeting of the Shareholders of the Commercial Bank*, Kingston, Ontario, 6 November 1867 (Montreal: Herald Steam Press, 1867) at 3 [*Report of the Proceedings*].

6 Klassen, above note 3 at 206–8.

Galt listened attentively to Holton's tale and considered the impact that a bank failure would have. The failure of the Bank of Upper Canada the previous year had made depositors anxious about the new Dominion's remaining banks. Galt was not the experienced banker that Holton was, but he understood enough to appreciate that nervous depositors seeking to withdraw their funds could cause a problem even for a solvent bank. Banks act as financial intermediaries — they borrow money by accepting deposits, many of which can be withdrawn with little or no notice.[7] The banks use much of that deposited money to make loans to those in need of funding, keeping enough in reserve to meet what they anticipate will be withdrawn by depositors. If for some reason depositors lose faith in a bank, they can seek to withdraw their funds at a time when the bank does not have enough in reserve to return the deposits. The inability to meet the withdrawals may be a short-term problem if the bank is able to recover enough from its loans to cover the shortfall. But the bank may not be able to do so. It need not be a case of the bank having made bad loans — it could simply be a timing issue. Its loans may be generating a good return through interest payments and might have a strong likelihood of repayment over time, but repayment may not be possible when the bank needs that money.[8] In the case of such a timing problem, the bank will usually be able to borrow from other banks against its loan portfolio and any security that it holds. More serious is the situation where the bank has actually made bad loans, ones where the borrower is unlikely to be able to repay at any time.[9] In this case, no other bank

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7 On the causes and effects of bank runs and resulting failures, see Carmen M Reinhart & Kenneth S Rogoff, *This Time Is Different: Eight Centuries of Financial Folly* (Princeton, NJ: Princeton University Press, 2009) at 141–73.

8 The loans might be for a defined term in the future and not be demandable at that time. But even if the bank were entitled to demand immediate payment, the borrower might not be in a position to pay at that time. The borrower might be awaiting a future payment or might need to sell assets.

9 This can be disastrous for the bank if the loan is unsecured or if the security that the bank has taken against repayment is not sufficient to permit the bank to realize on its security and recover its money.

is likely to lend it money and the bank will fail. Galt needed to know which scenario the Commercial Bank was facing.

He and Holton travelled to Montreal and met with a group of the bank's directors. Galt was assured that it was nothing more than a timing issue. The run on the bank had been triggered by concerns arising from the failure of the Bank of Upper Canada the previous year and had little to do with the Commercial Bank's operations or assets. If the government made a deposit, he was told, the crisis would be averted. The government deposit would provide sufficient "liquidity" — that is, funds to bridge the gap between the money the bank had available and the demand for withdrawals.

Galt felt somewhat reassured, but he had another concern. He doubted whether his government could intervene as it was being asked to do without parliamentary approval, and Parliament was not in session. In fact, an election was underway and he was sceptical whether the government could recall Parliament. And even if Parliament could be called, disclosure of the bank's request in Parliament would do more harm to the bank's reputation than the deposit could help. Rather than solve the problem, the process of approving a government deposit might make matters worse. People might completely lose confidence in the bank, leading even more depositors to try to withdraw their funds. And what sort of precedent would this set? In the future, would the government be expected to come to the rescue of every bank facing difficulty?

Galt met with Etienne Cartier, the leader of the French wing of the government, in Montreal, and then both men travelled to Kingston to confer with the prime minister, Sir John A Macdonald. Macdonald knew the Commercial Bank well. In the past, he had been legal counsel to the bank and even now he was a shareholder and listed on its board of directors. He also owed the bank a very large sum — $64,000 (about $1 million dollars in today's money).[10]

10 JK Johnson & PB Waite, "Macdonald, Sir John Alexander" in *Dictionary of Canadian Biography*, vol 12 (Toronto, ON: University of Toronto/Université Laval, 1990). See also Richard Gwyn, *Nation Maker: Sir John A. Macdonald: His Life, Our Times, Volume 2 1867–1891* (Toronto, ON: Vintage Canada, 2012) at 53.

Both Cartier and Galt shared their reservations with the prime minister. He concurred, but thought that there might nevertheless be a way to prevent the bank from failing. If the government could not itself deposit funds in the struggling bank, perhaps its bankers could. He could strongly suggest to the Bank of Montreal, which held the government's deposits, that it would be much appreciated if interim funding could be provided to the troubled bank. If things were as Galt had been told, there would be no risk since the Bank of Montreal could secure its loan by taking a charge on the assets that the Commercial Bank then held.

Having informed the directors of the Commercial Bank of what Macdonald had proposed, Galt accompanied Richard Cartwright, the bank's president, to Montreal to meet with the assistant manager of the Bank of Montreal (Edwin H King, the general manager, was away in England). They did so, and the assistant manager agreed to make an advance of $300,000. Galt was pleased that the matter had been resolved quickly and quietly without attracting the public attention that might have caused a panic among depositors.

Regrettably, things did not work out as Galt anticipated. On 15 October, he was again approached by Holton and Cartwright. They informed him that the interim funding from Bank of Montreal had not solved the problem. The run on deposits was continuing and the Commercial Bank would not survive much longer. Galt was implored yet again to meet with the bank's directors to see if more could be done. He agreed and was presented with a report by an independent committee that included Holton and Sir Hugh Allan, one of Canada's business leaders. That report reiterated that the problem was temporary. The run was the result of rumour and unwarranted public concern, but it represented a significant threat because the bank had much of its money tied up in the bonds of an American railroad company, the Detroit, Grand Haven and Milwaukee Railway.[11]

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11 Joseph Schull, *100 Years of Banking in Canada: A History of the Toronto-Dominion Bank* (Vancouver: Copp Clark, 1958) at 32 [Schull], and RT Naylor, *The History of Canadian Business*, vol 2, revised ed (Montreal: Black Rose Books, 1997) at 32–33 [Naylor].

Those bonds would eventually be sufficient to more than repay the bank's investment, but could not be sold at the present time. The bank thus needed interim assistance until the public concerns could be addressed and the value of the bonds realized.

By this time, General Manager King of the Bank of Montreal had returned and Galt decided to discuss the matter with him. Galt and King spent three hours the next day reviewing the situation and considering the very serious threat that another bank failure would have for the new Canadian Confederation and its other banks. Both believed that something should be done, but King doubted that any Canadian bank would have the resources to do so alone — even his Bank of Montreal, which was by far the largest. He encouraged Galt to reconsider government assistance.

Galt once more met with the directors of the Commercial Bank and encouraged them to authorize Cartwright, their president, to accompany him to Ottawa to petition the cabinet for aid. The board did so, and Galt and Cartwright boarded the train to Ottawa.

Immediately on arrival, Galt met with the prime minister to brief him. Sir John A acknowledged that this was a serious threat to their new nation and decided to call together his cabinet. A meeting with Cartier, however, caused Macdonald to rethink that course of action. Cartier was strongly of the view that this was best dealt with by the banking industry itself and suggested that a meeting of all of Canada's banks be arranged to put the problem to them collectively. Macdonald accepted Cartier's advice and convinced Galt to return to Montreal to arrange such a meeting.

On the morning of Friday, 18 October, Cartwright and Galt again met with King at the Bank of Montreal. They convinced him to send telegrams to the head offices of the other banks inviting them to a meeting to be held the next Monday in Montreal. The senior offices of many of Canada's banks, including the noted businessman James Gooderham Worts, vice-president of the Bank of Toronto, personally attended the meeting held in the offices of the Bank of North America. These bankers acknowledged that a Commercial Bank failure posed a serious threat, but could not agree on how to prevent it. The meeting dragged on for hours as they debated alternatives. Eventually, a

consensus seemed to be reached. The banks would pool their resources and guarantee the US railroad's bonds. The problem was that the majority looked to the Bank of Montreal as the largest bank to assume the lion's share of the guarantee, and King would not have it. He countered with a proposal of his own: his bank would put forward the entire amount needed, provided that the other banks guaranteed its repayment. This would have had the effect of making the other banks potentially responsible for the entire amount. When this was rejected, King walked out.

A despondent Galt left the bankers' meeting to telegraph Macdonald in Ottawa with the bad news. His mission had failed, and the Commercial Bank was doomed unless the government intervened. He urged the prime minister and his cabinet colleagues to provide interim funding to the Commercial Bank. To his chagrin, he received a response saying that no government aid would be forthcoming.

When Galt rejoined the bank meeting, he learned that things had gone from bad to worse. King now was demanding that the other banks settle the Commercial Bank's daily balance with his bank. If they did not, he would demand immediate payment from the Commercial Bank, which would cause it to fail. An incensed James Gooderham Worts asked, "Is this man a little god that he dares to treat the representatives of all of the other banks in this manner?"[12]

The Commercial Bank did close its doors shortly thereafter, which raised a public alarm that was made even worse when the Bank of Montreal refused to accept bank notes issued by another bank, Ontario's Royal Canadian. That bank would soon join the Commercial Bank in closing its doors. Those who held bank notes from these institutions or had deposits with them were denied access to their funds. Sir Edmond Walker, one of Canada's pre-eminent bankers of the late nineteenth century, would later characterize King's actions as an unfortunate "cause of irritation between the Bank of Montreal and its weaker brethren."[13] The *Globe* newspaper at the time was

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12 Schull, above note 11 at 32, and Naylor, above note 11 at 33.

13 BE Walker, *The History of Banking in Canada* (Toronto, ON: privately published, 1899) at 48 [Walker].

harsher in its criticism of King, terming his actions "a more diabolical act of treachery than it is possible for the mind to conceive."[14]

Galt placed the blame for this banking crisis elsewhere. In a lengthy address to the House of Commons in December, he reviewed his many efforts to prevent the bank failure. He made it clear to all that he felt betrayed by his cabinet colleagues who had refused to put their faith in his judgment and the timeliness of his actions. He resigned as minister of finance.

Meanwhile, the shareholders of both the Commercial Bank and the Royal Canadian Bank had to decide how best to deal with the situation. They could appoint a liquidator to collect the bank's outstanding loans (or sell the assets of the bank), use whatever funds were realized to retire the notes that the bank had issued, repay the bank's depositors, and distribute the excess, if any, to the shareholders. The process could be a lengthy one with no guarantee that the depositors and the shareholders would receive all or even most of their money back when the distribution was eventually made. Alternatively, the shareholders could seek out another bank with which to merge. This alternative offered the prospect that the bank could reopen its doors and resume operations. Of course, in any such merger the shareholders would be unlikely to receive what they saw as the value of their shares. But they would receive some shares in the new amalgamated bank, which could rise in value over time. Any merger, however, would have to be effected quickly because the bank's charter would expire sixty days after it closed its doors.

In the case of the Commercial Bank, the shareholders and the bank's note holders and depositors were fortunate. Within two months, sufficient assets of the bank were collected to reduce the amount owing by the bank to its note holders and depositors from $4.35 million to just under $2 million.[15] During this time, the directors were approached by the Bank of Montreal, which offered to provide a loan to allow the bank to resume operations. The independent

14 "Banks and Banking" *The Globe* (30 October 1867) at 2.

15 Merrill Denison, *Canada's First Bank: A History of the Bank of Montreal*, vol 2 (Toronto, ON: McClelland & Stewart, 1967) at 150–52.

directors' committee (including Holton and Allan) entered into discussions with that bank, but it was determined that a mutually satisfactory agreement could not be reached.[16] The shareholders authorized the committee to seek an extension of the charter to permit a better merger partner to be found. Three months later, the bank was taken over by Hugh Allan's Merchant's Bank of Canada with the Commercial Bank shareholders receiving one share of the Merchant's Bank for every three of theirs,[17] and the note holders and depositors gained access to the remainder of their funds.

Following these early failures, strengthening of Canada's banking laws became a priority for Canada's Parliament. By 1871, Canada had its first federal Bank Act. It adopted many of the provisions found in the charters of Canada's existing banks, but for the first time, a uniform set of rules would be applied to all the banks operating in Canada's provinces. To allow it to be adapted to new developments, the Bank Act was to be renewed every ten years, as were the charters of each bank. Each chartered bank was given the right to accept deposits, make loans, and provide currency exchange, as well as deal in coins, gold bullion, and negotiable securities.[18] The Act also imposed a number of restrictions on the business that could be conducted by a bank and the security that it could take. For example, the prohibition on banks taking mortgages as security was continued, and to protect borrowers, banks were limited to charging 7 percent interest on loans. The Act also set out capital and reserve requirements and rules with respect to internal affairs, such as minimum shareholdings and other eligibility requirements for directors. To protect depositors and holders of bank notes, it provided what was called "shareholder double indemnity." In the event of a bank failure, shareholders could be called upon to put additional capital into the bank equal to their original investment. For

16 *Report of the Proceedings*, above note 5.

17 Denison, above note 15 at 150–52.

18 There is a good analysis of the Bank Act of 1870 in John Anthony Turley-Ewart, *Gentlemen Bankers, Politicians and Bureaucrats: The History of the Canadian Bankers Association, 1891–1924* (PhD thesis, University of Toronto, 2000) at 10–12 [unpublished] [Turley-Ewart].

Sir Edmond Walker, this meant that "there are probably few countries in the world where better security is offered to depositors."[19]

However true Walker's statement may have been, there was one aspect of bank regulation in Canada that was deficient: although the Bank Act required an annual audit by the bank's management and annually filing various forms with the government, those annual audits and reports were of little value. The first problem was that the audit was an internal one — there was no review by an external auditor. The documents prepared by the bank's management had to be approved by the directors of the bank, but those directors often lacked the opportunity or the ability to delve deeply into them. To make matters worse, when these documents were filed with the federal government, there was little that the government did with them — they were not scrutinized with the care that one might have expected; the Department of Finance had few people to assist the minister; and there was no chief inspector or staff dedicated to providing a detailed analysis of what those reports purported to say.

The reality was that the federal government did not want to play a large role in the banking industry. Whether the government was Conservative or Liberal, it espoused the view that banking was best left to bankers; governments were not in the business of rescuing weak or failing banks. That, Sir John A Macdonald said in 1867, was the "primary duty of the banks themselves."[20] Management was to be accountable to the bank's board of directors, which in turn was to be accountable to its shareholders. It was not the job of government to second-guess these people.

The federal government did, however, write the rule book under which the banks were to operate. In the 1880 Bank Act review, following consultation with the banks, the federal government gave the holders of bank notes a first charge on the bank's assets.[21] Before other creditors were paid out on any sale of the bank's assets, the

19 Walker, above note 13 at 87.

20 *House of Commons Debates*, 1st Parl, 1st Sess, (12 December 1867) at 262. See also Turley-Ewart, above note 18 at 2.

21 Turley-Ewart, *ibid* at 18–19.

people who held notes from the bank were to be paid the value of their notes. Today it is hard to imagine that paper currency was originally not issued by government. Instead, each bank issued its own bank notes. Each note was meant to represent actual gold or silver coins deposited with the bank. Rather than force people to carry around these bulky coins, paper notes were issued. Each stated that the bearer was entitled to go to the bank that had issued the note and be paid in actual coins. These notes were a sort of IOU or, in today's terminology, a sort of prepaid credit card. When the bank failed, its notes would not be honoured by the other banks, and the only way that someone holding a note from the failed bank could receive value for the note was to make a claim as a creditor against the bank. In introducing the 1880 legislation, the government tried to ensure that holders of the bank's notes would be paid in priority to other creditors.

A decade later when the 1890 Bank Act review occurred, the bankers and the federal government agreed upon a set of responsibilities for each other.[22] The federal government, acting as a gatekeeper, was to improve its review of any proposed new banks in an effort to ensure that the individuals behind the proposed new bank were honest and had the financing backing and expertise to carry on a prudent and sound business. It would be the bankers' responsibility, through a new national banking association, to police any bank charters granted, ensuring that their actual operations were honest and well managed. This was to be done through mutual co-operation, peer pressure, and improved training. Bankers were made more interdependent that they had ever been. The banking industry and the federal government went even further. They agreed to the establishment of a Bank Circulation Redemption Fund to ensure redemption of the bank notes of any failed bank. They effectively imposed bank note insurance on the industry. A levy was to be made against each chartered bank calculated as a percentage

22 *Ibid* at 59–60.

of the notes issued by that bank.[23] The fund, which did *not* extend to depositors, was to be administered by the newly created Canadian Bankers Association, or the CBA, as it became known. A decade later the CBA was incorporated with a special charter that gave it a significant role in monitoring the industry and assisting with work outs and failures.[24]

None of the changes introduced by the federal government addressed the issue of the reliability of the bank's financial statements and the accuracy and completeness of the reports that each bank filed with the federal government. The lack of an external audit deeply troubled Henry Collingwood McLeod, the general manager of the Bank of Nova Scotia. Shortly after assuming the office of general manager in 1897, he began to campaign for external audits of bank financial statements and reports filed with the government. Although the industry and the federal government were then preparing to review the Bank Act for its 1900 re-enactment, his suggestion fell on deaf ears. In 1901, he wrote to the deputy minister of finance in Ottawa suggesting that the Department of Finance undertake a general inspection of all banks.[25]

Well before the next decennial revision of the Bank Act, McLeod tried again. On 22 November 1906, the *Globe* published an article written by McLeod where he urged external examination of banks. About the same time, he told his own board of directors that they ought to voluntarily undertake an external audit. It would benefit both the bank and its shareholders, he assured them: "If we take the initiative in having chartered accountants verify our next annual statement I think that we will still further entitle ourselves to the full confidence

23 See also Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 20 [MacIntosh]. See also Turley-Ewart, above note 18 at ch 3.

24 "Work outs" is a generic term in the financial services industry to refer to attempts to resolve the problems of the bank by merging with another institution, refinancing the bank, or other means. MacIntosh, *ibid* at 20.

25 Joseph Schull & J Douglas Gibson, *The Scotiabank Story: A History of the Bank of Nova Scotia, 1832–1982* (Toronto, ON: Macmillan of Canada, 1982) at 96 [Schull & Gibson].

of depositors and of the public generally."[26] The Bank of Nova Scotia became the first Canadian bank to have an external auditor.

Given the passive role that the federal government was then playing in the banking industry, one can imagine McLeod's consternation when the relatively new Sovereign Bank of Canada began to advertise on Toronto streetcars that "[g]overnment supervision [was] a guarantee of safety."[27] Nothing could be further from the truth, and the Sovereign Bank was soon required to remove the advertisements.[28] Despite a change of management,[29] the Sovereign Bank failed not long thereafter, and the reality of the government's role was brought home. Criminal charges were brought against its president, Duncan Stewart, and against its Montreal branch manager, W Graham Browne, for making false returns under the Bank Act, but neither person spent any time in jail. Stewart fled the jurisdiction by going to Alaska, and the charges against the other were dropped. There was certainly no government guarantee of the honesty of its operations or of its debt to its depositors and other creditors.

McLeod was not surprised. He was firmly of the view that in the absence of an independent audit, the filings that banks made to the federal government were "not worth the paper they are written on."[30]

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26 McLeod to the Bank of Nova Scotia board in 1907, quoted in Schull & Gibson, *ibid* at 97.

27 The Toronto streetcars were then operated by a private sector partner under franchise from the City. That company, the Toronto Railway Company, was happy to accept advertising since it did not have to share that revenue with the City. See CI Kyer, *A Thirty Years' War: The Failed Public Private Partnership that Spurred the Creation of the Toronto Transit Commission, 1891–1921* (Toronto, ON: Osgoode Society and Irwin Law, 2015) at 42.

28 MacIntosh, above note 23 at 39.

29 Ironically, Aemilius Jarvis, one of McLeod's biggest critics, was asked to assume management of the Sovereign Bank. Jarvis led the opposition to McLeod's proposed government audit of banking operations. See MacIntosh, *ibid* at 39. In 1924, Jarvis would be found guilty of criminal conspiracy to defraud the Ontario government. See Peter Oliver, "Scandal in Ontario Politics: The Jarvis-Smith Affair, An Ontario Dreyfus Case" in Peter Oliver, ed, *Public and Private Persons* (Toronto, ON: Clarke, Irwin, 1975) 253–63.

30 McLeod on bank filings with government in evidence before subcommittee of US National Monetary Commission in 1909, quoted in MacIntosh, above note 23 at 39.

In 1909, he prepared a detailed pamphlet entitled "Bank Inspection: The Necessity for External Examination" in which he called for the "government inspection of banks, or the independent audit of banks by other means." He initially circulated it within the upper echelons of the Canadian banking community. The topic was discussed at the CBA meeting of 25 November, but there was little support for the idea. Undaunted, McLeod sent copies to members of Parliament and circulated thousands of copies to bank shareholders, the press, and the general public. In this pamphlet, he explained that he had "long been convinced of the needfulness of independent examination." He noted that "the weakest point in the Canadian banking system is the lack of any check on the direction and general management, and to this defect failures are mainly due." He assured his readers that "[t]he supervision of banks which is advocated is not experimental: in one form or another it is in vogue in countries transacting more than three-fourths of the business of the world," including the United States, where there was government examination, and Great Britain, where there was an independent audit.

Despite his eloquent and very able argument, McLeod's ideas were not adopted by the CBA. Canada's leading banker, Sir Edmond Walker, summed up the situation by stating that "the members of the Association did not at present desire any closer examination of their respective institutions than that now given to same by [internal] bank inspection."

But 1910 brought another bank failure. The Farmers Bank of Canada, which had begun operations just a few years before in 1906, collapsed amid allegations of corruption, fraud, and inappropriate dealings in mining stock. Perhaps as a result, Laurier's government introduced a bill calling for an independent shareholders' audit, but the bill died on the order paper when an election was called in the fall of 1911.[31]

Robert Borden, the leader of the Conservative opposition, made the Liberal government's granting of the Farmers Bank's charter

31 Duncan McDowall, *Quick to the Frontier: Canada's Royal Bank* (Toronto, ON: McClelland & Stewart, 1993) at 141.

an issue in the election. He declared that if elected, his government would initiate an inquiry into the circumstances surrounding the granting of the Farmers Bank's charter.[32] True to his word, on 12 February 1912, not long after he defeated Laurier's government, Borden commissioned Ontario's chief justice, Sir William Meredith, to look into the Farmers Bank matter.[33]

Meanwhile, the newly elected Borden Conservative government took up McLeod's call for an external audit. Finance Minister William Thomas White found a place for such audits in his revisions to the Bank Act. It was odd that White was the person who got to introduce this measure. It was not that he was not capable and knowledgeable — he had worked as managing director for the National Trust Company, Ltd, becoming its vice-president in 1911[34] — it was that he was a Liberal party member. White had been one of the dissidents who signed the 1911 manifesto protesting the Liberal party's proposed reciprocity treaty with the United States that would have reduced trade barriers. When Conservative Robert Borden won the federal election of 1911, he asked White to be his minister of finance. White agreed and Borden arranged for him to be acclaimed in a by-election in the eastern Ontario riding of Leeds. White knew the financial services industry, and his support for the external audit was significant. He told the House of Commons that the "audit that is provided in this Bill is the audit which Mr. H. C. McLeod . . . had in mind."[35]

Some in the opposition, however, were still focused on the depositors in the failed Farmers Bank. Collectively, those depositors

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32 This election promise would later be used to introduce compensatory legislation. See *Debates of the Senate*, 12th Parl, 3rd Sess, (8 June 1914) at 774.

33 *Proceedings of the Royal Commission of Enquiry in the Matter of the Farmers' Bank of Canada* (Toronto, ON: CH Parmelee, 1913), online: http://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1912-2-1-eng.pdf at 1 [*Proceedings, Farmers' Bank*].

34 WA McKay, ed, *Macmillan Dictionary of Canadian Biography*, 4th revised ed (Toronto, ON: Macmillan of Canada, 1978) at 883, and in Henry James Morgan, ed, *The Canadian Men and Women of the Time: A Handbook of Canadian Biography of Living Characters*, 2d ed (Toronto, ON: W Briggs, 1912) at 1162.

35 See Schull & Gibson, above note 25 at 96–99.

had lost a million dollars. Six hundred of them were said to be completely impoverished.[36] Why, the opposition asked, could the government not establish a deposit insurance fund to protect depositors in the same way that bank note holders had earlier been protected? White replied that such an arrangement was not feasible. The way to protect depositors, he suggested, was to encourage bankers to act with integrity and to establish monitoring and effective oversight by the bank's shareholders and its board of directors.[37]

But White's attempt to put responsibility on the bank's shareholders and directors did not work with Meredith's royal commission. Meredith reported on 21 February 1913, questioning whether the bank charter ought to have been granted at all. True, the bank's operations were "characterized by gross extravagance, recklessness, incompetence, dishonesty and fraud,"[38] but even before the bank's charter had been granted, the Treasury Board had been in receipt of information that suggested all was not well. Finance Minister William Stevens Fielding[39] had made inquiries, but had not followed up when he had been reassured by the principals behind the new bank. Meredith was of the view that given the questions that had arisen, it was incumbent upon the Treasury Board to have diligently sought answers.[40]

White and the Borden government took notice of Meredith's findings and used them to justify legislation to compensate the non-governmental depositors in the Farmers Bank. On 11 May 1914, he introduced a bill for the Relief of Depositors in the Farmers Bank in Canada.[41] He was careful to say that the government was not reversing its stand on deposit insurance generally. These, however,

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36 *House of Commons Debates*, 12th Parl, 2nd Sess (17 December 1912) at 1284–85.

37 *Ibid* at 1285.

38 *Proceedings, Farmers' Bank*, above note 33 at 10. See also RT Naylor, *History of Canadian Business, 1867–1914* (Montreal, QC: McGill Queen's University Press, 2006) at 145.

39 See Carman Miller, "Fielding, William Stevens" in *Dictionary of Canadian Biography*, vol 15 (Toronto, ON: University of Toronto/Université Laval, 2005) at 345–51.

40 *Proceedings, Farmers' Bank*, above note 33 at 8.

41 *House of Commons Debates*, 12th Parl, 3rd Sess (11 May 1914) at 3517.

were special circumstances. The royal commission had found that the previous Liberal government had not been duly diligent, saying, "by reason of the negligence of the Treasury Board, as established by the commissioner, the bank was allowed to start on its ill-fated career."[42]

The Liberal opposition was not at all pleased. They accused White and the Borden government of seeking political advantage at the cost of the Canadian taxpayers. Laurier was incensed that aspersions were being cast on the distinguished career of Fielding, his finance minister.[43] Some warned the Conservatives of the "extremely bad precedent" they would be setting.[44] Rodolphe Lemieux, a former cabinet minister in the Laurier government, questioned why this Ontario-based bank was being dealt with differently than the three Quebec banks that had failed in the last fifteen years. How, he asked, could the government justify compensating the depositors in the Farmers Bank, when no compensation had been granted to those who had put their money in La Banque Ville Marie, La Banque du Peuple, and La Banque de St. Jean.[45] Still others wondered why depositors should be treated differently than shareholders, who had also been deceived by the bank's principals.[46]

Borden's majority in the House of Commons guaranteed that the compensation legislation went to the Senate, but that Liberal-controlled body was not inclined to support it. It was amended to delay its implementation.[47] That delay would be a long one indeed; the onset of World War I meant that the depositors in Farmers Bank would ultimately never be compensated.

It is often said that experience is the best teacher. Experience was soon to teach White that it is easier to accuse others of negligence than it is to yourself be duly diligent. White learned this lesson in

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42 *Ibid* at 3519.

43 *Ibid* at 3524.

44 See, for example, the remarks of AK Maclean, *ibid* at 3521.

45 Above note 41 at 3522–23.

46 *House of Commons Debates*, 12th Parl, 3rd Sess (5 June 1914) at 4895 (John Sinclair).

47 *Debates of the Senate*, 12th Parl, 3rd Sess (8 June 1914) at 802–3.

connection with the Toronto-based Home Bank of Canada.[48] The manager of that bank's Winnipeg branch, William Machaffie, was the first to suggest that there was a problem with the financial statements being prepared by the bank's management. He had noticed that there were several loans where the borrower was not paying any interest. Rather than being noted in default, the unpaid interest was being added to the principal. To make matters worse, that capitalized interest was being treated as revenue, as if the bank had received actual payment. In 1914, he brought these irregularities to the attention of the bank's three Winnipeg-based directors, TA Crerar, John Kennedy, and John Persse.

These western directors decided that they would look into the matter. They were already concerned about how isolated they were from the bank's management: they had been given seats on the board of directors to deal with the western business, and they met weekly and reported regularly their action to the head office, but no eastern director ever met with them, and none of the three were invited to attend the head office meetings in Toronto unless some western matter required their attention.[49] In November 1914, they travelled to Toronto to better understand what the management was doing. In their four days of meetings with the eastern directors, they learned that there was no meaningful external audit or inspection of the head office operations. Sidney H Jones, the external auditor for Home Bank, had been approved by the CBA as an auditor for banks under the 1913 Bank Act, and he had been the auditor for Trinity College, but he was not an accountant and lacked much banking experience. The eastern directors were not concerned — they were personally overseeing matters, they assured their western colleagues.

48 There is a useful chronology of the Home Bank failure, together with a discussion of the government's response, in Byron Lew & Alan J Richardson, "Institutional Responses to Bank Failure: A Comparative Case Study of the Home Bank (1923) and the Canadian Commercial Bank (1985) Failures" (1992) 3 *Critical Perspectives on Accounting* 163–183 at 170.

49 Parliament, "Interim Report: Royal Commission re Home Bank" by Harrison Andrew McKeon in *Sessional Papers*, No 1924-100d (1924) at 6–7 [McKeown Commission Report].

But what of the bank's extensive loans to several of its non-paying borrowers like Sir Henry Pellatt, the builder of Casa Loma?[50] Surely that was increasing the risk to the bank if these borrowers failed to repay their loans. Again, the eastern directors assured their western counterparts that these matters would be considered. However, the problem with these assurances is that they were coming from people engaged in the questionable activities.

When nothing improved the next year, the western directors reiterated their concerns to the eastern directors. They considered bringing these matters to the attention of White, the federal minister of finance, but they did not want to burden a government dealing with the war effort. Nevertheless, by 1916, when still nothing had improved, they decided that war or not, they had to bring their growing concerns to White's attention. They sent him a series of memoranda outlining the bank's unusual practices and its risky loans. Included with these memoranda were copies of the letters that had passed between the western and eastern directors in 1915.[51] In response to these complaints from the western directors, White asked Jones, the external auditor, for a report. There was no response. A further request from White elicited an incomplete report of little value.[52]

White turned to his friend, Zebulon Lash, the legal advisor to the CBA and the lawyer for Home Bank. Lash was a very highly regarded lawyer with extensive bank expertise and government experience. He had been deputy minister of justice under both Alexander Mackenzie's Liberals and Macdonald's Conservatives.[53] Lash acknowledged Home Bank's exposure to several borrowers, including the

50 Carlie Oreskovich, *Sir Henry Pellatt: The King of Casa Loma* (Toronto, ON: McGraw Hill Ryerson, 1982).

51 McKeown Commission Report, above note 49 at 5–6.

52 MacIntosh, above note 23 at 49 and 54–55

53 Theodore Regehr, "Lash, Zebulon Aiton" in *Dictionary of Canadian Biography*, vol 14 (Toronto, ON: University of Toronto/Université Laval, 1998) at 605. See also CI Kyer, *Lawyers, Families and Businesses The Shaping of a Bay Street Firm Faskens, 1863–1963* (Toronto, ON: Osgoode Society and Irwin Law, 2013) at 35 and 38–39.

lavish-spending Pellatt, and agreed that something needed to be done. He, however, thought that the issues could be addressed by a change of management.[54] In assessing this advice, one wonders whether White was aware that in 1908, Lash, who had also represented the failed Sovereign Bank, had written to the then deputy minister of finance providing a misleadingly positive description of the Sovereign Bank's financial position in a successful effort to discourage government intervention in his client's affairs.[55] Again the government relied on Lash, and did not intervene. White encouraged the directors of the bank to change its management.

For a few years, it seemed as if the concerns about Home Bank had been exaggerated or adequately addressed. But the early 1920s proved a difficult time for the banking industry in Canada generally, and Home Bank was no longer able to plaster over its problems.[56] On 17 August 1923, it collapsed with little warning. The bank's seventy-one branches were closed and those who had money on deposit were denied access to their funds.

Initially, people had no idea about how bad things were. There were no lineups with people clamouring for their money.[57] Not long before it closed its doors, Home Bank had announced that it had net profits of over $200,000 and was in "splendid financial condition."[58]

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54 MacIntosh, above note 23 at 54

55 Lash had accurately but misleadingly stated that the bank was not then being wound up. In fact, a group of twelve assisting banks had stepped in to prevent the complete collapse of the bank and had decided to informally wind it down over a period of years. See MacIntosh, *ibid* at 41.

56 It had taken longer for the economy to return to normal after World War I. In 1920, the high inflation of the immediate post-war years broke, and prices began to tumble. The cost of living dropped 15 percent in that year and a further 10 percent in the next. Many businesses were stuck with inventory that they had produced at high cost but could now sell only at a low price. Business bankruptcies went way up, from 873 in 1919 to 2,451 in 1920 and 3,695 in 1921. To this was added a severe wheat crop failure out west. On the background behind the banking difficulties see Michael Bliss, *Northern Enterprise: Five Centuries of Canadian Business* (Toronto, ON: McClelland & Stewart, 1987) ch 14.

57 "Bank Closed Sign Greets the Depositors" *Toronto Star* (18 August 1923) at 1.

58 [Toronto] *Monetary Times* (10 February 1882). Quoted in Basil Skodyn, ed, *The Permanent Story 1855–1980: An Historical Review of the 125-Year Growth of the*

So perhaps it is not surprising that when the *Toronto Star* polled Toronto's business leaders, the consensus was that there would be "slight losses, maybe none, for depositors."[59]

But by October, the true state of affairs had come to light. The curator appointed by the CBA reported that he was "horrified" at the "unusual methods" used by the bank management in their financial reporting.[60] He called for a full investigation. That same day, the Home Bank's president, vice-president, general manager, chief accountant, and chief auditor were all arrested and charged with fraud, as were five directors.[61]

Mackenzie King was now prime minister. He and his government came under tremendous pressure to better regulate banks. A political cartoon of the time showed "Mr Canuck" telling the government that it must "put a government officer on that corner, sir. The people demand it."[62] The corner that cartoon character was pointing to was the intersection of Banks Street and Public Confidence Avenue. Many people wrote to King and the CBA, sharing heart-wrenching accounts of the devastation caused by the Home Bank failure. Dr A MacDonald of Khedive, Saskatchewan, wrote the CBA explaining that the failure of Home Bank had crippled his town and the neighbouring town of Amulet:

> A number of farmers were hailed out in 1923 — had only received their hail insurance and deposited same in the Home Bank, where they lost it all. There were a number of sad cases. One case was a poor old man and his wife who had saved up $1,200 all his life from repairing shoes. He had his son deposit it in the Home Bank. The

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Canada Permanent Mortgage Corporation, its Subsidiaries, and Amalgamated Companies (Toronto, ON: Canada Permanent Mortgage Corporation, 1980) at 37.

59 *Toronto Star* (18 August 1923) at 1.

60 John Turley-Ewart, "The Bank That Went Bust" *The Beaver: Exploring Canada's History* (1 August 2004).

61 On the Crown's case, see Patrick Boyer, *A Passion for Justice: The Legacy of James Chalmers McRuer* (Toronto, ON: Osgoode Society for Canadian Legal History, 1994) at 68–69.

62 The cartoon is reprinted in MacIntosh, above note 23 at 60.

> bank's failure left him without a cent. He is now 68 years of age and unable to do much.[63]

In another case, William Mellor of Toronto sent in a clipping from the *Mail & Empire* which said:

> Despondent because of long illness and the loss of his life savings in the Home Bank, Charles L. Fitzpatrick, 30 years old, farmer of Maidstone, ended his life this afternoon into the river from the Walkerville ferry boat.[64]

Many wanted the government to reimburse depositors.

In response, Mackenzie King established a royal commission headed by Chief Justice Harrison A McKeown of the New Brunswick court. The young, Liberal prime minister was likely pleased when McKeown found that White, the turncoat Liberal in Borden's Conservative government, was partly to blame. McKeown found that White could have prevented the bank failure, or at least better protected depositors, had he acted when first informed of irregularities in 1916 or later in 1918. But Mackenzie King was less pleased with the suggestion that such earlier failings required his government to at least consider compensating depositors in the failed bank.

McKeown's interim report was referred by King to the Select Standing Committee on Banking and Commerce of the House of Commons. In their 1924 February–July session, they studied the report and heard from a number of witnesses. The committee then called on the government to compensate depositors. They were of the opinion that "the facts brought out in the Interim Report . . . establish that the depositors of the Home Bank have a moral claim in equity for compensation by the country."[65] Looking to the future, they recommended that:

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63 Quoted in MacIntosh, above note 23 at 59.

64 *Ibid.*

65 House of Commons, Select Standing Committee on Banking and Commerce, *Proceedings (revised) of the February-July Session* (1 July 1924) at 463.

> the Government should study and consider the practicability of . . . the establishment in the chartered banks of Canada of an additional class of savings account whereby all holders of deposits, who may place their money in such class of accounts, in any one bank or branch thereof, shall be protected against loss up to the sum of $3,000 by the establishment of a fund on an insurance basis, the premiums of which will be contributed by the depositor and the bank in such proportion as may be determined and that the Government work out the details and actuarial data necessary for the establishment of the said proposal and upon conference with the banking institutions of Canada; that legislation may be enacted to carry out the results of the said conference and such scheme as may be evolved.[66]

Despite the calls for deposit insurance from such MPs as Horatio Hocken, a former mayor of Toronto,[67] Mackenzie King's government did not take up this deposit insurance proposal. The House of Commons did, however, agree to pay depositors some compensation. King worked through the Senate to limit who would be eligible and the amount they would receive. The final amount paid out to depositors was $5.45 million. This money, plus the money realized on the liquidation of the assets, meant that those with deposits under $500 received about half of their money back. The amount received by those with deposits over $500 was proportionately much less.

There was one recommendation of the committee that Mackenzie King's government did act on fully — the appointment of a person with "proper training and experience" to act as the "Inspector General of Banks."[68] The 1924 amendment to the Bank Act provided that if this person was satisfied that a bank was insolvent, he was to

66 House of Commons, Select Standing Committee on Banking and Commerce, *Proceedings (revised) of the February-July Session* (4 July 1924) at 485.

67 "In my judgment the sooner the Bank Act is amended so that savings bank depositors will have a guarantee from the government, the better it will be for our banking system generally": Hocken as reported in *House of Commons Debates*, 14th Parl, 4th Sess (8 June 1925) at 3961.

68 House of Commons, Select Standing Committee on Banking and Commerce, *Proceedings (revised) of the February-July Session* (20 June 1924) at 423–25.

report this to the minister of finance who could request that the CBA appoint a curator to supervise the affairs of the bank. That same Act also added another external auditor, so that each bank was to have its books reviewed by two independent auditors.[69]

In advocating deposit insurance, the committee was likely influenced by the lengthy history of deposit insurance in the United States. At the time, banking in the United States was largely a state matter.[70] Deposit insurance had been enacted well before the Civil War in six states (successfully in Indiana, Ohio, and Iowa, and unsuccessfully in New York, Vermont, and Michigan). Then in the decade following the bank panic of 1907, eight other states adopted similar legislation.[71] All fourteen of these states had a unit-banking system where each bank was a small, single unit. No branches were permitted. These states adopted deposit insurance as a way of stabilizing their banking system. The hope was that insurance would help protect the economy from the frequent and very disruptive failures of these small banks. The state governments did not themselves provide the insurance; instead, the state legislatures made insurance of banknotes or deposits a shared responsibility of their state banks.

Between 1883 and 1933, various members of the US Congress tried 150 times to have a system of federal deposit insurance adopted.[72] Each proposed bill failed passage. It was only in the throes of the Great Depression when many small US banks were failing that the US Congress created the Federal Deposit Insurance Corporation (FDIC) as a temporary US government corporation operating as an independent agency. That agency had been given the right to

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69 See the Honourable Willard Z Estey, *Report of The Commission of Inquiry into the Collapse of the Canadian Commercial Bank (CCB) and the Northland Bank* (Ottawa, ON: Minister of Supply and Services, August 1986) Appendix A: Evolution of the Canadian Banking System Since Confederation at 352 [Estey Report].

70 Charles W Calomiris & Eugene N White, "The Origins of Federal Deposit Insurance" in Claudia Goldin & Gary D Libecap, eds, *The Regulated Economy: A Historical Approach to Political Economy* (Chicago, IL: University of Chicago Press, 1994) at 147–50.

71 *Ibid* at 147.

72 *Ibid* 145–88 at 150.

supervise state banks and to insure their deposits to a limit of $2,500. Two years later in the Banking Act of 1935, the FDIC was made a permanent agency of the government and deposit insurance was increased to $5,000.

Canada too suffered in the Great Depression, but its banks were larger and more stable. The federal government of RB Bennett did not see the need to follow the lead of the United States and institute deposit insurance. Instead, Bennett established a royal commission to study "the organisation and working of our entire banking and monetary system [and] to consider the arguments for or against a central banking institution."[73] The royal commission, led by Lord Macmillan, recommended that a central bank be established. An appendix to the report, entitled "Suggestions as to some of the Main Features of the Constitution of a Central Bank for Canada," became the basis for the *Bank of Canada Act*, which received royal assent on 3 July 1934. In March 1935, the Bank of Canada opened as a privately owned institution, with shares sold to the public. When Mackenzie King's government was elected in the fall of 1935, they introduced an amendment to the *Bank of Canada Act* to nationalize the institution. In 1938, the bank became publicly owned.

The Bank of Canada would become a major player in Canada's economy and in Canada's increasingly consolidated and stable bank sector. No Canadian banks failed in the 1930s, 1940s, or 1950s, nor were there any new banks. From the 1920s to 1966, five new bank charters were issued, but none actually began operations.[74] Through mergers, the number of Canadian banks was reduced to just eight. But to focus on the stable bank sector and its lack of failures would be to miss the issues that would arise in the financial services industry in the late 1950s and early 1960s. Those issues

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73 On Bennett's thinking and the political and economic factors that influenced it, see John Boyko, *Bennett: The Rebel Who Challenged and Changed a Nation* (Toronto, ON: Key Porter Books, 2010) at 294–312.

74 Jack Carr, Frank Mathewson, & Neil Quigley, "Stability in the Absence of Deposit Insurance: The Canadian Banking System, 1890–1966" (1995) 27:4 *Journal of Money, Credit and Banking* 1137–58 at 1137.

were rooted in Canada's regulatory environment — or perhaps it would be more accurate to say, environments.

There was no single regulatory regime that governed Canada's financial institutions. In addition to federally chartered banks, there were trust companies and loan companies that were incorporated and regulated federally or provincially. There were credit unions or *caisse populaires* that were subject to provincial laws and accepted deposits and lent money exclusively to their members, and there were largely unregulated consumer finance companies that lent small amounts to consumers. It was anything but a level playing field. The powers that could be exercised by any particular institution and the regulatory oversight to which it was subject depended upon both the nature of the entity and the jurisdiction of its incorporation. A federally chartered bank was subject to the strict rules under the *Bank Act* and it was inspected and supervised by the Inspector General of Banks. A federally chartered loan or trust company was subject to the *Trust and Loan Companies Act* and was inspected and supervised by the Superintendent of Insurance. Very different rules and a much looser regime of supervision applied to a mortgage loan company in Ontario, Alberta, or British Columbia. And yet again different rules and supervision applied to Quebec savings banks or *caisse populaires*. Some of the smaller provinces had contracted out the supervision of their financial institutions to the federal Superintendent of Insurance, but the larger ones had not.

One of those concerned about this irregular, hodgepodge regulation was the Conservative prime minister, John Diefenbaker. In 1961, he asked Ontario's chief justice, Dana Porter, to chair a royal commission on the structure and operation of Canada's financial services.[75] The Porter Commission's three years of study and its 1964 report would be an important step in the creation of CDIC but not

75 Canada, *Report of the Royal Commission on Banking and Finance, 1964* (Ottawa, ON: Queen's Printer, 1964) [*Porter Report*]. On Dana Harris Porter, see *Who's Who in Canada 1964–5* (Toronto, ON: International Press Ltd, 1964) at 59 and Christopher Moore, *The Court of Appeal for Ontario: Defining the Right of Appeal 1792–2013* (Toronto, ON: University of Toronto Press and The Osgoode Society, 2014) at 267–68.

in a way that Porter and his commission staff[76] could have contemplated. The commission would, in fact, recommend against deposit insurance.[77] It would adopt a similar attitude to that of past federal governments — the public could never be guaranteed against loss in its dealings with financial institutions.[78] The best safeguard, the Porter Commission would conclude, was legislation that provided adequate disclosure and set high standards of self-regulation, backed up by strong government supervision and powers to enforce proper practices.[79] The newly elected Liberal government of Lester B Pearson would share the same goals, but would chart a different course to achieve them.

76 As so often happens the Commission provided useful training and valuable contacts for a number of up-and-coming professionals, including Grant Reuber (later, the chairman of CDIC), Bill Kennett (later, the inspector general of banks and a CDIC board member), and Jacques Parizeau (the author of a Quebec study of deposit insurance and later, the premier of the Province of Quebec). The staff is listed in the *Porter Report*, above note 75 at 575, Appendix 5. On their role in the Porter Commission, see MacIntosh, above note 23 at 137.

77 "Competent supervision can provide the public with a large measure of protection in its dealings with financial institutions, although there should, as now, be no warranty that federal inspection would protect depositors or shareholders against losses. Given such regulation, we do not see the need for imposing a general system of deposit insurance, especially as none of the institutions thought it desirable": *Porter Report*, above note 75 at 382.

78 *Porter Report*, above note 75 at 363–64.

79 *Ibid* at 560.

Chapter Two

The Next Best Approach, 1965–1967

Deposit insurance is the next best approach.

— *MONTREAL GAZETTE*, 8 JULY 1966

It is telling that Peter Newman's book about the mid-1960s was entitled *The Distemper of Our Times*.[1] The Porter Commission reflected the concerns of that economically troubled era.[2] Although this commission had been created in 1961 by the Conservative government of John Diefenbaker, it reported in 1964 to the Liberal government of Lester B Pearson. As the new Liberal government studied the recommendations in the commission's 1964 report, the need for government action became more and more evident. In 1965 the Atlantic Acceptance Corporation, Canada's sixth largest finance company, failed.[3] This was followed by the near collapse

1 Peter C Newman, *The Distemper of Our Times: Canadian Politics in Transition 1963–1968* (Toronto, ON: McClelland & Stewart, 1968) [Newman].

2 Canada, *Report of the Royal Commission on Banking and Finance, 1964* (Ottawa, ON: Queen's Printer, 1964) [*Porter Report*].

3 On the collapse, see Irvin Duncan Weekes, *The Collapse of the Atlantic Acceptance Corporation and its Effect on the Structure of Liabilities and Quality of Reporting of Canadian Finance Companies* (University of British Columbia, Master's of Business Administration, 1968) [unpublished].

of Stratford, Ontario's British Mortgage and Trust Company.[4] The Ontario government established a public inquiry into the Atlantic Acceptance affair and the adequacy of provincial regulation.[5] Then in 1966, a federal investment company, Prudential Finance, failed. Concern about the state of Canada's financial institutions was widespread. People questioned the stability of the system.

The minority Pearson government decided to act. On 7 July 1966, the recently appointed finance minister, Mitchell Sharp, announced in Parliament that, in conjunction with its mandated ten-year renewal of the *Bank Act*, the Pearson government would be asking Parliament to pass legislation to create a system of deposit insurance in Canada. It would be compulsory for federal institutions and available for provincial institutions with the consent of their province of incorporation.[6] While many had been calling for action, this was not the action that people had been expecting.

Not only was this action not recommended by the Porter Commission, but it reversed the century-long stance that the federal government should not interfere with market forces in the banking sector, and an almost equally long-held position that it could not afford to insure bank deposits.

The reason that the Pearson government put forward deposit insurance as the way to deal with the concerns about Canadian financial institutions was that it did not think that it could do what the Porter Commission had suggested. That commission had been happy with Canada's banking legislation, but had concluded that

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4 Only a fire sale buyout of the trust company by Victoria and Grey Trust had prevented depositors in that company from losing their money. The story of the collapse of Atlantic Acceptance and its impact on British Mortgage and Trust Company is told in Philip Smith, *The Trust-Builders: The Remarkable Rise of Canada Trust* (Toronto, ON: Macmillan of Canada, 1989) at 143–46.

5 The Hon SHS Hughes was appointed to conduct an inquiry into the Failure of Atlantic Acceptance in August 1965. See Ontario, *Report of the Royal Commission Appointed to Inquire Into the Failure of Atlantic Acceptance Corporation Limited* (Toronto, ON: Queen's Printer for Ontario, 1969).

6 Richard Humphrys, *History of the Origins and Early Operation of Deposit Insurance in Canada* (1991) [unpublished, archived in the files of the Canada Deposit Insurance Corporation] at 9 [Humphrys].

this legislation applied to too narrow a group of institutions, applying to only ten federally chartered banks. Concerns had been expressed to the commission by both regulators and the financial institutions themselves about the inequitable and illogical nature of Canada's regulatory regimes. The commission had recommended that the system of inspection and supervision by the Inspector General of Banks be extended to the broader group of institutions doing what amounted to banking business — with some of them going without adequate public safeguards. The commission had recommended that the federal government exert its constitutional power over banks and banking to require loan, trust, and mortgage companies (referred to as "near-banks") to apply to become federal banks or abandon their bank-like operations. To achieve this, the commission had suggested defining banking to encompass all financial institutions issuing demand liabilities, transferable and short-term deposits, and other short-term banking claims.

The rise of the near-banks was well known. By the 1960s, provincially incorporated trust and loan companies dominated the residential real estate market. They funded their mortgage loans by accepting deposits from the public, and selling guaranteed investment certificates (GICs) if they were trust companies, or debentures if they were mortgage loan companies.[7] They enjoyed this dominance because the banks were effectively excluded from this segment of the market. The *Bank Act* did not permit banks to lend at more than 6 percent (which at the time was in some cases less than what was being paid on deposits), nor could they lend on mortgages unless those mortgages were insured under the *National Housing Act*.[8] Loan and trust companies, many of which were provincially incorporated, were not limited in either respect. They could offer depositors higher interest rates and still earn a good return because they were lending at more than 6 percent and they could take mortgages as collateral. A deposit with many of the near-banks may have been more of a risk because

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7 *Ibid* at 1.

8 Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 120–21 [MacIntosh].

they were not subject to the rigorous scrutiny and strict regulation to which banks were subject, but people ignored or were unaware of these risks. They flocked to deposit their money in these higher-paying institutions, much to the chagrin of the chartered banks, who complained that the rules were skewed against them. Gradually, the trust companies began to accept more and more deposits and to offer accounts with chequing privileges, like banks. By 1966, many individuals opened their savings and chequing accounts and generally conducted their banking with trust companies not banks. To the general public these deposit-taking financial institutions truly were "near-banks."

Many, including the Canadian Bankers Association (CBA), agreed with the Porter Commission that the way to deal with near-banks was to force them to seek a federal bank charter. They called on the federal government to use the ten-year *Bank Act* review to legislate the near-banks out of existence by defining the business of banking. Those institutions like Canada Trust and Canada Permanent Building and Savings Society (Canada Permanent) that were large, well-capitalized, and well-run would qualify for a federal bank charter. Those that did not meet those criteria would not, and would be precluded from taking deposits from the public. This, they suggested, would reduce the risk to depositors that came from people putting their money in the provincially chartered loan and trust companies. This approach, they argued, would also be fairer, with all deposit-taking institutions subject to the same rules and the same regulation and scrutiny. Despite expected opposition from Quebec, this recommendation was taken up in August 1965 by the Trust Companies Association.[9]

9 Humphrys, above note 6 at 8. By November 1966, the Trust Companies Association had changed its mind. Under the leadership of Marcel Faribault, the president of Le Trust General du Canada, the association called for a federal-provincial conference to more clearly establish the line between federal and provincial jurisdiction over trust companies. He called on Sharp to hold off on his deposit insurance plans until this could be done. See "Defer Action on Trust Companies Till Jurisdiction Settled: Faribault" *Globe and Mail* (19 November 1966) at 35.

In his memoirs, an aging Mitchell Sharp wrote that he "vividly" remembered the day in 1966 when the superintendent of insurance, John Humphries, reported to him that there was growing concern about the liquidity of York Trust and Savings Corporation (York Trust) and some other institutions. He was told that "there could be a run by the public to withdraw their deposits precipitating a financial crisis that might extend widely" and "[l]egislation was drafted quickly" to create the Canada Deposit Insurance Corporation, widely known as CDIC.[10]

Memory can be flawed, and this is one such case. First, it was Richard "Dick" Humphrys who was the federal superintendent of insurance. But more importantly, while the concern about the liquidity of York Trust affected the creation of CDIC, it did not trigger it. The actual scenario that resulted in the creation of CDIC was much more complex. It arose out of a series of meetings and studies done by the Department of Insurance in consultation with the Office of the Inspector General of Banks and the Department of Finance in late 1964, 1965, and early 1966 in response to the Porter Commission, and involved a detailed analysis of Canadian constitutional law.[11]

Pearson's minister of finance at the time was the fiery Canadian nationalist, Walter Gordon.[12] In his memoirs, Gordon explained that he saw the Porter Commission's proposal as impractical and lacking a solid legal foundation. There was nothing in the report, he wrote, about how the federal government was to justify its assumption of jurisdiction over the provincial trust and loan companies. He agreed that "under the British North America Act, 'banking' is designated as coming within the federal authority,"[13] but there was

10 Mitchell Sharp, *Which Reminds Me — A Memoir* (Toronto, ON: University of Toronto Press, 1995) at 31 [Sharp].

11 Humphrys, above note 6 at 12.

12 On Walter Gordon's personality and role in the early Pearson years, see Newman, above note 1 at 218–30.

13 Walter L Gordon, *A Political Memoir* (Toronto, ON: McClelland & Stewart, 1977) at 210–11 [Gordon]. See also Brian JH Macdonald, *The Canadian Chartered Banks and the Federal Government, An Analysis of the 1954 and 1967 Bank Act Revisions* (MA Thesis, University of British Columbia, 1978) [unpublished].

no definition of "banking" in that Act. He consulted the lawyers in the Department of Justice and "could find no support"[14] for what the commission had recommended. He then sought opinions "from outside counsel whom [he] consulted privately."[15] None of these lawyers would provide an opinion that "could have justified the federal government assuming the proposed powers of supervision over the so-called 'near-banks.'"[16]

It seems odd that a report bearing the name of the chief justice of Ontario would be seen as wrong in law by all of the lawyers that Gordon consulted. But Porter was not much of a lawyer. He was said by Gregory Evans who sat with him on the Court of Appeal to be "a nice man, with little knowledge of the law."[17] A bright fellow with a distinguished academic record, he had spent most of his time in politics, and at the court he served as an effective administrator.[18] In fact, the Porter Commission report was likely not written by Porter — it reads more like the work of an economist rather than a lawyer. It talks of logical, efficient operation of the Canadian financial system and spends little time discussing the legal issues involved in defining banking — and there were many such issues.

Indeed, defining the business of banking was easier said than done. Over the decades, there had been much thought given in the Department of Finance, the halls of Parliament, and in the courts to what exactly constituted banking and whether the federal government could exclude validly constituted provincial institutions from conducting activities that formed part of banking. There was even some question about whether a definition of banking was possible or even desirable. England's Lord Chorley had warned in his book on banking that "to construct a definition which would embrace the

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14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 Quoted in Christopher Moore, *The Court of Appeal for Ontario: Defining the Right of Appeal, 1792–2013* (Toronto, ON: University of Toronto Press and the Osgoode Society, 2014) at 104.

18 *Ibid.*

whole of it is manifestly impossible."[19] It was not only that banking had evolved over time, but it was still evolving, developing, and expanding to meet competition and to provide more and more services to the public.

In 1893 in the case of *Tennant v Union Bank of Canada*,[20] the Judicial Committee of the Privy Council had been called upon to assess the constitutionality of the *Bank Act*. It was suggested by those challenging the legislation that all that the *British North America Act* (*BNA Act*) had done was give the federal government the power to incorporate and regulate banks. In conducting their business, it was argued, these federally chartered banks had to follow provincial laws that established property and civil rights. In the *Tennant* case, their challenge was focused on the provisions of the *Bank Act* that gave banks priority over other creditors when it came to warehouse receipts pledged to the bank as security. The priority set out in the *Bank Act* clashed with the ordering of creditors' claims established by provincial law. The *BNA Act*, it was contended, had not given the federal government the right to interfere with those provincial laws. The Law Lords disagreed, noting that the *BNA Act* gave the federal government more than just the right to create "bodies corporate with the privilege of carrying on the business of banking"; it also gave that government the right to legislate on issues concerning "banking" and the issuance of paper money. Banking, they noted, was a broad concept that "embraced every transaction coming within the legitimate business of a banker." They upheld the *Bank Act*. But could this decision be used to support an argument that a provincial institution could not take warehouse receipts as security because to do so was part of the business of banking? Surely not.

In fact, in 1938, the Privy Council, in the case of the *Attorney General of Alberta v Attorney General of Canada*[21] had established the principle that a valid legislative power (in this case, the right to

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19 CC Johnston, "Judicial Comment on the Concept of 'Banking Business'" (1962) 2 *Osgoode Hall Law Journal* 347.

20 [1893] UKPC 53.

21 [1938] UKPC 46.

impose direct taxes in a province) could not be exercised in such a way as to effectively prohibit an institution, validly created by another level of government, from operating. The court struck down the social credit tax legislation that sought to drive federal banks out of Alberta. Would the courts now let the federal government effectively outlaw provincial loan and trust companies from taking deposits, when deposit taking was central to their operations? Not likely.

Even though the role of financial intermediary, taking deposits, and lending that money to others, was central to banking, it had never been the exclusive reserve of the banks. Mortgage loan companies, it could be argued, had been accepting deposits for longer than there had been a Dominion of Canada, and certainly longer than there had been a *Bank Act*. As early as 1855, John Herbert Mason had come up with the idea of forming Canada Permanent, and raising money through deposits.[22] Previously "limited life" building societies (that is, societies with a fixed term of existence) had sold shares and lent money to their members. In 1855, Mason conceived of a building society that would be permanent and would take in money through deposits. When this was challenged by some, he had asked the Legislature of United Canada (the union of Upper and Lower Canada that existed from 1841 to 1867) to confirm what Canada Permanent was doing. The result was the *Act to Amend the Building Societies Act*.[23] Mason's Canada Permanent paid interest of 6 percent on deposits, which could be withdrawn on thirty, sixty, or ninety days' notice. Deposits of $4 or more were accepted. The deposits were secured by mortgages. To further assure depositors, Mason established a substantial reserve fund. This provincially incorporated body had later incorporated federally as Canada Permanent Trust, one of the largest and most successful of the near-banks, but it had never been a chartered bank. Even Sir Edmond Walker, a

22 *Act to Amend the Building Societies Act*, 22 Vict, c 45. See also Basil Skodyn, *The Permanent Story 1855–1980: An Historical Review of the 125-Year Growth of the Canada Permanent Mortgage Corporation, its Subsidiaries, and Amalgamated Companies* (Toronto, ON: Canada Permanent Mortgage Corporation, 1980).

23 *Ibid.*

prominent banker and for many years the president of the CBA, in his *History of Banking in Canada* (written in 1899) had admitted that the charters of many mortgage loan companies permitted them to accept deposits. He did not like this, regarding it as "the weakest feature" of their regulation. To him it made no sense that a mortgage loan company that lent money on the security of real property that could not be readily sold could accept demand deposits. But he acknowledged that many did have that power.[24]

It is true that in 1907 the Ontario government amended the *Loan and Trust Corporations Act* to prohibit trust companies from borrowing money by taking deposits.[25] But this prohibition had nevertheless allowed these companies to accept money from a member of the public for the purposes of investing it on that person's behalf, provided that the principal and interest was guaranteed — the origin of the guaranteed investment certificate (GIC).[26] Then in 1921, the restriction was significantly loosened to allow money to be taken as deposits in trust.[27] By 1949, deposit taking had been permitted, provided that it was approved by the trust company's shareholders.[28]

It is also worth noting that deposit taking had not always been seen to be an essential aspect of banking. At about the same time that Mason was turning Canada Permanent into a deposit-taking institution, the Legislative Assembly of United Canada had passed a law defining banking. That definition included many things, but

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24 BE Walker, *The History of Banking in Canada* (Toronto, ON: privately published, 1899) at 91.

25 RSO 1914, c 184, s 17(1). See also MacIntosh, above note 8 at 205.

26 *Ibid*, s 17(2).

27 *An Act to Amend the Loan and Trust Corporations Act*, SO 1921, c 61, ss 2–3. On the rationale for loosening this restriction see "Loan Companies Need More Money Major Hume Cronyn of Huron & Erie Presents Case for Greater Powers" *Globe* (21 January 1921) at 8. Major Cronyn was the father of the famous actor. He noted that in Canada's early years, much of the money for mortgages and the like was raised by Canadian mortgage and loan companies by selling their debentures in the United Kingdom. That ended with World War I. Even after the war ended, this traditional source of funding could not be re-established. This made raising local money through GICs even more important.

28 SO 1949, c 52, s 69(1).

it did not expressly include deposit taking. Banking, it said, meant "the making and issuing of Bank Notes, the dealing in gold and silver bullion and exchange, discounting of promissory notes, bills and negotiable securities, and such other trade as belongs legitimately to the business of banking."[29]

Perhaps the highest hurdle that the Porter Commission recommendation faced was the 1949 *Bergethaler* case.[30] In that decision, Justice Coyne of the Manitoba Court of Appeal had expressly ruled that deposit taking was not the exclusive right of banks. On behalf of that court he had commented that,

> Banking is not a technical or legal term but a loose popular one, comprehending activities carried on by those who, likewise popularly, are called bankers. . . . Some are essential to the conception. But very few are exclusive activities of bankers. Chequing privileges accorded depositors, and general dealing in credit, are characteristic of and perhaps essential to banking. But even that does not make them exclusive rights of bankers . . .[31]

So the lawyers advising Walter Gordon were right. The caselaw did not support what the Porter Commission had recommended.[32] But even if it had, the Pearson government knew that any such action would invite a major confrontation with Quebec and the other provinces.[33] As superintendent of insurance, Dick Humphrys supervised the regulation of federal loan and trust companies, as well as a number of provincial institutions under contract with several provinces. He gave the matter much thought.

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29 *An Act Respecting Incorporated Banks*, CSC 1859, c 54.

30 *Re Bergethaler Waisenamt*, [1949] 1 DLR 769 (Man CA).

31 *Ibid* at 778.

32 Just over a decade later in the *Pioneer Trust* case, the Supreme Court of Canada would adopt the reasoning in the *Bergethaler* case and decide that the federal government could not claim exclusive jurisdiction over companies that conducted some aspect of banking, like taking deposits. See *Canadian Pioneer Management Ltd et al v Attorney General of Canada et al*, [1980] 1 SCR 433.

33 Gordon, above note 13 at 210–11. See also Humphrys, above note 6 at 5.

> I believed that an effort to seize jurisdiction along the lines recommended by the Royal Commission would only result in a long drawn-out constitutional battle. I was conscious of the unproductive fights that had gone on in the constitutional field over insurance and thought that it would be far from being in the public interest to start that in the deposit-taking field.[34]

He began to think that there might be a less confrontational, more practical way of achieving federal regulation of the near-banks.[35] His thinking was shaped in part by a comment made in the submission of the Trust Companies Association to the Porter Commission. Dr Grant Reuber and five other professors from Western University[36] had been commissioned to do a study of loan and trust companies in Canada.[37] Although the professors had thought deposit insurance unnecessary in Canada, they had stated that "one

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34 Discussion Papers prepared by Mr R Humphrys, 6 March 1985, in the files of CDIC at tab 1, p 4 [Humphrys, Discussion Papers]. On the decades of constitutional litigation over the federal claim to regulate insurance in Canada, see Peter Hogg, *Constitutional Law of Canada* (Toronto, ON: Carswell, 1977) at 299–302. Fifty years before, in 1912, an American scholar had commented that in Canada, regulation of insurance was a "rather delicate matter of governmental jurisdiction as between the Federal government and the provinces . . . and the tendency seems to be towards greater confusion rather than towards concurrent and uniform legislation." See Avard Longley Bishop, "Governmental Regulation of Insurance in Canada" (1912) 6:2 *The American Political Science Review* 176 at 175–93.

35 Humphrys, above note 6 at 6–10.

36 By the time that the paper was presented to the Porter Commission, Reuber was working for the commission. The other five were Dr MK Inman, the head of the Department of Economics; Dr Markos Mamalakis, of the Department of Economics; Dr S Peitchinis of the Department of Economics; and Messers J F Graham and JC Taylor of the School of Business Administration. Their submission is described in Beatrice Riddell, "Should Your Deposits Get Insurance Coverage?" *Financial Post* (2 September 1965) [Riddell]. Dick Humphrys kept a copy of her article and twenty years later included it in his briefing papers for the CDIC board. See Humphrys, Discussion Papers, at tab 1, after p 16.

37 "The Role of Trust and Loan Companies in the Canadian Economy," a study prepared at the University of Western Ontario for the Trust Companies Association of Canada and submitted to the Porter Commission. The study was published but the complete submission of the association was not.

merit of the system is that it may achieve uniformity in regulation where regulation is deemed desirable."[38] The Western University professors had noted that the United States had used deposit insurance as a way of achieving federal supervision of state banks.[39]

This point had made an impression on Humphrys. It better suited the co-operative approach that he had adopted in the regulation of insurance.

> It seemed that a more productive course would be in the direction of attempting to further develop provincial co-operation rather than the bold assertion of jurisdictional authority. In this context, a plan of deposit insurance operated under federal auspices but with the opportunity for provincial companies to participate would clearly be a useful vehicle for working towards adequate and uniform standards of supervision and regulation.[40]

With this approach in mind, Humphrys advised the minister of finance that it might be better to entice provincially created institutions into voluntarily accepting federal oversight and regulation by offering federal deposit insurance. In an era of concern and uncertainty about the viability of the provincial loan and trust companies, a federal insurance plan that effectively guaranteed repayment of money deposited with these institutions would be a much sought-after benefit. The key was to make it a requirement of getting deposit insurance that each provincial institution submit to an initial inspection and an annual inspection thereafter.[41]

Significantly, the finance minister who received this practical advice was Mitchell Sharp.[42] Walter Gordon had been a victim of the

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38 Riddell, above note 36.

39 *Ibid.*

40 Humphrys, Discussion Papers at tab 1, at p 4.

41 Economists JL Carr, GF Mathewson, and NC Quigley were not far off the mark when they stated in *Ensuring Failure: Financial System Stability and Deposit Insurance in Canada* (Toronto, ON: CD Howe Institute, 1994) at 43, that "the introduction of deposit insurance was motivated not by economic efficiency but by political expediency."

42 Mitchell Sharp would later recall that as a young member of the Department of Finance he had participated in the 1944 Bank Act decennial review. Some

Liberals inability to win a majority government in the 1965 federal election.[43] Sharp, whom Pearson referred to as "a political technician,"[44] was "the most effective Parliamentarian in the Pearson cabinet."[45] Sharp would need his Parliamentary skills to achieve what Humphrys was suggesting. As a new minister in a minority government, he would need to convince the opposition that abandoning the Porter recommendation was the right thing to do, despite complaints from the banks and the concerns of some of the provinces.

Besides their pragmatism, Sharp and Humphrys had much in common. They were both "Ottawa men," well-educated, intelligent people recruited by Ottawa's chief mandarins during the heydays of the federal civil service.[46] Both were from the west (Sharp had been born in Winnipeg in 1911, and Humphrys in Jasmin, Saskatchewan, in 1917) and they both had been profoundly influenced by "the grim coupling of the Great Depression and the great Prairie drought."[47] Each was a graduate of the University of Manitoba, although Sharp had taken a less direct route to get there. He had left school at fourteen, but while working as a statistician in the grain trade, he studied in his spare time, earning not only a high-school diploma, but his BA from the University of Manitoba in economics. Both had ended up working in Winnipeg — Humphrys at Great West Life as an actuary and Sharp as an economist for James Richardson. Although only one (Sharp) had been fortunate enough to have an employer who supported his graduate work at the London School of

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thought was given at that time to defining banking in such a way as to bring all institutions that took deposits and used them to provide loans under the federal Bank Act. Neither the deputy minister nor the governor of Bank of Canada had favoured this and no action was taken. In his autobiography, Sharp suggested that there might have been fewer failures later had this been done during these war years. See Sharp, above note 10 at 31.

43 On Gordon's key role in the 1965 election that failed to win a majority for the Liberals, see Newman, above note 1 at 333–77.

44 *Ibid* at 52.

45 *Ibid* at 207.

46 JL Granatstein, *The Ottawa Men: The Civil Service Mandarins, 1935–1957* (Oakville, ON: Rock's Mills Press, 2015).

47 Mitchell Sharp, "Canada's Trading Revolution" OD Skelton Memorial Lecture Series, 1995 at 1.

Economics, both had been recruited for wartime service in Ottawa.[48] In 1940, Humphrys became an actuarial assistant in the Department of Insurance. Two years later, Sharp was recruited by Clifford Clark for the Department of Finance. Both spent a short time away from Ottawa after the war. Humphrys became an assistant actuary for the Teachers Insurance and Annuity Association in New York in 1947, rejoining the Department of Insurance as chief actuary in 1948. Sharp's time away came somewhat later. He first had come to the attention of CD Howe as head of the economic policy unit of the Department of Finance. He then served from 1951 to 1957 as Howe's associate deputy minister of trade and commerce.[49] During these years, Humphrys was rising in the Department of Insurance. By 1956, he had become the assistant superintendent of insurance.[50] When John Diefenbaker swept to power in 1958, it was Sharp's turn to leave, joining one of Howe's dollar-a-day men, Henry Borden, at the Brazilian Traction, Light and Power Company.[51] Pearson, who had worked with Sharp on foreign trade during the St Laurent administration[52] and in the organizing of the Kingston Conference of 1960,[53] had other plans for Sharp. He recruited Sharp for the Liberal Party. In 1962, Sharp was elected as a member of Parliament. Pearson initially gave him Howe's former portfolio as minister of trade and commerce. By 1966, both were in positions of influence and power. Humphrys had moved up to be superintendent of insurance, and Sharp had become the minister of finance. In establishing CDIC, they would work with a young Quebecer, Sharp's parliamentary

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48 See Mitchell Sharp, *The Canadian Who's Who 1964–1965* (Toronto, ON: International Press Ltd, 1964) at 516 [Sharp, *Who's Who*]. On Humphrys, see the "In Memoriam" from the Canadian Institute of Actuaries published after his death on 24 August 2004 at the age of eighty-seven.

49 Robert Bothwell & William Kilbourn, *CD Howe: A Biography* (Toronto, ON: McClelland & Stewart, 1979) at 268–69.

50 Sharp, *Who's Who*, above note 48 at 516

51 Peter Stursberg, *Diefenbaker: Leadership Gained, 1957–62* (Toronto, ON: University of Toronto Press, 1975) at 148–49.

52 Lester B Pearson, *Mike: The Memoirs of Lester B. Pearson, Volume 2, 1948–1957* (Toronto, ON: University of Toronto Press, 1973) at 196–201.

53 *Ibid* at 52.

secretary, Jean Chrétien.[54] Chrétien had expressed an interest in financial matters and had been appointed to the parliamentary committee that reviewed finance and banking matters.[55]

Sharp recognized the genius of Humphrys's deposit insurance plan. As the *Montreal Gazette* stated in an editorial, it was "the next best approach" to Canada's financial uncertainty.[56] With deposits of the federal banks insured, the near-banks would have no choice but to apply for similar insurance. To do otherwise in the climate of uncertainty would put at risk their ability to attract and keep deposits. The crucial role that these institutions played in the consumer and mortgage markets would be preserved, and their competition with the banks would continue. And all of this could be funded fairly easily — the new insurer would be a mere "paybox" without any real staff. What few expenses it did incur, together with the insurance fund that it would establish, would be funded by premiums paid by all insured institutions but primarily by the big banks.

The announcement in 1966 had been made to assure Canadians that their deposits would no longer be at risk. It was thought, however, that there was no rush to actually implement the plan. That could be done in the fall of 1967 with the new Bank Act, which would permit consultation with the provincial authorities. Provincial co-operation would be key to achieving success. Humphrys was confident that it could be obtained:

> We had made considerable progress in the previous 15 years in achieving a cooperative atmosphere between the federal supervisory agency and the provincial supervisors in the insurance field and, to a modest extent, in the trust and loan field. The federal Department of Insurance was already supervising trust companies in some of the provinces by agreement between the province and the federal Government.[57]

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54 On Chrétien's view of Mitchell Sharp as his mentor, see Jean Chrétien (with Ron Graham), *Straight from the Heart* (Toronto, ON: Key Porter Books, 1985) at 49–50.

55 See *ibid* and MacIntosh, above note 8 at 140.

56 "Insurance for Depositors the Next Best Approach" *Montreal Gazette* (8 July 1966).

57 Humphrys, Discussion Papers, above note 34 at tab 1, p 4.

The events of early 1967, however, would create a sense of urgency and make the provincial consultations much more difficult to complete before the legislation could be introduced.

That sense of urgency was not yet evident on Monday, 9 January 1967, when Sharp addressed the Canadian Club. He informed his audience that the day before in the House of Commons, formal notice had been given that later in the year the government would be introducing legislation to provide deposit insurance for federal banks and loan companies, and for those provincial trust and loan companies that voluntarily sought such insurance.[58] The legislation, he explained, would create the Canada Deposit Insurance Corporation, a Crown corporation, with a capital of $10 million and with a credit line with the federal government of $500 million. This new corporation would insure deposits up to $20,000 made in all federal banks and loan companies and in participating provincial trust and loan companies.[59] The same day in Ottawa, Prime Minister Pearson stated that his government would not be calling for a federal-provincial inquiry into the failure of the Prudential Finance Corp Ltd.[60] He did indicate that Minister Sharp would be meeting with his provincial counterparts the next month to discuss federal and provincial measures to improve the regulation of such companies. Neither Sharp nor Pearson linked the deposit insurance proposal with the recent finance company failures, but those links clearly existed. Nor did Pearson say that Sharp's meetings with the provinces would be about deposit insurance, but that was their purpose.

The next day, the *Globe and Mail* proclaimed the deposit insurance initiative in a banner headline on page one of its "Report on Business."[61] The *Toronto Star* ran a more modest headline below the fold, but the story still made the front page.[62] The large chartered

58 "Sharp Places Deposit Insurance Legislation on Agenda" *Globe and Mail* (10 January 1967) B1 ["Deposit Insurance Legislation"].

59 "Limit on Deposit Insurance to be $20,000 Per Account" *Montreal Gazette* (12 January 1967).

60 "Deposit Insurance Legislation," above note 58.

61 *Ibid*.

62 "Ottawa Plans Insurance for Loan Firms" *Toronto Star* (10 January 1967) at 1.

banks took notice and promptly warned that the initiative was ill-considered and unfair to the established banks. Allan Thomas "AT" Lambert, president of the Toronto-Dominion Bank, characterized the legislation as "a terrible burden and a little frightening."[63] To him, Sharp's proposal violated the very essence of insurance because it lumped together all institutions, large and small, well-run and poorly run, and charged each the same premium. The premium, he suggested, ought to be based on risk: "Since the risk is considerably less in a well-established bank than a new, small loan company, the premiums should differ." W Earle McLaughlin, the president of the Royal Bank was also critical.[64] He saw the proposal as unnecessary. As the Porter Commission had noted, what was needed was not insurance but better regulation and inspection of the near-banks. The government's proposed insurance would force the stable, well-run banks to subsidize their competition.[65] He cautioned that this initiative might well be interpreted as a sign that the federal government feared more failures of financial institutions.

Davie Fulton, the former minister of justice in John Diefenbaker's Conservative government, picked up the criticisms voiced by the heads of the big banks. He warned that the approach being put forward by Sharp was wrong and put the stability of Canada's financial services industry in danger. Rather than introduce deposit insurance, the federal government ought to be doing what the Porter Commission had recommended — exercising its constitutional power over banking to regulate the provincially incorporated near-banks. He noted Sharp's doubt about whether the federal government had the constitutional right to do so and correctly surmised that Sharp was trying to entice the provincial companies into

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63 "Insurance Unfair" *Toronto Star* (11 January 1967) at 12.

64 "Royal Bank Boss Knocks Deposit Bill" *Toronto Star* (12 January 1967) at 11 and "Addresses Mad at Annual Meeting of Shareholders" *Globe and Mail* (13 January 1967) at B6.

65 To some extent, the banks were right. They were subsidizing their competition, but to the federal government that was not a bad thing. They wanted to encourage competition in financial services and that was hard to do if people feared putting their money on deposit with smaller institutions.

accepting federal oversight. He doubted whether this would work. Deposit insurance, he argued would not solve the "new and serious" issues facing the country. It would "arouse a sense of false security . . . which may make the situation more dangerous than before."[66]

The immediate situation did, in fact, become more dangerous. As W Earle McLaughlin had predicted, some people saw the deposit insurance proposal as evidence that the government was concerned about the possible failure of financial institutions. Many who had their money in York Trust were certainly made anxious by the proposal. They were already concerned because Sinclair Stevens, the power behind York Trust, was in a messy fight with former Bank of Canada governor, James Coyne, over control of the Bank of Western Canada.[67] They began to withdraw their money. As soon as news of this reached the Ontario Ministry of Finance, it was decided that immediate action was required. Financial Affairs Minister Leslie Rowntree convinced Premier Robarts that Ontario could not wait until the fall for the federal scheme: Ontario needed its own deposit insurance now. On 26 January, Rowntree informed the press that the provincial government would quickly introduce deposit insurance legislation, which it intended to pass within a month.[68]

Ontario's rush to action caused concern in Ottawa. The whole rationale for CDIC was to entice the provincial financial institutions to accept federal supervision. Many of those institutions were in Ontario; an Ontario plan would make it much less likely that these companies would apply for federal insurance and accept the federal supervision that came with it. Sharp and Humphrys knew that they had to speed up the introduction of their own deposit insurance legislation. Sharp announced that deposit insurance had become a

66 "Stability of Banks in Danger, Fulton Charges" *Toronto Star* (18 January 1967) at 14.

67 The battle between Sinclair Stevens and Coyne is set out in Alexander Ross, "How to Start a Bank and Almost Lose Your Shirt" *Maclean's* (1 July 1967). Stevens would lose the battle but end up as a member of the federal cabinet in the Conservative governments of Joe Clark and Brian Mulroney.

68 "Ontario Will Protect 'Near-Bank' Investors" *Toronto Star* (27 January 1967) at 1.

new priority of the Pearson government.[69] He called on the opposition to help get that legislation in place as quickly as possible.

Nevertheless, Rowntree continued to push the Ontario legislation through. The *Toronto Star* reported that the Robarts government was "edgy," concerned about the negative impact that deposit insurance legislation was having on the financial market.[70] It reported that York Trust had been forced to liquidate some short-term investments to meet the withdrawals taking place. In an unusual (and risky) moment of candour, Rowntree told the press on 8 February that the urgency in passing the Ontario legislation arose from the run on York Trust. He revealed that his ministry was keeping a close eye on the troubled institution. The *Star* ran the story in a banner headline on its front page. The failure of York Trust was seen as imminent. In an effort to calm the public, York Trust president Alexander Craig had his spokesperson deny that there was any run, and stressed that it was business as usual. Rowntree's remarks, however, had made a bad situation worse. Premier Robarts decided that they had to ram the Ontario deposit insurance legislation through that very evening "at break neck speed amid angry exchanges."[71]

Meanwhile, in Ottawa, Sharp and Humphrys were trying to salvage the federal plan and convince Ontario that there would be no need to actually implement its legislation. Sharp assured people that the federal legislation would be passed within a few days and Humphrys announced that the regime would be in place within weeks.[72]

Sharp and Humphrys were true to their words. The *Canada Deposit Insurance Corporation Act* (the *CDIC Act*) received Royal assent on 17 February 1967 and was proclaimed in force on 17 April. Between those two dates, on 21 March, the *ex officio* government members who were to form the board of directors — the governor

69 "Ottawa to Insure Bank, Trust Deposits" *Toronto Star* (3 February 1967) at 2.

70 "Province Rushes Deposit Insurance for Trust Companies" *Toronto Star* (7 February 1967) at 1.

71 "Robarts Rushes Deposit Insurance — It's Law Today" *Toronto Star* (10 February 1967) at 1.

72 "Now Ottawa Gets Deposit Insurance Ready" *Toronto Star* (11 February 1967) at 3.

of the Bank of Canada, the deputy minister of finance, and the inspector general of banks — were called to a meeting. Two of the three could not attend, but they sent representatives, as the *CDIC Act* permitted them to do. It was Robert Beattie, the deputy governor of the Bank of Canada,[73] and a representative of the deputy minister of finance, who met with Humphrys and WE Scott,[74] the inspector general of banks.[75] These officials adopted CDIC's first bylaw, which dealt with a number of matters, including the definition of what constituted a deposit. The Act had already specified that an insured deposit had to be in Canadian dollars. The officials preparing the draft bylaw had initially thought that they would adopt the definition of deposit used by the Porter Commission — amounts deposited with a financial institution that were repayable on demand or on no more than 100 days' notice. This would have excluded both GICs issued by trust companies and loan company debentures, but that seemed appropriate because these instruments were viewed more as investments than as deposits in the traditional sense. The provinces, when consulted, had a different view. They were quite insistent that trust company GICs and loan company debentures be covered, and pointed out that these instruments were the principal liabilities of trust and loan companies. To exclude them would have offered little protection for those dealing with these institutions. Ontario noted that it had included these financial instruments in the deposit insurance legislation that it had passed. Therefore, to keep the provinces onside, when the CDIC bylaw was prepared in its final form, these types of investments, as well as term deposits, were included as insured deposits, but only if the GIC, debenture,

73 On Robert Beattie's role at the Bank of Canada and his relationship with Louis Rasminsky, the governor of the Bank of Canada, see Bruce Muirhead, *Against the Odds: The Public Life and Times of Louis Rasminsky* (Toronto, ON: University of Toronto Press, 1999).

74 In a deviation from its standard practice, Scott was listed (at 985) as "W.E." in *The Canadian Who's Who 1964–1966* (Toronto, ON: International Press Ltd, 1964), and not by his full name.

75 Humphrys, above note 6 at 57–58.

or term deposit matured in five years or less.[76] The new bylaw needed cabinet approval, which was given on 30 March. Now all that remained was to bring the new corporation into operation. But would that be enough to keep Ontario in the fold? And what of Quebec? Could an accommodation be reached with that province, which so guarded its jurisdiction?

76 Humphrys, *ibid* at 21. The five-years-or-less rule did not apply to GICs, debentures, and term deposits acquired before 17 April 1967.

Chapter Three

The Mighty Mite, 1968–1982

CDIC is the mighty mite of the Canadian insurance business.

— *OTTAWA CITIZEN*, 18 AUGUST 1967

NO SOONER HAD THE federal Parliament passed the *CDIC Act* and given life to the new corporation, than Quebec made it clear that it would not cede control of its financial institutions to the government in Ottawa. On 15 March, Quebec's premier, Daniel Johnson, announced that his government would be passing its own deposit insurance legislation.[1] This was not a surprise; as early as the summer of 1966, Quebec had initiated a study of provincial deposit insurance as part of its regulatory review.[2] Thirty-seven-year-old Jacques Parizeau, a bright, articulate doctoral graduate of the London School of Economics who had worked on the Porter Commission, produced an interim report advocating a

1 "Quebec Challenges Ottawa to New Battle over Banking" *Toronto Star* (16 March 1967) at 1. See also "Include Chartered Banks in Quebec Deposit Plan" *Globe and Mail* (16 March 1967) at 11.

2 "Johnson Orders Study of Deposit Insurance" *Montreal Gazette* (7 July 1966). See also "Trust Brief Urges Quebec Fight Federal Involvement in Near-Banks" *Globe and Mail* (18 November 1966) B4 and "Choice Wide on Deposit Insurance" *Globe and Mail* (9 December 1966) B7.

Quebec plan.[3] Now Premier Johnson explained that this new legislation would protect the deposits made by Quebecers in both Quebec-incorporated institutions and in the Quebec branches of federal institutions, including the federal Post Office Savings Bank.[4] The insurance was to be funded by a levy on both sets of institutions, meaning that those federal institutions operating in Quebec would pay both a federal and a provincial levy. His intention, he explained, was to force the federal government to modify its approach.[5]

While this confrontation with Quebec was developing, the federal government went looking for a home for its new Crown corporation. Luckily, the Municipal Development and Loan Board was winding down. That board's offices at 99 Bank Street in Ottawa were available, as was its executive director, TJ "Ted" Davis.[6] In July, Davis became CDIC's first secretary general, a post that he would hold until February 1985. He had a staff of two — a clerk-stenographer and a bookkeeper.[7] Dick Humphrys would later recall that because "there was little likelihood of any major insolvency . . . the administration machinery of the new corporation [was] kept at a minimum."[8]

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3 Denis Chaput, "Le rapport Parizeau" (1969) 45:3 *L'Actualité économique* 521–33 at 528. On the final report, see also "Quebec Urged to Regulate Near Banks after 4-Year Study" *Globe and Mail* (8 August 1969) B2.

4 The Post Office Savings Bank is described in "The Role of Trust and Loan Companies in the Canadian Economy," a study prepared at the University of Western Ontario for the Trust Companies Association of Canada and submitted to the Porter Commission at I-13 ["The Role of Trust and Loan Companies"]. It had been established under the Post Office Act of 1867 for small deposits. In 1962, the deposits were not to exceed $10,000 plus interest. By the 1960s, it was in decline.

5 The banks did not believe that he would actually institute this form of "double taxation." See Lyndon Watkins, "Quebec Deposit Insurance Scheme Brings Muted Reaction from Banks" *Globe and Mail* (17 March 1967) B2.

6 JP Sabourin, who would later be hired by CDIC and would rise to be its CEO, recalls that the offices were Spartan, government green, and located over a sandwich shop. Interview with JP Sabourin by author (7 August 2015) in Ottawa [Interview, JP Sabourin].

7 CDIC, *Annual Report* (2003).

8 Discussion Papers prepared by Mr R Humphrys, 6 March 1985, in the files of CDIC at tab 2, p 2 [Humphrys, Discussion Papers].

With the office in place, the federal government sought out a chairman for CDIC. They wanted someone from outside the civil service who had proven financial ability and experience. Their hope was that this person would bring an independent, informed opinion[9] and "an outside chairman [would] avoid possible criticism along the lines that the Department of Insurance and the Inspector General of Banks might have a conflict of interest between their duty as supervisors and their responsibility towards the CDIC."[10] They chose Antonio Rainville,[11] the recently retired bilingual general manager of the Montreal City and District Savings Bank (now the Laurentian Bank of Canada),[12] a small, federally chartered bank that served Montreal and its environs.[13] He had been born in St Polycarpe, Quebec, on 11 April 1902 and was a lifelong banker. He had joined the bank in 1918 as a junior clerk and had become its general manager in 1960.

Just a short time before, in January 1967, the Montreal City and District Savings Bank had experienced a run on its deposits.[14] Rainville had learned first-hand of the need for something like deposit insurance to guard against a run. Rumours had spread in a community of new Canadians that their money was not safe in that bank and five of its seventy-four branches were affected. Rainville had not been able to determine how the rumours had started, but he was able to stabilize the situation. That experience had helped convince him to delay his plans for world travel with his wife and accept the chairmanship of CDIC. When interviewed on his appointment, he had reassured people that Canada's banking system was "very

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9 Richard Humphrys, *History of the Origins and Early Operation of Deposit Insurance in Canada* (1991) [unpublished, archived in the files of the Canada Deposit Insurance Corporation] at 21 [Humphrys, *History*].

10 Humphrys, Discussion Papers above note 8 at tab 2, p 2.

11 "Pearson Names Head of Agency for Insurance" *Globe and Mail* (17 May 1967).

12 See Antonio Rainville, *The Canadian Who's Who 1964–5* (Toronto, ON: University of Toronto Press, 1964–65) at 905.

13 "The Role of Trust and Loan Companies," above note 4 at I-14. It had been established in 1846 and federally chartered in 1871. In 1962, it had deposits of $252 million.

14 *Journal de Montréal* (27 January 1967).

solid," but, he pointed out, "it was not always that way, and it might not always be."[15]

The real work in getting CDIC up and running fell to the superintendent of insurance, Dick Humphrys, and his department. By design, CDIC itself had almost no staff. It had always been intended that Humphrys's people would be called upon to inspect the various provincial institutions that applied for insurance. There were twenty-eight federal institutions that automatically became members of CDIC (ten banks and eighteen federally incorporated loan or trust companies).[16] In addition, seven provincial institutions incorporated in Nova Scotia, New Brunswick, or Manitoba were already under Humphrys's supervision pursuant to agreements with the affected provinces; no further inspection was required of them. That left thirty-four institutions incorporated in other provinces. Under the CDIC bylaw, any provincial institution seeking to join CDIC had to agree to pay a premium, file annual reports, and submit to inspections by or on behalf of CDIC. There was no more important inspection than the first one that would determine if the institution would be admitted as a member and, if so, on what conditions. This was crucial work. Bringing these institutions into CDIC and under federal supervision was the principal reason for the creation of deposit insurance, but it was nevertheless a daunting task for a department that already had a number of other responsibilities. It would take some time to complete, but time was a luxury that they did not have. The fear was that any institution not immediately added as a member of CDIC would be seen as financially unsound. It would have been incredibly ironic if CDIC, which was being created at least in part to allay fears, had itself triggered them. To escape this irony and to allow time for the necessary inspections, arrangements needed to be reached with several provinces. Saskatchewan had only one institution, and Newfoundland and Prince Edward Island had none, so no special arrangements were needed for them. Alberta, which had seven institutions, proved quite co-operative. As

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15 "New Company a Mighty Mite" *Ottawa Citizen* (18 August 1967).

16 CDIC, *Annual Report* (1967).

early as 14 April they had agreed to indemnify CDIC for any liability that was assumed while inspections of these companies were being completed.[17] Once it was agreed that the sought-after indemnity would only apply after CDIC had applied whatever premiums that it had collected, Ontario agreed to do the same with respect to its twenty-five institutions.[18]

The Social Credit government of WAC Bennett in British Columbia, however, had its own idiosyncratic ideas on money and banking,[19] and it was very reluctant to follow suit. British Columbia had only two institutions, but one of them, Commonwealth Trust, raised a number of issues.[20] The company had been incorporated in British Columbia just a few years before in 1961. An initial assessment of Commonwealth Trust suggested that remedial measures were needed. Humphrys briefed the board on 14 and 15 April, and there was much concern expressed.[21] Without a provincial indemnity, insuring this company meant taking on significant risk. At the time, the CDIC board did not know that in 1964 the BC Attorney-General's office and the RCMP had looked into allegations of inappropriate conduct at Commonwealth Trust, but had not found sufficient evidence to bring charges. One of the directors did suggest that the RCMP be asked if they had a file on Commonwealth Trust, but the board had not acted upon the suggestion. Instead, it was decided

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17 Minutes of the Board of Directors of CDIC (14 April 1967). Mitchell Sharp had suggested as early as February 1967 that provincial institutions would be accepted into CDIC membership if their province of origin would guarantee any losses. See "Sharp Offers Deposit Plan to Provinces Immediately" *Globe and Mail* (4 February 1967) at 28.

18 CDIC, *Annual Report* (1967) at 7. The Ontario companies were accepted for insurance on 29 April 1967 conditional upon an indemnity agreement similar to the one with Alberta. On the change in the indemnity to take into account any collected premiums, see Humphrys, *History*, above note 9 at 61–62. See also "Decision Within Year on Trust Firms" *Globe and Mail* (26 April 1967) B4.

19 See Roger Keene, *Conversations with WAC Bennett* (Toronto, ON: Methuen, 1980), ch 11, and William Rayner, *British Columbia's Premiers in Profile* (Surrey, BC: Heritage House, 2000) 176–93.

20 Humphrys, *History*, above note 9 at 58–59 and 72–73.

21 Memorandum, summarizing the discussion at the board meeting of 14–15 April, included with those minutes (25 April 1967).

that CDIC would accept Commonwealth Trust as an insured member, provided that the management gave certain undertakings with respect to its methods of operation and its presentation of its financial position. The undertakings were given and Commonwealth Trust was admitted into the fold.[22]

As this determination was being made, Isabelle Alix Granger, a student in the Economics and Commerce Department at Simon Fraser University, was reaching her own conclusions about Commonwealth Trust. She was putting the finishing touches on a master's thesis about the lack of strong regulation of trust and finance companies in British Columbia.[23] In July 1967, in the course of her research, she interviewed Duncan Crux, the president of Commonwealth Trust.[24] Albert Gilbert Duncan Crux, a lawyer, had first formed Commonwealth Investors Syndicate in 1952 to invest in real estate. Commonwealth Trust was the centrepiece of a forty-company group that dealt in securities, mortgages, and real estate development with offices in British Columbia, California, Washington State, and the Bahamas.[25] Crux had refused Granger access to any financial information or to any other officer of the company, including his vice-president and chief financial officer, Cornelis Polvliet. Granger was forced to rely upon the company's financial reports, which she characterized as inadequate to permit a proper analysis of the company — but even this uncovered some irregularities. She noted that the trust company was carrying the marketable securities it held at more than their market value. In fact, the gap between the value shown on the books of the company and what they were actually worth was more than the stated surplus of the company.[26] Clearly, she explained, British Columbia had been doing a poor job of regulation and supervision.

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22 Humphrys, *History*, above note 9 at 72–73.

23 Isabelle Alix Granger, *The Regulation of Trust Companies and Finance Companies in British Columbia* (Master's Thesis, Economics and Commerce Department, Simon Fraser University, 1967) [unpublished] [Granger].

24 *Ibid* at 67–68.

25 William Rayner, *Scandal!: 130 Years of Damnable Deeds in Canada's Lotus Land* (Surrey, BC: Heritage House, 2001) at 187 [Rayner].

26 Granger, above note 23 at 90.

She contrasted the "perfunctory" inspection of the provincial regulators with the "detailed and knowledgeable procedures" that were then being used by Humphrys's team on behalf of the new CDIC. She applauded the use of CDIC to implement uniform, improved federal supervision of British Columbia's financial institutions and she chided the BC government for its "indifference . . . to improving the regulation of trust companies."[27]

By the end of 1967, Humphrys's inspectors had completed twenty-nine of the thirty-four inspections.[28] One of those inspections was a more thorough look at Commonwealth Trust. It was an unsettling examination, to say the least. Not only did Humphrys's team discover that the undertakings so recently given were not being complied with, but they discovered that certain interim reports filed with his Department of Insurance had intentionally omitted important information.

Given the concerns of CDIC, the BC inspector of trust companies carried out his own review of Commonwealth Trust, and in a 5 January 1968 report, confirmed that the trust company was operating in an "unsafe and unauthorized manner contrary to the public interest."[29] The federal and provincial inspectors conferred in an effort to develop a common strategy. On 12 February 1968, at the urging of CDIC, the BC minister of finance and the attorney general issued an order under the *Trust Companies Act of British Columbia* prohibiting the company from paying dividends or transferring money to any of its many affiliates. The order also required the company to maintain certain moneys in reserve, to obtain appraisals of its properties, and to divest itself of certain holdings.[30]

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27 *Ibid* at 94.

28 CDIC, *Annual Report* (1967).

29 British Columbia, *Journals of the Legislative Assembly*, 29th Parl, 1st Sess, vol 100 (2 April 1970) at 223.

30 The Order was attached to Bill 41, *Trust Companies (Amendment)*, 29th Parl, 1st Sess, British Columbia, 1969 [Bill 41]. See above note 29 at 224.

Meanwhile, behind the scenes, CDIC cautioned the BC government. If they were to try to save the trust company, no public announcement was to be made about their intervention in the day-to-day operations of the company.[31] They did not want a repeat of the type of inappropriate candour shown by the Ontario government minister in discussing York Trust. Comments like those would spook depositors and doom their rescue efforts.

By August it was clear that the management was still engaged in the prohibited activities, so a further order was issued under the *Trust Companies Act of British Columbia*.[32] Alan Douglas Stanley, FCA, a chartered accountant, was appointed at company expense to monitor company operations and to ensure compliance with the previous order. He was given full authority to operate the company and to control all expenditures, investments, and divestitures, with full access to all files and records. The company and its directors, officers, and employees were required to comply with his orders and directions. At the same time, the RCMP conducted raids on the company's offices and seized files.[33] Stanley informed the staff that they were not to sell or offer for sale any GICs or to accept any deposits beyond what was guaranteed and covered by the $20,000 of CDIC insurance.[34] In March 1969, the BC government introduced legislation to help the company maintain liquidity by offering to match an investment of new capital in the company from $1 million to a maximum of $3 million. The preamble to the Act stated this was being done to maintain confidence and stability in the financial industry at a time of stress and difficulty in the national and international markets, and to enhance the City of Vancouver's "present excellent reputation" in those markets.[35] CDIC had, by this point,

31 British Columbia, *Journals of the Legislative Assembly*, 29th Parl, 1st Sess, vol 100 (3 April 1970) at 231.

32 *Ibid*. The order is attached to Bill 41, above note 30.

33 The Commonwealth Trust saga is told somewhat inaccurately by Rayner, above note 25.

34 British Columbia, *Journals of the Legislative Assembly*, 29th Parl, 1st Sess, vol 100 (3 April 1970) at 230–31.

35 Bill 41, above note 30.

already loaned $3.5 million to the company to provide liquidity. Initially, the proposal was for the 7 percent interest to be capitalized and made part of the loan from the BC government repayable in 1974, but to get the bill passed, interest was made payable before maturity.

Crux was by this time in the Bahamas, where the Commonwealth Trust group operated a bank. He was arrested there in June 1969, and charged with fraud. Polvliet, his CFO and vice-president, was arrested in Bakersfield, California. In each case, extradition proceedings were commenced. The Crux proceedings took some months, but by 5 December 1969, he was ordered to return to Canada. That same month, shareholders in Commonwealth Trust started liquidation proceedings. On 29 June 1971, Crux was found guilty of fraud and sentenced to seven years in prison. In October, Polvliet was also found guilty and sentenced to three years.[36]

Meanwhile, CDIC had dealt with the depositors of Commonwealth Trust. Arrangements were made effective on 1 January 1970 for the Commonwealth Trust's deposits to be transferred to British Columbia's other trust company, Yorkshire Trust, which was acting as liquidator. New accounts were established for each depositor with terms and interest rates identical to those of Commonwealth Trust. To assist Yorkshire in taking this on, CDIC made a one-time reimbursable payment of $3,930,552,[37] equal to the amount of the deposits less $100,000.[38]

While the board of CDIC got more than it bargained for in Commonwealth Trust, it was a vivid demonstration of why CDIC was needed and how it could help resolve problems encountered with provincially incorporated bodies. Here was a company that had been engaged in questionable activities for several years. The provincial regulators had uncovered some evidence of these activities, but had not wanted to or had been unable to effectively deal with the

36 "Crux, Partner to Face Trial" *Ottawa Citizen* (16 October 1970). They would be found guilty. See "Financier Gets Stiff Sentence for Stock Theft" *Montreal Gazette* (7 July 1971).

37 CDIC, *Annual Report* (1969) at 12.

38 Humphrys, *History*, above note 9 at 75.

problem. It was only in late 1967 and early 1968 when the superintendent of insurance on behalf of CDIC had conducted its thorough inspections that the full extent of the problem was uncovered and decisive action taken. Without the offer of deposit insurance, there would have been no such federal inspection. CDIC had proved its worth.

Meanwhile, the Ontario institution, York Trust, that had hastened the creation of both CDIC and its Ontario counterpart, presented special concerns. The creation of the federal and Ontario deposit insurance plans had helped, but had not cured what ailed York Trust. It found itself having to pay higher and higher interest on its deposits to prevent people from pulling their money out. This meant that at times it was paying more to keep these deposits than it could earn on mortgages or other forms of investments. To use a banking term, it had a "negative interest spread." To help it survive, Canadian Mortgage and Housing Corporation had offered it a $15.35 million loan. When CDIC accepted York Trust as a member, it assumed this loan from CMHC and reduced the interest rate to 6.5 percent, hoping that this would help the trust company return to a stable, profitable operation.[39] The tactic did not work, and York Trust was merged into Metropolitan Trust. It was a sorry ending to what had been seen as a great success story. York Trust had been incorporated in Ontario five years before. In 1962, its first year, it had only $700,000 in assets. In just four years, it had grown enormously, opening nineteen branches in Ontario and increasing its assets to $90 million and its depositors to 76,000. It had achieved this growth by opening branches in Loblaws supermarkets and offering higher interest rates and incentives like gifts for opening new accounts, and chances for European vacations for buying GICs.[40] At its height, York Trust had been the thirteenth largest trust company of the thirty-three registered in Ontario. But in November 1967, when its assets were sold to Metropolitan Trust, the amount

39 *Ibid* at 71–72.

40 "Metropolitan Trust Gains Control of York's Assets for $300,000" *Globe and Mail* (25 November 1967) B5.

paid was a mere $300,000.[41] The CDIC loan, however, was repaid in full.[42]

Quebec, of course, followed through on its threat and chartered its own course. With the guidance of Parizeau, the Quebec government crafted its own legislation.[43] When their Act was introduced in early May 1967, it was less confrontational than had earlier been suggested. It did deny Quebec institutions the right to apply to join CDIC and it did provide its own deposit insurance arrangement, but it excluded federal banks and did not seek to impose a fee on federal deposit-taking institutions that were operating in Quebec.[44]

Talks were initiated between the federal government and Quebec to find a workable compromise. It was eventually agreed that CDIC would insure deposits made in federally incorporated institutions even if in Quebec, as well as deposits made by Quebecers outside Quebec in any of its member institutions. Quebec would insure deposits in Quebec, even if made in an institution incorporated in another province.[45] On 29 June 1967, the National Assembly of Quebec passed the *Deposit Insurance Act* and created the *Régie de l'assurance-dépôts du Québec* (RADQ, the Quebec Deposit Insurance Board).[46]

In early 1968, Jean Chrétien, now minister of national revenue, explained to the House of Commons that the accommodation with the province of Quebec required an amendment to the *CDIC Act*.[47] He noted that although the amendment had been triggered by Quebec's plan, it had been drafted broadly to deal with any similar legislation that might be subsequently adopted by another province. He also explained that the amendment would permit CDIC to make short-term, secured loans to provincial deposit insurers

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41 *Ibid.*

42 Humphrys, *History*, above note 9 at 71–72.

43 "Choice Wide on Deposit Insurance: Quebec Studying Several Plans for Near-Banks" *Globe and Mail* (9 December 1966) B7.

44 "Quebec Dilutes its Deposit 'Showdown'" *Toronto Star* (5 May 1967) at 13.

45 CDIC, *Annual Report* (1967).

46 "Double Tax Avoided by Merger of Plans" *Globe and Mail* (8 July 1967) at 26.

47 *House of Commons Debates*, 27th Parl, 2nd Sess, vol 6 (7 February 1968) at 6472.

where that provincial body found itself covering a loss or potential loss at a time when it lacked sufficient reserves in its fund.[48] Finally, he explained that a technical amendment was also being proposed, unrelated to Quebec.[49] It would prove a very important amendment in later years. This provision made it clear that if two member institutions merged, their insured deposits at the time of the merger would continue to be insured separately after the merger. Thus, if a depositor had a $20,000 deposit in each of the merging institutions, both deposits would continue to be insured after the merger. The Act was passed and became law on 27 March 1968.[50]

Meanwhile, the CDIC staff began to collect the premiums due from its sixty-nine members. The legislation had set the premium for each member as the greater of $500 or one-thirtieth of 1 percent of the amounts on deposit at that member's institution as of 30 April. Approximately $5.7 million in premiums were assessed. An additional $809,918 was received in interest. Given its limited expenses, the new corporation had a net profit of $371,468. The cabinet waived the payment of income tax on this amount.[51]

The *Ottawa Citizen* correctly noted that the modest size of the new corporation was deceiving — it was responsible for insuring $17.1 billion in deposits. It might have only four employees, sixty-nine policy holders, and modest offices in a modest building, but it was a "mighty mite."[52]

Less than two years later, that "mighty mite" faced another member failure. In 1969, CDIC was called upon to cover insured deposits in Security Trust. It was, however, a payout with a difference. Security Trust was an Alberta-incorporated trust company that was covered by the provincial indemnity that CDIC had obtained two years before. In the circumstances, CDIC's role in the insolvency was quite limited. Although in 1969 CDIC indirectly paid out $3,930,552 to those who held insured deposits in 1969, it was the

48 *Ibid* at 6473.
49 *Ibid* at 6474.
50 SC 1966–67, c 70.
51 CDIC, *Annual Report* (1967).
52 "New Company a Mighty Mite" *Ottawa Citizen* (18 August 1967).

trust company that actually dealt with its depositors, and it was the Government of Alberta that was ultimately responsible for covering the loss. The total amount eventually paid by CDIC (which was estimated to be just under $19 million over the five years during which GICs would be maturing), was lent to the company and was repaid by Alberta with interest on or before 31 December 1974. It was therefore Alberta that determined that the way to handle the situation was to "run off" the liabilities — let the company continue in business over the five-year period, realizing on assets where possible and paying off depositors as they came due.

Again, CDIC's management had to decide how best to balance their obligation of secrecy with respect to the affairs of their members with their duty to properly disclose their own financial affairs in its financial statements. No express mention was made of the Security Trust arrangements in those statements. That company was listed as a member of CDIC without any hint that it was in financial difficulty.[53] The only clue as to what was going on behind the scenes was Note 1 to the financial statements.[54] That note disclosed that $3,930,552 had been paid out to those who held insured deposits in a member institution and that another $6.5 million would be paid out in 1970, with the five-year total possibly reaching $15 million beyond what had been paid. The note further explained that a province would be reimbursing CDIC under an indemnity arrangement. The name of the member institution was omitted, as was the name of the province.

After these initial failures had been dealt with, CDIC found itself with little to do. Its creation had had the desired effect — provincial loan and trust companies were now being admitted as members and were being regularly inspected. But those "licensing" and inspection activities, done in the name of CDIC, were actually being conducted by the Department of Insurance. The work left to the small staff of CDIC was largely clerical. In the words of Mitchell

53 CDIC, *Annual Report* (1969) at 9.

54 *Ibid* at 11–12.

Sharp, it was a mere "paybox." Or as Ronald Robertson would later say, it was a "drawer" in Dick Humphrys's desk.[55]

In the fall of 1976, Ted Davis decided to hire Jean Pierre Sabourin, a young, bilingual bookkeeper working at the Chateau Laurier. It is not likely that he had any idea that he was hiring the person who would become the longest serving president in CDIC's history. Jean Pierre Sabourin, or JP, as he was always known, had been born in Ottawa of a working-class family. As it happened, Sabourin knew a friend of Davis. This mutual friend suggested to Sabourin that he could fill the need that Davis had for someone to oversee the collection of premiums and their investment in government bonds. Sabourin did not know if he ought to interview for the job. He knew nothing of CDIC. He had seen the "tent cards" given to financial institutions to put on the counters to inform bank depositors that their deposits were insured by CDIC, but that was the extent of his knowledge. He asked for the annual reports to allow him to learn more. Although there had been nine reports, there was not much to read. At the time, the annual reports were never more than sixteen pages, including the auditors' letter and the notes to the financial statements. And much of the text was repeated year after year.

When Sabourin read those annual reports, he learned that there were forty-three federal members, eleven banks, thirty-two loan or trust companies, and forty provincial loan or trust companies with insured deposits totalling almost $49 billion. The financial statements disclosed that the amount collected by CDIC by way of interest on its investments and in premiums from its members far exceeded the operational expenses that it incurred. For example, in 1970, about $1.5 million had been added to its accumulated net earnings account while almost $9 million was added to the Deposit Insurance Fund.[56] The 1970 report of the auditor general reported that in the 1969–70 fiscal year, CDIC had made a profit of $1.45 million. He also noted that from its inception, the cabinet had granted CDIC a

55 Interview of Mr Ronald Robertson by the Osgoode Society Oral History (29 January 2010, revised July 2013) at his offices in downtown Toronto.

56 CDIC, *Annual Report* (1970) at 9.

remission order under the *Financial Administration Act* that relieved CDIC from paying income tax.[57] Despite questions from the House of Commons Public Accounts Committee as to why this profit — which could, under the CDIC bylaw, be shared with its financial institution members — was not subject to tax,[58] the government had not deviated from its practice. He also noted that as a result of CDIC's intervention in the Commonwealth Trust failure in 1970, it had a claim for almost $5.5 million. Much of that had been recovered through the liquidation of assets. In 1975, $1.1 million was still owed.[59]

In his review of CDIC's annual reports, Sabourin would have noted that in May 1972, Rainville's term as chairman had come to an end and Gerard Gingras, an investment consultant who had served as the Quebec director of the Canada Savings Bond organization,[60] had been appointed to replace him. Sabourin would not get to work much with Gingras, but he did meet him and found him to be a gentleman, impeccably dressed, and ever the diplomat.[61]

This was the small, sleepy organization that Sabourin joined in November 1976. Perhaps it was only appropriate that CDIC was housed in gloomy, government green offices without windows at 99 Bank Street above a sandwich shop. One of Sabourin's first jobs was assisting in the preparation of the annual return for the year ending on 31 December 1976. Donald MacDonald was the minister of finance who received that annual report in late March of the next year. It showed an excess of income over expenditure of $7.8 million, of which $4.2 million was added to accumulated net earnings, bringing the Deposit Insurance Fund to a total of $114,257,241.[62]

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57 Note 3 to the Financial Statements in CDIC, *Annual Report* (1967) at 11. See also: note 4 to the 1968 Financial Statements in CDIC, *Annual Report* (1968) at 12; note 5 to the 1969 Financial Statements in CDIC, *Annual Report* (1969) at 12; and note 5 to the 1970 Financial Statements in CDIC, *Annual Report* (1970) at 12.

58 *Montreal Gazette* (27 October 1971).

59 Canada Deposit Insurance Corporation, *Annual Report* (year ended 31 December 1975) at 4 [CDIC, *Annual Report*, 1975].

60 Humphrys, *History*, above note 9 at 81.

61 Interview, JP Sabourin, above note 6.

62 Canada Deposit Insurance Corporation, *Annual Report* (year ended 31 December 1976) at 4.

Earlier in the year, $862,500 had been paid as a dividend to the federal government, and after the end of the year, an additional $812,500 had been paid. About $500,000 of the amount provided to Commonwealth Trust had been realized in the liquidation, leaving a claim of $617,012 against the company.[63]

After assisting with the report, Sabourin settled into a quiet routine. Besides collecting member premiums and investing the money in government bonds as CDIC was mandated to do, he tracked its members, noting when they merged or changed their names or ceased to accept deposits. The highlight of each year was when CDIC's board of senior government bureaucrats met and dealt with the few issues that arose. All of the real work was done by Humphrys's team in the Department of Insurance.

Sabourin could have sat at his desk and wiled away his time, but that was not in his nature. Being ambitious, he dedicated himself to learning everything that he could about deposit insurance. As it happened, a bill to amend the *CDIC Act* had just been introduced in to the House of Commons in the month before he joined.[64] The amendments were characterized as "housekeeping." The definition of deposit, which had been set out in CDIC's bylaw, was now attached as a schedule and made a formal part of the Act. The *ex officio* directors like the governor of the Bank of Canada were now allowed to designate someone as their alternate to attend meetings of the board. Previously, the minister had been required to do this and such designation had lasted for only thirty days. It was an indication that CDIC

63 Based on a comparison of *ibid* at 4 with CDIC, *Annual Report*, 1975, above note 59 at 4.

64 In speaking to the amendments, Dick Humphrys reminded Parliament that CDIC had served its real purpose by enticing the provinces to accept federal inspection of their institutions. Marcel Lambert, the MP for Edmonton West, still thought that it would have been better to have defined banking a decade before and avoided the "series of pigeonholes" that denied Canada an effective credit granting system in Canada. Humphrys addressed Lambert's concerns saying that "without attempting to supercede the regulatory responsibilities of the provinces" CDIC had helped bring about "more or less uniform standards of supervision and regulation in all the jurisdictions where deposit institutions have been incorporated."

was seen to be functioning quietly and well, and was unlikely to need the personal attention of Canada's most senior financial bureaucrats. However, in case problems did arise, CDIC's right to guarantee payment to a liquidator and to sustain an action against a failed member to enforce a depositor's rights against the institution were clarified.

These amendments gave Sabourin a reason to study CDIC's legislation, mandate, and bylaws. He pumped Ted Davis for information about CDIC's role and the purpose of deposit insurance. Davis became Sabourin's teacher. He also learned much from Bill Kennett, the inspector general of banks, who was happy to assist Sabourin's efforts to learn.

In 1977, the five-year term of Gingras as chairman of CDIC came to an end, and John F Close was chosen to replace him. The new chairman was something of a "bon vivant . . . who follow[ed] a rousing game of squash with martinis at Montreal's University Club."[65] Sabourin found him to be very knowledgeable and well-connected with a tremendous sense of humour.[66] Known as Jack, Close was a retired former executive of the Royal Trust Company (Royal Trust). He had joined that company in 1936, after graduating from McGill University where he had attended lectures by Graham Towers, who four years later became the first governor of the Bank of Canada.[67] By 1958, Jack had become the treasurer of Royal Trust and by 1974, its vice-president of investments.[68]

That same year, CDIC brought in its first in-house lawyer, HD "Harry" McDonald. This lawyer, who had joined the Department of Justice in March 1965,[69] had been advising the Department

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65 Patricia Best, *A Matter of Trust: Greed, Government and Canada's $60 Billion Trust Industry* (Markham, ON: Penguin Books, 1986) at 282.

66 Interview, JP Sabourin, above note 6.

67 See Douglas H Fullerton, *Graham Towers and His Times* (Toronto, ON: McClelland & Stewart, 1986) at 23. Both Towers and Close became members of the Twenty Club in Montreal. A businessman's club, it was limited to twenty and permitted experience in public speaking and debating. See Fullerton at 21.

68 "Red Feather" *Montreal Gazette* (31 July 1964).

69 Richard W Pound, *Chief Justice W.R. Jackett: By the Law of the Land* (Montreal and Kingston, ON: McGill-Queen's University Press and the Osgoode Society for Canadian Legal History, 1999) at 300.

of Insurance[70] before he was seconded to CDIC. McDonald supplemented what Davis was teaching Sabourin, explaining the legislative aspects of CDIC's mandate and role. Sabourin and McDonald began a working list of amendments that should be made to the *CDIC Act* and regulations so that when the departments of justice or finance asked if they needed legislative changes, they would be ready. If they experienced a problem under the Act or the regulations, they jotted down notes on their list. As a result, Sabourin became very knowledgeable about the legislation and the regulations and always looked to them when issues arose. As Sabourin studied the purposes of CDIC, he came more and more to believe that CDIC had a key role to play in promoting competition in the financial services sector, making it easier for new entrants to compete effectively for deposits with the larger, more established institutions.

The small staff of CDIC had a brief flurry of activity in 1979 when they packed up their files and possessions and moved out of their gloomy offices on Bank Street and into the new Place de Ville with its shopping complex at 112 Kent Street.[71]

As the 1970s came to an end, Sabourin and the other members of CDIC's small staff had no idea how dramatically things were about to change. The many aspects of deposit insurance that Sabourin had been absorbing would soon no longer be abstract principles, and his intimate knowledge of its governing statute and bylaws would soon be called upon.

The first inkling of those changes came in early 1980 when CDIC learned of the pending failure of Astra Trust Company, a small, federally incorporated trust company carrying on business in the Niagara peninsula of Ontario. Initially it was thought that the company could be saved by providing it with some liquidity. CDIC made $8.4 million in loans to help the company meet its obligations to its depositors. CDIC's loans were secured by mortgages and bonds held by Astra Trust.[72] It soon became clear, however, that this company

70 CDIC, *Annual Report* (1985) at 10.

71 CDIC, "35 Years Strong 1967–2002" *Annual Report* (2003) at 63.

72 CDIC, *Annual Report* (1980) at 3.

could not and should not be saved. It was, in fact, a vehicle for fraud. The federal regulators decided to liquidate the company and the CDIC board decided to pay the holders of insured deposits.

The circumstances bore a striking resemblance to Commonwealth Trust more than a decade earlier. Here too the trust company took money from the public and funnelled it into a network of related companies involved in dubious real estate deals. But unlike Commonwealth Trust, there was no lax provincial regulator that could be blamed for condoning or ignoring what was going on. CDIC had been created to ensure federal inspection of provincial institutions, which were seen as the threat to the financial system, but here a fraud had been perpetrated by a federally licensed company. It had been incorporated just a few years before on 12 November 1976.

The Astra Trust matter was not only the first call on the assets of CDIC for a decade, but it was a personal embarrassment for Finance Minister Allan MacEachen and for Dick Humphrys. Both would later be sued personally by eighteen of the disgruntled depositors of Astra Trust who alleged that these federal officials had been negligent in licensing and inspecting the trust company.[73] Although Justice Patrick Mahoney of the Federal Court would later rule that they were not personally liable, there could be no denying that the system had not worked as was intended. Barry Brace, vice-president of Deloitte Haskins and Sells Limited, which acted as the receiver for the related company, Re-Mor Investment Management Corporation (Re-Mor), said as much in a 24 February 1981 letter to Dick Humphrys and Jack Close:

> With respect to any allegations of negligence by the two levels of government in licensing and regulating Astra Trust and Re-Mor, we are led to conclude:
>
> 1. There were facts available to various government officers which, if they had been properly integrated, would have suggested that neither Astra Trust nor Re-Mor should have been licensed.

73 "Ottawa Ruled Not Liable for Astra Trust Losses" *Montreal Gazette* (27 April 1982).

> 2. There were from the beginning repeated incidents, breaches of undertaking, breaches of license conditions which indicated a clear and present danger that the principals of the trust company were functioning without any concept of fiduciary obligation.
>
> Opportunities presented by these warnings to conduct a thorough investigation, rigidly control the operations, correct the improprieties or ultimately close the operations were not taken.
>
> Decisive action was not taken by any level of government in the face of these repeated opportunities until the depredations were too far advanced. There was jurisdictional confusion between the responsibilities of different levels of government as well as those of different departments and authorities. This confusion was a major contributor to the damage that occurred.[74]

Ironically, the principals of Astra Trust would have preferred to have had their company licensed by the Ontario government. In 1975, Carlo Montemurro; his wife, Santo; and several associates[75] had applied for an Ontario trust company licence but had been turned away. Exploiting some political contacts,[76] they had, however, been able to acquire a federal licence despite concerns in the federal bureaucracy about "some questionable activities by the principal figures in prior years."[77] The Montemurro group was very pleased to add a trust company to their corporate group. Starting in 1972, their companies had been raising funds to finance a number

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74 Ontario, Legislative Assembly, Official Report of Debates (Hansard), 32nd Parl, 2nd Sess (20 January 1983) (Mr Cunningham).

75 See Open Corporates, online: opencorporates.com/companies/ca/0156221.

76 A Select Committee of the Ontario Legislature found that "[w]hile the administration of the relevant federal laws is beyond the jurisdiction of the committee, it has received evidence indicating that political influence was exerted on federal officials to incorporate and license Astra Trust as a federal trust company. The committee invites the Parliament of Canada to examine the transcript of its proceedings and to take such action as it deems appropriate" (see above note 74). See also "Three Found Not Guilty in Astra Trust Fraud Case" *Ottawa Citizen* (13 July 1984).

77 Humphrys, *History*, above note 9 at 108.

of speculative ventures, including a condominium project in Spain. They had already raised millions of dollars by assuring people that they were offering secure investments with a good return. They knew that Astra Trust would make fundraising easier because they could offer investments insured by CDIC. As Ontario's minister of consumer and commercial relations, James Francis "Frank" Drea would later say in the Ontario legislature, "the Canada Deposit Insurance Corporation [was] dangled as the selling feature."[78] It was the first, but certainly not the last, time that CDIC would have to deal with a member institution seeking to exploit the deposit insurance it provided. After a lengthy Ontario Securities Commission investigation, criminal fraud charges were brought against Carlo Montemurro, his wife, and six others. Five of the eight would later be found guilty.[79]

When Astra Trust was put into liquidation in July 1980, its principals challenged the action. They alleged that the government had acted precipitously without proper notice to the shareholders.[80] In an interim order, the court froze the assets until proper notice could be given. But some of the depositors of Astra Trust needed access to at least some of their money. In an effort to meet their need, CDIC sent out $1,500 cheques to those who requested immediate cash.

Once the liquidation was permitted to proceed, cheques for the full amount of each insured deposit needed to be sent to those determined to be eligible. But this was easier said than done. CDIC lacked the staff and resources to itself prepare and send out these cheques. Arrangements had to be made with the liquidator to do so on CDIC's behalf. But there were also questions about which deposits were in fact insured. Astra Trust had done its best to muddy the waters on this issue: it had established a sort of mutual fund known as the Agency Trust Fund, and investors in the fund had been led to believe that they were acquiring a sort of guaranteed investment

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78 Ontario, Legislative Assembly, Official Report of Debates (Hansard), 31st Parl, 4th Sess (7 November 1980) at L110.

79 "Three Found Not Guilty in Astra Trust Fraud Case" *Ottawa Citizen* (13 July 1984).

80 Humphrys, *History*, above note 9 at 109.

certificate (GIC) insured by CDIC. Technically the investment was not a GIC and therefore not covered by deposit insurance, but CDIC's board was concerned that an investment in this fund might be found by the courts to be an insured deposit. A legal opinion was obtained that suggested that a case could indeed be made that the investment qualified as an insured deposit.[81] It was decided that the investors in the fund would be treated as eligible for compensation. A different decision was made with respect to investment certificates sold by Astra Trust but issued by its related company, Re-Mor. Here too, Astra Trust had led those buying this investment to believe that their money was insured by CDIC. The Ontario government tried very hard to convince CDIC to stand behind these investments as well,[82] but Re-Mor was an unregulated provincial corporation not covered by the CDIC insurance. The federal government was clearly of the view that if anyone ought to step up to deal with Re-Mor, it was Ontario.[83] Besides, insuring its investment certificates would set a dangerous precedent for CDIC.[84] At about the same time, another fraud was being dealt with: the investors in the debentures and syndicated mortgages of the Argosy Financial Group of Canada (Argosy) were learning that they would recover little of their money because Argosy was an unregulated entity like Re-Mor.[85] Would it be fair, CDIC's directors asked, to treat those who had purchased the certificates of Re-Mor differently than those who had invested in similar instruments issued by Argosy just because one set of investors had made the investment through a CDIC member?[86] The Federal Court would later uphold CDIC's

81 *Ibid* at 110.

82 *Ibid* at 110–11.

83 House of Commons, Official Report of Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24382 (Hon Paul J Cosgrove).

84 CDIC, *Annual Report* (1981) notes at 10 (note 8b to the financial statements) that certain claims had been made with respect to non-member, related companies but "the Corporation is still of the opinion that it is not liable in that connection."

85 "120 Fraud Charges Laid Against Argosy" *Ottawa Citizen* (4 November 1982).

86 To answer that question in the negative once and for all, an amendment to the *CDIC Act* was prepared that would have required CDIC member institutions

decision.[87] Associate Chief Justice James Jerome determined that a couple who had put their money into a Re-Mor-issued guaranteed mortgage investment sold by Astra Trust were not entitled to reimbursement from CDIC since their money was not in an investment that qualified as an insured deposit. The same judge, however, allowed another woman to claim reimbursement from CDIC because she had not authorized Astra Trust to put her money in this type of investment. Even with the exclusion of most of the Re-Mor investments, by the end of the year, CDIC had paid out just over $21 million dollars.[88]

Astra Trust was one of three calls made to CDIC for assistance at the beginning of the 1980s. In mid-1981, District Trust, a small Ontario incorporated company operating in southwestern Ontario ran into difficulty. CDIC arranged for Canada Trust to deposit $10 million dollars in District Trust in return for a CDIC guarantee. This was a technique that CDIC would come to use often in the future. When the Canada Trust deposit proved inadequate in meeting the liquidity needs of the small trust company, the Ontario government closed District Trust down in early 1982. CDIC sought bids from member institutions to manage the run-off of its assets; Sterling Trust was chosen. It agreed to advance funds to District Trust as needed to meet its depositor obligations, and CDIC agreed to guarantee those advanced funds. Sterling Trust liked the arrangement because it received a favourable rate of return on the money it advanced without fear of loss.[89]

While CDIC was dealing with District Trust and wrapping up Astra Trust, it was called upon by its Quebec counterpart. The Quebec

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selling uninsured investments to make that fact clear. Paul Cosgrove, the minister of state (finance) discussed this amendment in April 1983. See House of Commons, Official Report of Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24380–81. This amendment was passed but never proclaimed in force, although a similar provision was introduced in 1987. Humphrys, *History*, above note 9 at 115.

87 See *Boomsma v Canada Deposit Insurance Corp*, [1983] FCJ No 404 (TD).

88 CDIC, *Annual Report* (1981) at 9 (note 5 to the financial statements).

89 Humphrys, *History*, above note 9 at 112.

Deposit Insurance Board (QDIB) asked CDIC for short-term funding under the 1968 agreement to help it provide needed liquidity for certain Quebec savings institutions known as *caisses d'entraide*.[90] CDIC agreed to give the QDIB a $100-million line of credit. As of 31 December 1981, $55 million had been drawn down, $25 million of which had been repaid. Then in January 1982, an additional $25 million was provided to QDIB.[91]

During the board discussion of this Quebec request, Jack Close, recognizing the political sensitivity of the matter, offered to cede the chair to Gerald Bouey of the Bank of Canada. Bouey would have none of it. He too was aware of the political overtones, but to him that was all the more reason why everything had to be done strictly in accordance with the board's rules and the statute's assigned responsibilities.[92] Bouey reminded Close that his role as chair was clearly set out in the statute and that this legislation had to govern. The young Sabourin was impressed.

Sabourin was less impressed by those pressing to raise the limit on insured deposits. As early as 1975, an Ontario Select Committee on Company Law had recommended that the $20,000 limit on insured deposits be raised,[93] but nothing had been done. By the fall of 1982, there was a growing concern being expressed that this limit was no longer adequate.[94] High inflation meant that the effective coverage had been substantially reduced. In July 1982, the Commons Standing Committee on Finance Trade and Economic Affairs suggested that the limit be increased to $60,000.[95] CDIC's board feared that a tripling of the limit would mean that premiums paid by CDIC's members would have to be substantially increased.[96] The

90 *Ibid* at 113.

91 CDIC, *Annual Report* (1981) at 3

92 Interview, JP Sabourin, above note 6.

93 Ontario, Legislative Assembly, Select Committee on Company Law, *Report of the Select Committee on Company Law on Loan and Trust Corporations* (1975) at 49 (Chair: William Hodgson).

94 "Insurance Limits on Deposits to be Raised" *Montreal Gazette* (11 January 1983).

95 Ontario, Legislative Assembly, Official Report of Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24380.

96 Humphrys, Discussion Papers, above note 8 at tab 1, p 8.

board had suggested a $40,000 limit. Despite the concerns of the CDIC board, the $60,000 was approved by cabinet before the end of 1982. Then on 17 January 1983, Paul Cosgrove, the minister of state finance, told the House of Commons that the minister would be introducing the legislation shortly.[97] It would pass on 27 April 1983.[98]

Between the time when the increased limit was proposed and when it became law, the situation CDIC faced would change substantially. If Sabourin and the other members of CDIC's small staff thought that they had been busy in the first three years of the 1980s, they were about to learn what busy really meant. The coming year, 1983, was to put demands on CDIC that it had never imagined, let alone experienced. And they would face those demands without Dick Humphrys on their board or overseeing their annual inspections.[99] The last of the original directors from 1967, Humphrys retired from the post of superintendent of insurance in April 1982.[100]

It was originally thought that they would also have a new chairman. Jack Close's term was set to expire in November 1982, but the newly recruited replacement, sixty-four-year-old Robert De Coster asked for a three-month delay in taking the chair. He had just completed a term as president of the Quebec government-owned steelmaker Sidbec. That steel company had been losing millions of dollars for years and De Coster had been charged with finding a buyer for it.[101] It was a very demanding position that put him very much in the public eye. He explained to the federal government that he needed the three months to relax and unwind. He wanted a lengthy winter vacation in Florida.

The government was happy to accommodate their new recruit. He seemed amply qualified to assume the role, and if that meant waiting a few months, then so be it. On paper, De Coster did seem to be well-suited to the job. He was from a distinguished Quebec

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97 House of Commons, Official Report of Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24380.

98 SC 1980–81–82–83, c 148.

99 Humphrys did continue as an adviser to the board.

100 See CDIC, *Annual Report* (1982) at 4.

101 "For Sale: A Steelmaking Loser" *Montreal Gazette* (17 July 1982).

family that traced its roots back a century before the Conquest when, in April 1647, Gilles De Coster had landed in New France.[102] De Coster had held a number of positions with the Quebec government or its related entities, including five years as the deputy minister for industry and commerce.[103] An accountant by profession, he knew something of banking, having served as a manager for Royal Trust Company from 1959 to 1965.

De Coster, for his part, thought the job was well-suited to what he was seeking. After years of challenging positions, he was looking for a less demanding one, and CDIC's chairmanship seemed perfect. But while he was vacationing in Florida, the job that he had accepted changed beyond recognition. He found that he had jumped from the frying pan into the fire.

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102 Gabriel Debien, "Liste des engagés pour le Canada au XVIIe siècle (1634–1715)" (1952) 6:3 *Revue d'histoire de l'Amérique française* 374–407 at 378.

103 *The Canadian Who's Who 1979* (Toronto, ON: University of Toronto Press, 1979) at 255. See also "High Technology Needed" *Montreal Gazette* (28 February 1974) and "De Coster Lands Job with Ottawa" *Montreal Gazette* (18 February 1983).

Depositors line up to withdraw their funds from the branch of the Home Bank at Queen and Bathurst streets, Toronto (22 December 1923).

Dick Humphrys played an integral role at CDIC's birth and was a key player thereafter (c 1965–66).

Mitchell Sharp, Minister of Finance, and the consummate Parliamentarian who would oversee the creation of CDIC (1967).

$10-million Crown company planned

Sharp places deposit insurance legislation on agenda

The *Globe and Mail* reports that Ottawa is to create CDIC (10 January 1967).

La "ruée vers l'or"

Pendant que l'invasion d'une banque par ses clients apeurés la vide de ses fonds en quelques heures...

Un événement pour le moins imprévisible a pris naissance au début de la semaine et s'est accentué dans la journée d'hier. Il s'agit ici d'une "invasion massive" dans quelque succursales de la Banque d'Epargne de la Cité et du District de Montréal. Par des centaines et des centaines de clients qui, fébrilement accouraient chercher leurs économies.

La journée d'hier a été particulièrement "néfaste" pour les dites banques, si l'on considère que les retraits ont dépassé les 3 millions de dollars.

On se demande encore aujourd'hui qui peut-être à l'origine de cet état de chose pour le moins surprenant. Les dirigeants eux-mêmes de différentes succursales littéralement "vidées", se voient eux-mêmes les plus surpris et les plus décontenancés de ces faits étranges.

Rumeur

Bien qu'on se perd en conjecture, tout porte à croire qu'une s'accentuer lors d'une émission radiophonique en langue grecque, et dans laquelle le brave ou l'impétueux animateur aurait fait mention d'une faillite imminente de l'institution bancaire en cause.

Jusqu'à maintenant les recherches effectuées auprès de nos postes radiophoniques locaux n'ont pas permis de dénicher le ou les coupables.

Notre représentant s'étant rendu sur les lieux constata "de visu" l'ampleur d'un étrange "pèlerinage" vers une des succursales, notamment celle sise angle Avenue des Pins et Laurier. Comme à une faire des heures supplémentaires pour répondre aux réclamations de chacun.

...les autorités apportent toutes les preuve propres à rassurer la population montréalaise

La Banque de la Cité et du District de Montréal a pris dès hier soir des mesures énergiques pour mettre fin à la ruée de ses déposants dans cinq succursales du quartier grec de Montréal.

— Le nouveau consul des Grèces à Montréal,

$394,000,000 en liquide, obligations fédérales et provinciales et d'importants crédits ouverts avec la Banque du Canada.

Promesses

— Le président de la Banque du Canada, M.

A run on the Montreal City and District Savings Bank grabs headlines in the *Journal de Montréal* (27 January 1967).

CANADA

Annual Report

CANADA
DEPOSIT
INSURANCE
CORPORATION

Year Ending December 31
1967

CDIC's first annual report — a slim, unassuming document (March 1968).

Antonio Rainville, formerly of Montreal City and District Savings Bank, becomes CDIC's first chair (shown in 1968).

Jean Pierre (JP) Sabourin, pictured here in 2001, would rise from a bookkeeper in 1976 to become the longest-serving president in CDIC's history.

Chapter Four

A Dramatic Turn, 1983–1984

[T]he situation had taken a dramatic turn.

— ROBERT DE COSTER, 1984

THE CANADA DEPOSIT INSURANCE Corporation's 1982 annual report, the last of the Jack Close era, talked proudly of the fact that CDIC's revenues exceeded its expenses by $24.9 million and that almost all of the money that had been advanced to cover the insured deposits of Astra Trust had been recovered.[1] But the last paragraph of the report hinted at the disruptive events that were already bringing significant change to CDIC. It noted that subsequent to the year end, in January 1983, five members of CDIC had been placed under the control of regulatory authorities. Three of those companies, Crown Trust, Greymac Trust, and Seaway Trust, had been seized by the Ontario government on 7 January, and their two federal affiliates, Greymac Mortgage and Seaway Mortgage, had been put under federal government control a day later. These seizures were unprecedented and signalled a huge change in CDIC. This mighty mite that had gone largely ignored for years would now be front page news.

1 CDIC, *Annual Report* (1982) at 3.

The so-called Trust Companies Affair arose out of changes in the real estate market and specifically in the Ontario rental apartment market. At the beginning of the 1980s, Cadillac Fairview, a large real estate company, had found itself in a very difficult situation.[2] It had acquired many apartment buildings using over a billion dollars of borrowed money. Not only were its borrowings enormous by the standards of the day, but they had been structured at a floating rate of interest. By 1980, property values were plummeting and interest rates were skyrocketing to 20 percent.[3] As if this was not bad enough, Ontario had imposed rent controls, limiting the return that Cadillac Fairview could enjoy on its existing massive investment. Rent increases were limited to 6 percent, far below the company's cost of servicing its debt and maintaining its properties. Not surprisingly, Cadillac Fairview wanted out. But who would buy those properties? Leonard Rosenberg, a brash, entrepreneurial real estate developer, was interested. What to Cadillac Fairview was a terrible burden was seen by him as a great opportunity. He was a determined sort. He was already in a battle with Ontario's moneyed elite over the control of the long-established and respected Crown Trust and a series of related companies.[4] Rather than be deterred by

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2 Terry Belford, *Trust: The Greymac Affair* (Toronto, ON: James Lorimer & Sons, 1983) [Belford].

3 CDIC, "35 Years Strong 1967-2002" *Annual Report* (2003) at 67 has a chart showing bank rates for Canada at 31 March of each year from 1967 to 2003. The peak rate shown was 20.8 percent in 1981. The actual high point was slightly later in 1982 when it reached 22.75 percent. See Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 202. In 1981, the Canada Savings Bonds paid 19.5 percent.

4 Only a few years before, the moneyed establishment had successfully fought a similar attempt by Robert Campeau, another entrepreneurial real estate developer from Ottawa, to acquire the shares of Royal Trust. The idea of a real estate developer taking control of one of Canada's most respected trust companies was appalling to many. To them, a trust company ought to be a conservative custodian of estate funds and not a vehicle to finance a developer's real estate projects. At that time, the question was whether the board of directors of Royal Trust could reject a bid that was well in excess of the price at which its shares were then trading. Ronald Robertson of Fasken & Calvin, who would later play a key role in CDIC, had advised the board that they could

the opposition to his acquisitions, Rosenberg set out to prove that he could complete those deals and use them as a stepping stone to even larger ones. What could be larger than the Cadillac Fairview deal? But the Cadillac acquisition would require more money than he himself could raise, even with Crown Trust. He needed partners. He found willing helpers in Bill Player whose Kilderkin group controlled Greymac Trust, and in Andrew Markle who controlled Seaway Trust. It was Player who developed the plan. The key was to acquire the package of Cadillac properties as cheaply as possible as a group and to then flip the individual properties to a series of buyers who would acquire them using borrowed funds. The new owners of the properties would be able to substantially increase rents because a new owner was permitted to increase rents beyond the limits imposed by rent controls if the increase was necessary to meet its financing costs. Rosenberg and Markle liked the plan and they proceeded to implement it. First, Player sold Rosenberg the Greymac companies. Then, using money from Crown Trust, Greymac Trust, and Seaway Trust for the $40.5 million down payment, Rosenberg's Greymac Credit acquired the Cadillac Fairview properties for $270 million.[5] This company in turn flipped the properties to the Kilderkin group for $312.5 million, $42.5 million of which was a down payment. The Kilderkin group in turn flipped the properties to a series of numbered companies for more than $500 million, plus a property management contract for the Kilderkin group. Although the three stages involved deals totalling more than a billion dollars, the only cash that flowed was $152 million from the three trust companies ($76 million from Seaway Trust, $56 million from Greymac Trust, and $13 million from Crown Trust) for which they received *third* mortgages on the properties. What Player, Rosenberg, and Markle did not take sufficiently into account was the reaction of the approximately 11,000 tenants of the flipped apartment buildings

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reject such an offer and fight to defeat the bid if they truly believed that such a bid was not in the best interests of the corporation. See the Interview of Mr Ronald Robertson by the Osgoode Society Oral History (29 January 2010, revised July 2013) at his offices in downtown Toronto.

5 The transactions are described in detail in Belford, above note 2 at 158–59.

and their ability to fight back. Those tenants, on being told that they would have to pay much higher rents, complained loudly and continuously to the press and the politicians, arguing that the rent-control law was being circumvented. The press readily took up their cause. Day after day for two months, the Toronto newspapers made the tenants' complaints headline news. The Ontario government found itself at the centre of a media storm that it had not created and little understood. Looking for a way out, it decided to look into the transaction. James Morrison of Touche Ross & Co was appointed to conduct an examination. What he discovered was a series of these sorts of artificial transactions going back several years. When questioned, the principals behind the three trust companies assured Morrison and the Ontario regulators that everything was above board. Moreover, the money paid to Cadillac Fairview was much less than the properties were really worth — they were fire sale prices. The higher resale price better reflected the real value of the properties and had been paid by Saudi investors anxious to acquire top-quality rental properties in Canada's wealthiest province. When this explanation became known, it reassured neither the government nor the newspapers. The *Toronto Sun* ran the headline "Saudis New Landlords for 11,000."[6] More troubling to Morrison and Ontario's regulators was that they could not identify the mysterious Saudis behind the numbered companies. They began to think that these anonymous Saudis had been invented and that the Cadillac Fairview transactions, as well as several others financed by the three trust companies, were a scam.

In late December 1982, the Ontario government brought in John Leonard "Jack" Biddell, a legend in receiverships.[7] He was the retired former chief executive officer of The Clarkson Co Ltd and a key player in the liquidation of Atlantic Acceptance, Prudential Finance, and Astra Trust. On Boxing Day, Biddell called Robert "Bob" Hammond

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6 *Toronto Sun* (11 November 1982) at 1. For a detailed description of the press coverage see Terence Corcoran & Laura Reid, *Public Money, Private Greed: The Greymac, Seaway, and Crown Trusts Affair* (Toronto, ON: Collins, 1984) at 241–58 [Corcoran & Reid].

7 The following scenario is based on Corcoran & Reid, *ibid* at 284–96.

who had succeeded Dick Humphrys as the superintendent of insurance to tell him that the Ontario government was thinking of seizing Crown Trust, Greymac Trust, and Seaway Trust. Hammond was invited to a meeting in Toronto on 28 December. He accepted the invitation, bringing with him Jack Close, as well as Harry McDonald, CDIC's internal legal counsel, and Richard Page, who headed the loan and trust company division of the Department of Insurance. In a boardroom at Tory Tory Deslauriers & Binnington (Tory Tory), CDIC's outside lawyers, Biddell set out the situation with the three trust companies and their federal subsidiaries. Biddell wanted to know if CDIC would stand behind a provincial takeover of the three trust companies. It was not an easy question to answer for a number of reasons. Obviously, any such support would require the approval of the CDIC board. But more than that, Hammond and his team questioned whether CDIC could act when there was no run on the trust companies and they were not technically insolvent. A few days later, on 4 January, a CDIC board meeting was held by conference telephone. Gathered in Toronto were Jim Baillie, Charles Scott, and three other lawyers from Tory Tory as well as several CDIC board members and, by invitation, Jack Biddell. In Ottawa, the other board members were joined by Dick Humphrys, who had been called in as an adviser. After a lengthy debate that considered several options, it was decided that CDIC would support Ontario's proposed seizures. The reality is that CDIC had little or no control over what was happening. In the lead up to the Ontario government takeovers and the early days following, CDIC was, in the words of Paul Cosgrove, the minister of state (finance), "a minor player in the larger picture."[8]

Even with CDIC's reluctantly given support, the Ontario government faced real problems. The Ontario *Loan and Trust Corporations Act*[9] did not authorize the seizures that it was proposing. Under the Act, any such action required notice, a hearing, and a court order.

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8 See House of Commons, Official Report of Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24385 (Hon Paul J Cosgrove).

9 RSO 1980, c 249.

The Ontario government, however, did not want to follow this long-established legal process because it would be time-consuming and open to legal challenge and appeal. Instead, it proposed special legislation that would permit it to act without notice or a hearing. Many lawyers would later object to what was seen as a financial *War Measures Act*.[10] It was legislation that gave the government broad discretion to seize any Ontario trust company. All that was required was an opinion that actions had been taken by the management of the company that were not in the public interest. In proposing speedy passage of the new legislation, the minister of consumer and commercial relations, Bob Elgie, asked the legislature to trust that it was needed and promised that it could be reviewed later. As a result, this incredibly sweeping legislation was passed by the Ontario legislature on 21 December 1982 without public notice or any debate.

CDIC found itself in the midst of an unprecedented regulatory juggernaut that was attracting enormous public attention and spurring numerous questions in both the Ontario legislature and the House of Commons.[11] Day after day, the newspapers chronicled the Ontario government's actions, the supporting actions of the federal government, the hostile questions that came from the opposition parties, and the legal challenges that lawyers for the seized companies brought to contest those actions.[12]

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10 The *War Measures Act* was an extraordinary piece of legislation passed during WWI that gave the federal government special powers to act without following normal legal procedures or meeting its civil rights obligations. It had been invoked during the FLQ crisis in Quebec in 1970, See ML Friedland, *National Security: The Legal Dimensions* (Ottawa, ON: Macdonald Commission, June 1979).

11 Conservative MP Don Blenkarn led the attack in the House of Commons. See, for example, House of Commons, Debates (Hansard), 32nd Parl, 1st Sess (12 April 1983) at 24385 (Hon Paul J Cosgrove).

12 Working with Ron Robertson, Ron Rolls, Robert McDowell, and Allan Rock of Fasken & Calvin, I was one of those lawyers opposing the actions of the Ontario government and the acquiescence of the federal regulators. Our legal challenge was based on the Ontario government's failure to follow the principles of natural justice and the legislation then in force. There had been no notice, no hearing, no opportunity to contest their conclusions. The customary procedural safeguards had been overridden by special statute. See *Seaway*

Although CDIC had not initiated the takeovers, once they had been carried out it had a significant role to play. All five of the seized companies were members of CDIC with substantial insured deposits. CDIC had to deal with the implications of those actions in a way that protected the insured depositors while minimizing its financial exposure — no easy task under the circumstances. The problem was that Ontario had little legal authority for what it had done. The takeovers were good politics and they may well have been fiscally responsible. Certainly the Ontario government was hailed by the public for acting promptly and decisively to protect the Cadillac Fairview tenants and the public at large. But their actions were on shaky legal ground. It was seen by the principals of the three trust companies, with some justification, to be expropriation without compensation.

In these extraordinary circumstances, CDIC could not use its customary techniques for dealing with a failed financial institution. They were not available; the companies were not insolvent. They had been meeting their liabilities as they came due and they had assets that management could argue had a value well in excess of their liabilities.[13] True, the Ontario government and its experts were of the opinion that the value of some of the trust company assets had been wildly inflated, but that had not yet been proven. At this point, it was just a difference of opinion. So CDIC could not seek a court order for "winding-up" (liquidation) and then pay out the insured deposits. Any such proceeding would be hotly contested by the principals behind the seized companies and the results were unlikely to be favourable to CDIC. Neither could CDIC work with the Ontario government to sell the trust companies to one or more third parties. The Ontario government had de facto control, but did not have any claim to the shares of the companies. A great deal of thought was given to how best to proceed.

Trust Company v Ontario (1983), 143 DLR (3d) 252 (Ont HCJ) and *Re Seaway Trust Co et al and The Queen in right of Ontario et al* (1983), 41 OR (2d) 532 (CA).

13 Richard Humphrys, *History of the Origins and Early Operation of Deposit Insurance in Canada* (1991) [unpublished, archived in the files of the Canada Deposit Insurance Corporation] at 120 [Humphrys, *History*].

In the case of Crown Trust, the largest company in the best financial position, a further piece of special legislation was passed by the Ontario legislature authorizing the provincial government to close the business and to retain a third party to manage the assets and pay out liabilities as they came due, winding the company down in an orderly manner over five years.[14] This deal structure was termed an agency run-off.[15] Offers were solicited from CDIC-member institutions willing to act as the managing agent, and the Halifax-based Central Trust was chosen. Central Trust had been trying unsuccessfully for some time to acquire Crown Trust and become a truly national trust company. For Central Trust, it was a way to do indirectly what it had been unable to do directly.[16] Central Trust's management was very pleased because it could grow its business with little risk since CDIC would be guaranteeing repayment of the money that it loaned to Crown Trust to pay out that company's liabilities. And grow its business it did — Central Trust's assets under administration went from $452 million to $1.2 billion, a 173 percent increase. And its profits went up. By the end of 1983, it would have a $9.2 million profit — a 226 percent increase.

The situation was more complicated with Greymac Trust and Seaway Trust. The special legislation that Ontario passed to permit the agency run-off for Crown Trust did not apply to the other two seized companies, and each had a federal mortgage company subsidiary that would not have been covered by the Ontario legislature even if the trust company had been. Nevertheless, Ontario's lawyers assured CDIC that Ontario could enter into a similar arrangement for Greymac Trust. Again bids were sought for the run-off agent.[17] This time, Standard Trust was chosen. At the same time, the federal regulator petitioned the court for a receivership order for Greymac

14 CDIC, *Annual Report* (1984) at 18, note 4.

15 Humphrys, *History*, above note 13 at 121–24. See also Belford, above note 2 at 200–4.

16 Harry Bruce, *A Century at Central Trust: The Story of its Growth* (Halifax, NS: Nimbus Publishing, 1985) at 69–72.

17 Humphrys, *History*, above note 13 at 124–25. See also Belford, above note 2 at 233 and Corcoran & Reid, above note 6 at 324.

Mortgage. When that was obtained, an order was obtained naming Standard Trust as the agent for the federal company as well.

Seaway Trust was handled somewhat differently.[18] Here the controlling shareholder was now Midland Bank. Andrew Markle had pledged his controlling shares to that bank as security for certain loans. Following the Ontario government takeover, Markle had been unable to meet his loan obligations and the bank had taken the shares.[19] CDIC decided to let the Midland Bank act as the run-off agent for both the provincial trust company and its federal subsidiary.

In each instance, CDIC entered into an agreement with the agent and the seized company under which CDIC provided funds to permit the seized company to meet its liquidity needs. Those needs would prove to be very substantial. By the end of 1983, CDIC would provide almost a billion dollars to these companies. Part of the reason why the call on CDIC grew so large was that the agency run-off approach meant that all deposits were in effect protected by CDIC and not just the insured depositors. Luckily, the amount the CDIC was entitled to borrow from the federal treasury had been increased to $1.5 billion in connection with the increase in the insurance limit.

The chartered banks viewed these events in horror. They complained bitterly through the CBA. The banks were substantially funding CDIC's operations through their premiums and they thought that the additional cost to CDIC of the agency run-off was unwarranted. But in the circumstances, CDIC had little choice. Knowing that such concerns would be raised, CDIC's board had studied its options very carefully. A complex formula was used to try to determine the ultimate cost of each alternative to CDIC. If the companies were permitted to become insolvent and then liquidated, how would the cost to CDIC compare with the cost of the agency run-off?[20] They looked at the amount of the insured deposits that would be paid out, the interest on money that would have to be borrowed from the Consolidated

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18 Humphrys, *History*, above note 13 at 126.

19 On the details of these loans and the security taken, see Belford, above note 2 at 228–29.

20 Humphrys, *History*, above note 13 at 123–24.

Revenue Fund, the fees of the liquidator, and the likely return on the sale of assets. On the other hand, they considered the fees of the agent, any allowance that would be required by the agent to pursue business opportunities, the interest to be paid on deposits, the maturity profile of the assets and liabilities, and any potential loss on realization of the assets by the agent. It was determined that the agency run-off would be less expensive.

The trust companies affair was an incredible learning experience for Sabourin. He learned about dealing with the press, managing the myriad questions that were coming from reporters. Sabourin also learned something about dealing with outside legal counsel. Jim Baillie and the Tory Tory law firm had done a good job. But in Sabourin's view, they had taken the lead rather than simply advising. Baillie, a very able counsel, undoubtedly recognized that his client, CDIC, lacked the experience to deal with the situation. Baillie played a large role in bringing the federal government in line with the Ontario government, but Sabourin resented the fact that CDIC management was shunted to the side. Even more importantly, Sabourin learned that CDIC needed to take more control of such situations. Here, Ontario had taken the lead. CDIC had been consulted, but the reality was that Ontario had developed a plan and CDIC had little input, even though it was CDIC that bore the brunt of the financial impact.

In February 1983, little more than a month after the seizures, chairman designate De Coster returned from Florida and Jack Close's extended term as chairman finally came to an end. The three-month extension had been the most challenging time of Close's tenure, and he was undoubtedly relieved that it was over. One suspects that De Coster was not nearly as happy to be assuming the post. The office that he had accepted a few months before had changed beyond recognition. In the fall of 1982 when he had reviewed CDIC's operation, he had concluded that things would likely be "uneventful."[21] Before 1983, the insurer had been called upon in "only three isolated cases." The total deposits in these troubled institutions had barely reached

21 Robert De Coster began his "Chairman's Overview" in the 1984 *Annual Report* with this comment ["Chairman's Overview," 1984].

$60 million. Not surprisingly, he had expected that he would play a minimal role — as his predecessors had done — leaving decisions to the financial and regulatory experts on the CDIC board. That had certainly not been the case in December and January. Nevertheless, he fully expected things to return to normal and he acted accordingly.[22] He was seldom in the CDIC offices, and when the officers of CDIC sought his input, they had to drive to Quebec City or talk to him on the phone from his winter place in Florida. At the board meetings, he honoured the letter but not the spirit of Gerald Bouey's advice to Jack Close. He did not turn over the chair to the governor of the Bank of Canada, but he nevertheless let him and Bill Kennett run the show.

De Coster was wrong in thinking that things would soon return to normal. As he would later acknowledge, everything had changed in January 1983 — "the situation had taken a dramatic turn."[23] The same decline in property values and high interest rates that caused problems for Cadillac Fairview, also created problems for others. Things were especially bad in Western Canada, where a decline in oil prices had compounded these other problems. The first problem that CDIC had to face was with Fidelity Trust. Peter Pocklington, best remembered as the owner of the Edmonton Oilers hockey team who sent superstar hockey player Wayne Gretzy to the LA Kings, had purchased a controlling interest in Fidelity Trust in 1979 through Pocklington Financial Corporation.[24] Fidelity Trust was

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22 Interview with JP Sabourin by author (7 August 2015) in Ottawa [Interview, JP Sabourin].

23 "Chairman's Overview," 1984, above note 21.

24 On Fidelity Trust's operations, see Lesley Taylor, "Former U.S. President Gerald Ford Said Friday He Has . . ." (16 April 1982), United Press International (archives), online: http://upi.com/5017460t; UPI, "Millionaire Businessman Peter Pocklington Said Friday Fidelity Trust Co., . . ." (16 April 1982), United Press International (archives), online: http://upi.com/5017711t; and Lesley Taylor, "The United States Will Be 'Strictly and Solely Behind ..." (16 April 1982), United Press International (archives), online: http://upi.com/6034170t. See also UPI, "Fidelity Trustco, Owned by Edmonton Entrepreneur Peter Pocklington, Has . . ." (26 April 1983), United Press International (archives), online: http://upi.com/50736o5t. See also "Peter Pocklington Vague on Fidelity Trust Sale" *Ottawa Citizen* (6 May 1983).

heavily invested in western Canadian properties. Pocklington, who was running for leadership of the Conservative Party at the time, blamed Pierre Trudeau's national energy program for the problems being experienced by Fidelity Trust.[25] But the problems were much more complex. The oil and gas boom of the 1970s had led many in Alberta to believe that sustained growth had finally come to the west. Large real estate projects proliferated, and people rushed to buy houses. By 1982, however, the boom had gone bust and property values were in sharp decline. Companies began to cancel leases in industrial parks and individuals began to default on their mortgages. A joke began to circulate among bankers about a lender that had just taken possession of a 500-acre Alberta farm. It was a nice piece of farmland, he said, if only that it was not covered with houses.[26] Fidelity Trust, with much of its money in real estate projects linked to the oil and gas industry, was in serious difficulty. Its profits were a thing of the past, and its capital had been totally eroded. CDIC and the Alberta regulator encouraged Pocklington to put additional capital into Fidelity Trust, but he was unable to do so.[27] By 1 July 1983, it had joined the seized trust companies on CDIC's list of failed members. After a careful analysis of the costs of various alternatives, it was decided that again the arrangement would be an agency run-off.[28] CDIC arranged for First City Trust to assume management of the company.[29]

Fidelity Trust was not the only western financial services company in trouble. AMIC Mortgage Investment Corporation, a small Calgary-based operation, was affiliated with a real estate development company known as Abacus Cities. In the late 1970s, Abacus Cities had planned townhouse, duplex, and condo projects, and had

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25 *Ibid.*

26 Patricia Best & Ann Shortell, *A Matter of Trust: Greed, Government and Canada's $60 Billion Trust Industry* (Markham, Ontario: Penguin Books, 1986) at 304 [Best & Shortell].

27 Humphrys, *History*, above note 13 at 127.

28 *Ibid.*

29 "First City Trust to Take Part in Management of Fidelity" *Montreal Gazette* (28 June 1983).

sold interests in these projects to individuals as tax shelters. But the projects had run well over budget and Abacus Cities had turned to AMIC for substantial loans. When the land values fell, Abacus Cities collapsed and an investigation was initiated by the Alberta securities commission.[30] AMIC was dragged down with it. None of its deposits were in excess of the CDIC insurance limits, so it was decided that an agency run-off made no sense. In July 1983, it was put into liquidation and its depositors were paid off.[31]

In less than a year, seven members had ceased operation, joining Astra Trust and District Trust on the list of failed members with which CDIC was dealing. Together these failed members held almost $3 billion in assets, of which 85 percent was insured by CDIC.

For the first time in its short history, CDIC was garnering intense scrutiny, and many did not like what they saw. However, the *Ottawa Citizen* was generally supportive. It stated that CDIC was "a valued and little understood organization that generally serves Canadians well,"[32] but it was critical of CDIC's refusal to share information about what it was doing to handle the financial crisis. The newspaper concluded that CDIC had "a warm regard for the sensitivities of its member organizations and questionable views about the public's right to know." To the *Ottawa Citizen*, this was putting the interests of the management and shareholders of its member institutions ahead of the general public. In response to CDIC's statement that full disclosure might undermine its efforts to rescue troubled institutions, the *Ottawa Citizen* replied that such disclosure would reassure the public and dispel rumours.

James Morrison of Touche Ross & Co had a different sort of criticism.[33] The head of the Ontario government's inquiry into the seized trust companies was concerned that CDIC's insurance had facilitated the frauds carried out by these companies. Despite their

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30 Best & Shortell, above note 26 at 305–6.

31 CDIC, *Annual Report* (1984) at 10–11. See also Humphrys, *History*, above note 13 at 128.

32 "Bail Out Must Be in the Open," Editorial, *Ottawa Citizen* (29 August 1983).

33 See "Govts. Tighten Grip on Financial Firms" *Ottawa Citizen* (6 September 1983).

relatively small size and the risky investments they made, these trust companies had had no difficulty in raising funds from the public. Potential investors had not feared the loss of their funds because they knew that much of those funds were guaranteed by the federal government through CDIC. It was not that Morrison thought that CDIC and deposit insurance should be done away with: his suggestion was that Ontario's Registrar of Loan and Trust Companies ought to be able to terminate the membership in CDIC of any Ontario loan or trust company that the office considered to be engaged in inappropriate or risky ventures, or at least deny any such company CDIC protection for future deposits. Helen Sinclair, the director of public affairs for the CBA, considered both ideas extreme and unworkable. Any such measure would be the death knell of the affected company, she warned.[34]

The situation stabilized somewhat in 1984, but an additional member, Northguard Mortgage, failed and was put into liquidation in December.[35] In that year, the CDIC board also rethought its approach to Seaway Trust. Midland Bank had not worked out well in the agency run-off, and Seaway was put into liquidation in June. The remaining insured depositors were paid out at a cost of $152 million.[36] Three other members, Pioneer Trust, Western Capital Trust, and London Loan were actively being discussed. All three would be put into liquidation in early 1985.[37]

But even if 1984 did not bring the same large-scale failures as 1983, the year brought CDIC a different set of problems. It had to deal with the assets that it had received in return for its pay-outs to depositors. Many of those assets were either real property or mortgages on real property. These properties, which were estimated to have a value of $1.5 billion, were spread across Canada and included numerous shopping malls and apartment and office buildings.[38] CDIC

34 *Ibid.*
35 CDIC, *Annual Report* (1984) at 10.
36 *Ibid.*
37 *Ibid* at 6.
38 "$1.5 Billion Real Estate Sale of the Century to be Held by CDIC" *Ottawa Citizen* (18 December 1984) A4.

faced the challenge of turning those properties into cash to repay its extensive borrowings. In the words of the *Montreal Gazette*, CDIC had to conduct "the real-estate sale of the century."[39] Not since the federal government had given the Canadian Pacific Railway 25-million acres of Canada's west, had a government-sponsored entity conducted such a sale of property. De Coster travelled to Toronto to consult with senior members of the banking community who had experience with large real estate realizations. William C "Bill" Poole, senior vice-president realty advisory, at the Toronto-Dominion Bank told De Coster that CDIC needed to develop expertise in realization of such assets. In the interim, Poole volunteered to head an advisory board for CDIC. When De Coster welcomed such a body, Poole recruited John W McCool, senior vice-president real estate, Bank of Montreal; David C Howard, chairman of Citicom Inc; Joseph Berman, formerly of Cadillac Fairview; Kenneth Rotenberg, chairman of Rostland Corp; and Herbert I Stricker of Heathcliffe Development to join him as advisers.[40] It was initially proposed that this advisory group would be supplemented by an action group headed by William "Bill" Grenier, a successful real estate entrepreneur. Grenier's group included Eddie Cogan and Neal Wood, who were already dealing with the sale of the Fidelity Trust properties; Joe Barnicke, who operated the largest independent real estate brokerage in Toronto; Lou Orzech, of Nesbitt Thomson; and Clive Millar of Coldwell Banker.[41] The advisory board would work out, but the action group would not.

Faced with managing the many member failures and the asset realizations, the board of CDIC decided that they needed an experienced full-time CEO. Sabourin was rising to the occasion and demonstrating determination and self-confidence,[42] but he lacked experience. To acknowledge the key role he was now playing, Sabourin was made chief operating officer. For their CEO, however,

39 "Federal Agency to Hold Real-Estate Sale of the Century" *Montreal Gazette* (18 December 1984).

40 CDIC, *Annual Report* (1984) at 12. See also Best & Shortell, above note 26 at 288.

41 *Ibid.*

42 "Sabourin's star was in the ascendant . . . he could push opponents into a corner with sheer bravado": *ibid* at 283.

the board, on the advice of De Coster,[43] turned to a retired financial services executive, Charles de Léry. Financial institutions and their administration was something of a family tradition for de Léry. His father, Rene, had managed Royal Trust's Quebec City branch from 1927 to 1956.[44] Charles had followed in his father's footsteps, joining Royal Trust in 1949 at their Montreal branch. In 1960, he had opened a Trois-Rivieres branch, which he managed for two years. Then in 1962, he returned to his father's former branch in Quebec City as assistant manager. By the 1970s he had risen to senior vice-president and comptroller, and by 1977 to senior vice-president administrative services.[45] His last postings had brought him to Toronto, where he wanted to stay.

A Toronto office for CDIC made a lot of sense.[46] Many of the properties they were dealing with were in or around Toronto, and many of the professionals who were needed to deal with those properties were located there. De Léry welcomed the new Toronto office because it allowed him to schedule meetings in Toronto on Mondays and Fridays. In this way, he could spend four days each week in Toronto with his family. The other three days he went to Ottawa.[47]

De Léry was not particularly happy with much else at CDIC. He found an organization that simply was not capable of dealing with the many tasks it was facing.[48] There were only six people on staff, including the aging Ted Davis and the soon-to-retire legal counsel, Harry McDonald. Virtually all work had to be contracted out, but even that caused problems because there were no skilled and experienced people to oversee that contracted work. Many decisions were the responsibility of the board, but they had to be briefed. Other

43 Interview, JP Sabourin above note 22.

44 "The Royal Trust Company Announces" *Quebec Chronicle-Telegraph* (17 September 1962).

45 *Globe and Mail* (5 July 1977) B3. See also *Montreal Gazette* (21 June 1984).

46 The office was originally located at 55 University Avenue. In December 1986, it moved to 79 Wellington Street West. From the minutes of the CDIC board meeting (3 December 1986).

47 Best & Shortell, above note 26 at 291.

48 "Well beyond its existing resources" is the terminology that he used in his "President's Report" in CDIC, *Annual Report* (1984) at 12.

than De Coster, the board was made up of senior civil servants who had sound judgment but little business experience. And even when the board made its decisions, they lacked the staff that could effectively and expertly carry them out. In de Léry's view, CDIC needed to grow, adding internal expertise and management. In 1984, de Léry added nine people, but this was not enough. He noted in the 1984 annual report that CDIC would require "more personnel with specialized backgrounds to allow it to discharge its objectives and obligations and face any new problems."

De Coster had changes of his own in mind, but decidedly more personal ones. At the end of 1984, in order to "reduce considerably his post-retirement activities,"[49] he submitted his resignation to take effect in the spring of 1985. He boarded a plane for South America for a five-week holiday.[50] His last act as chairman was preparing the overview in the 1984 annual report. He concluded his remarks with the warning that the failures of 1983 and 1984 were not isolated cases. They reflected underlying structural problems that called for the rebuilding of the deposit insurance fund and a complete review of CDIC's prevention and detection mechanisms. By the time that those words were published, the rebuilding and the review were well under way.

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49 CDIC, *Annual Report* (1984) at 9.

50 Best & Shortell, above note 26 at 322.

Chapter Five

Under the Microscope: The Studies of 1985

[A]mple material for a sound restructuring of the Canadian financial system.

—PROFESSOR ALEX M MCLEOD, 1986

DE COSTER'S CALL FOR a complete review of CDIC's prevention and detection mechanisms was delivered to the newly elected Conservative government of Brian Mulroney, which had come to power in the election of September 1984 with a huge majority, winning 211 of the 282 seats in the House of Commons. The new government was only too happy to listen to criticisms of the previous Liberal administrations and to review the institutions that they had created and overseen. And many who worked in or studied the financial services industry were equally happy to share their criticism of CDIC and the deposit insurance regime that it administered.

The issue that attracted the most attention was CDIC's deficit and growing debt. It had reported a loss of $871 million for its 1983–84 fiscal year.[1] CDIC's management assured the new Conservative government that it could recoup these losses through higher premiums,[2]

1 CDIC, *Annual Report* (1984) at 11 and 16.

2 "Federal Deposit Insurance System Will Be Reviewed" *Montreal Gazette* (January 10 1985).

but that assurance itself drew considerable criticism from Canada's banks, as showcased at a 26 November 1984 press conference. Robert MacIntosh, the president of the Canadian Bankers Association, delivered an unsolicited brief to the new government calling for a complete overhaul of the deposit insurance system.[3] As far as the CBA was concerned, CDIC's proposal to recoup its losses through higher premiums was not only inappropriate, it was illegal. CDIC, MacIntosh noted, had incurred this debt by exceeding its mandate and guaranteeing 100 percent of the deposits in the three seized trust companies and in Fidelity Trust, rather than adhering to the $60,000 statutory limit. The chartered banks had never been in favour of deposit insurance, which they saw as discouraging people from engaging in appropriate due diligence. In their view, each investor ought to ensure that his or her money was deposited in a stable, well run institution where it would be safe. If an investor failed to do so, that investor ought to pay the price — this was known as market discipline. By taking away the risk of loss, CDIC was eroding market discipline and making it possible for less stable, less well-run institutions to attract depositors. Against this backdrop, CDIC's proposal to recoup its losses through higher premiums was adding insult to injury. It would force the more stable, better-run chartered banks to fund the loss incurred by its risk-taking, ill-managed trust company competitors. The CBA insisted that something be done to address these concerns.

Henry "Hal" Jackman, chairman of National Victoria and Grey Trustco, responded on behalf of the trust companies. He agreed that there ought to be an overhaul of CDIC, but he considered the representations of the CBA to be self-serving.[4] In Jackman's opinion, the problem was not that banks were being asked to subsidize the trust companies, but rather that the system offered no incentive for either type of institution to manage its affairs prudently. There was

3 "Changes Are Sought in Deposit Insurance" *Montreal Gazette* (27 November 1984).

4 "Revamp Canada Deposit Insurance Corp., Jackman Urges" *Montreal Gazette* (15 January 1985).

no penalty for those who incurred undue risk and put the depositors at risk. He encouraged the government to take this opportunity to establish common standards for all deposit-taking institutions.

Gerald Bouey, the governor of the Bank of Canada, and his fellow CDIC board member, Bill Kennett, the inspector general of banks, were even less happy with the CBA submission. Shortly after the CBA presented its brief, they used the occasion of a CBA executive council meeting to chastise the banks, reminding them that they too had contributed to the financial instability in the marketplace.[5]

As satisfying as this dressing down must have been, both men knew that it was not likely to sway the banks or deter the new government from considering how CDIC ought to be reformed. With this in mind, they, and the other members of CDIC's board, again called on the expertise and experience of Dick Humphrys. They commissioned him to study what might be done. He was asked to consider CDIC's objectives and powers; the composition of its board and its use of advisory committees; the amount and structure of deposit insurance, including the introduction of co-insurance; how CDIC dealt with insolvent members; and CDIC's relations with provincial regulators.

It was a broad mandate, but Humphrys tackled it well. By 6 March 1985, he had prepared an insightful, balanced, and practical report, sharing with the board his years of experience as a regulator and as the midwife of Canada's deposit insurance scheme.

Given the attacks on deposit insurance generally, Humphrys reminded the board that deposit insurance and CDIC had been a means to an end. That end — ensuring adequate financial standards and adequate supervision and regulation at the provincial level — remained as important as ever, and CDIC's deposit insurance was indispensable as the means of achieving it.

Accepting that CDIC played a key role and ought to be maintained, he considered CDIC's structure. He could see little need for

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5 Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) tells of this lecture at 218.

change. CDIC was "a relatively small closely organized institution"[6] with minimal costs of operation. Its board was "small [and] easily convened," permitting it to respond quickly to situations that arose.[7] It utilized the existing resources of such departments as the superintendent of insurance and the inspector general of banks, eliminating duplication and minimizing interdepartmental rivalries. True, the recent events had placed a strain on the organization and forced it to seek out external expertise, but he saw these as short-term problems resulting from extraordinary events.

Humphrys put the blame for those extraordinary events on a combination of "unscrupulous or incompetent management" of the financial institutions exploiting the deposit insurance scheme and the fluctuations in the real estate market. He acknowledged that he and the others who had originally proposed CDIC had been "over-optimistic." They had assumed that insuring deposits for $20,000 would not have any significant effect on the marketplace, but that was before a number of key decisions had been made that had the effect of extending the insurance provided by CDIC. First, discussions with the provinces and industry had broadened the definition of a deposit to include GICs and debentures. It had then been decided to treat certain types of investments, like RRSPs and joint accounts, as separate deposits with separate limits. It had also been determined that related companies, like a parent mortgage company and a subsidiary trust company, should each have separate deposit insurance limits. Cumulatively, these decisions meant that depositors were able to shelter much more than $20,000 under the CDIC umbrella. By spreading their money around in different companies, utilizing different types of investments, and holding some money individually and some in joint or trust accounts, people were now able to shelter a great deal more. As if this "stacking" were not bad enough, in late 1984 and early 1985, the government had decided to increase the insured limit to $60,000, even though the CDIC board

6 Discussion Papers prepared by Mr R Humphrys, 6 March 1985, in the files of CDIC at tab 2, p 4 [Humphrys, Discussion Papers].

7 *Ibid* at tab 2, p 2.

had not favoured the increase. Humphrys concluded that "[t]he coming together of all of these factors opened the way to exploit the savings market on the strength of deposit insurance."[8] Then, when real estate values had been inflated substantially in the late 1970s, especially in Western Canada, unscrupulous developers who controlled deposit-taking institutions had used them to attract money for their real estate projects. The financial institution would lend the money it received in deposits to another company controlled by the developer, taking the property being developed as security. Often, the value of the real property that they gave these lending institutions as security was "grossly overstated." When those properties fell in value, the development company could not repay the loan and the lending company could not recover its money from the secured property.[9] He pointed to District Trust, AMIC, Fidelity Trust, Greymac Trust, and Seaway Trust as companies that had failed as a result of such practices.[10] Clearly, something needed to be done, but he was strongly of the view that these problems were best dealt with by the regulators, not CDIC.[11]

He noted that the CBA had complained that deposit insurance lessened market discipline, but to him market discipline was "a harsh and crude instrument causing losses to many depositors who could not be in a position to make decisions on which company could be trusted."[12]

He had the same criticism of co-insurance, which some argued would reintroduce some market discipline. Rather than have CDIC insure a deposit to a determined limit, under co-insurance, CDIC would ensure some percentage, say 90 percent, of that limit. Under the then current regime, if a person had a $60,000 deposit and the institution failed, he or she would receive the full $60,000 from CDIC. Under a 90 percent co-insurance arrangement, the depositor would receive only $54,000, incurring a $6,000 loss. A co-insurance

8 *Ibid* at tab 3, pp 2–4.

9 *Ibid.*

10 *Ibid* at tab 3, p 4.

11 *Ibid* at tab 3, p 8.

12 *Ibid* at tab 2, p 9.

arrangement would mean that the depositor risked some loss and in theory would be more careful about where he or she placed their money. Humphrys thought this naïve. He believed that most depositors simply lacked the expertise and the access to information required to make an informed decision,[13] and co-insurance would not change that simple fact.

Humphrys also challenged the suggestion that the existence of deposit insurance had led to relaxed financial standards. The presence of the superintendent of insurance and the inspector general of banks on the board of CDIC had ensured that this did not happen. It was not CDIC that had directly or indirectly led to any loosening of standards, and he stated that, "[i]n truth, the attitude of the industry is generally one of seeking to relax standards rather than stiffen them." He feared the current talk of "deregulation" by the pro-business Conservative government, which involved loosening some of the restrictions on financial services.[14] If adopted, this would likely lead to a significant lowering of financial standards at a time when indications were that they ought to be enhanced.

To Humphrys's mind, if the failures continued, the problem lay with regulation and supervision. It would be better to augment those rather than expand CDIC.[15] The main responsibility for the development and application of financial standards had to lie with those administering the governing legislation, be that the federal regulators or their provincial counterparts. CDIC's role ought to be as an adviser. If regulations were to change, it was important that CDIC have "wide authority to adjust premium levels to the risk created for

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13 *Ibid* at tab 2, p 9.

14 Walter Stewart, *Dismantling the State: Downsizing to Disaster* (Toronto, ON: Stoddard, 1998) at 120–21 talks of "unleashing the banks" by collapsing the "four pillars" (banks, insurance companies, stock brokers, and trust companies) in 1987 as part of the global deregulation led by Margaret Thatcher in the United Kingdom and Ronald Reagan in the United States. Michael Bliss, *Right Honourable Men: The Descent of Canadian Politics from Macdonald to Mulroney* (Toronto, ON: Harper Collins, 1984) at 287 talks of Mulroney's part in the "neoconservative ascendency" of the 1980s.

15 Humphrys, Discussion Papers, above note 6 at tab 2, p 4.

it."[16] Premium adjustments should lie within the discretion of CDIC's board, subject to confirmation by the Governor in Council.

Given the limited role that Humphrys saw for CDIC, he could see no reason to expand its staff. He recognized that CDIC had found itself holding substantial real estate assets, and clearly it did not have the expertise to realize on such assets effectively. But he doubted whether the right way to deal with this was by adding expert staff — if this turned out to be a short-term problem, as he thought it was, the added staff would prove unnecessary. Instead, he favoured retaining experts as needed. He was aware of and saw the value in the real estate advisory committee that had been assembled, but he was sceptical about whether a permanent committee would have much to do.[17]

Humphrys favoured a co-operative arrangement with provincial regulators as had been done successfully in the past, and he did not like the option of terminating insurance for a provincial institution in trouble. This would just precipitate a run in circumstances where CDIC could do nothing.[18]

Some were questioning CDIC's role as a lender to troubled financial institutions. To Humphrys, it was clearly established that CDIC needed to be able to provide liquidity to these institutions to avoid the necessity of a forced sale of assets with consequent capital losses. The relevant provision of the Act gave CDIC the power to make loans to or acquire assets from member institutions to avoid or reduce a threatened loss; this power had been used to good effect on a number of occasions. Such loans had given CDIC the time it needed to find solutions — increase the capital in the troubled company or arrange a takeover or merger — to avoid having to close the company. If loans were made against security, as was usually the case, CDIC could recover its funds as the company readjusted.

Humphrys considered changing the premiums charged by CDIC to better reflect the fact that some members created more risk than

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16 *Ibid* at tab 1, p 8.
17 *Ibid* at tab 2, p 6.
18 *Ibid* at tab 2, p 8.

others.[19] He went through several approaches to such risk-based premiums and concluded that, for the moment at least, any such change was not feasible.

Humphrys's report, like the lecture delivered by Bouey and Kennett to the CBA, was not likely to convince the critics of CDIC. It justified and explained CDIC's structure and past actions rather than developing a road map for future reform.

In January 1985, while Humphrys was compiling his report, Barbara McDougall, Prime Minister Mulroney's minister of state for finance, called a press conference to announce an independent industry working group to study CDIC.[20] This informal commission was named after its chairman, Robert Wyman, the fifty-four-year-old chairman of Pemberton, Houston and Willoughby Inc, a Vancouver investment firm.[21] Other members of the commission were André Bérard, senior executive vice-president of the National Bank; Hugh Brown, the director of Burns Fry; and Leslie Colhoun, the former president of the National Trust Company and then vice-chairman of National Victoria and Grey Trustco. They were asked many of the same questions that the CDIC board had directed Humphrys to address, but their answers would prove to be very different.

While McDougall and her staff waited for those answers, they prepared a policy paper on a broader reform of the financial services industry.[22] That Department of Finance Green Paper reflected the new Conservative government's priorities. The failures of the early 1980s may have led Dick Humphrys to emphasize increased regulation and financial stability, but the Mulroney government had other ideas. It wanted to promote competition, enhance the convenience and options available to consumers, and broaden the sources

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19 *Ibid* at tab 4.

20 "Federal Deposit Insurance System Will Be Reviewed" *Montreal Gazette* (10 January 1985).

21 *The Canadian Who's Who, 1985* (Toronto, ON: University of Toronto Press, 1985) at 1341.

22 Canada, Department of Finance, *The Regulation of Canadian Financial Institutions: Proposals for Discussion* (Ottawa, ON: Department of Finance, 1985).

of available credit.[23] The challenge, as they saw it, was "to develop a regulatory approach that encourages, rather than inhibits, innovation and efficiency in our financial sector while at the same time protecting the public."[24]

They wanted to leave room for market forces to shape a dynamic and efficient system. The Green Paper sought to distinguish its approach from deregulation.[25] It sought to impose "new, tougher rules" against self-dealing and conflicts of interest while permitting greater flexibility in institutional structures and arrangements. It also sought to impose specific structural requirements to facilitate regulatory oversight to assess capital adequacy, liquidity, and the application of deposit insurance.[26]

The Green Paper saw CDIC's deposit insurance as facilitating some loosening of the restrictions on financial institutions because it largely precluded the possibility of a system-wide run triggered by the failure of a single deposit-taking institution.[27] CDIC backstopped the two primary means of protecting investors — full information, which protected sophisticated investors; and regulation and supervision, which protected the remainder of society. Deposit insurance protected small, less sophisticated investors to whom disclosure meant little.[28]

On 24 April 1985, the report of the Wyman working group was provided to McDougall. It would be published a few months later. That report recommended a much larger, more active role for CDIC than either Humphrys or the Green Paper had suggested. In fact, it is hard to imagine a report that differed more dramatically from what Dick Humphrys had recommended. The two reports reflected different approaches to the reform of CDIC and saw very different roles for the organization. They both agreed that CDIC ought to be preserved, that it should focus on insuring deposits, that it should

23 *Ibid* at 1.
24 *Ibid.*
25 *Ibid* at 2.
26 *Ibid* at 3.
27 *Ibid* at 13.
28 *Ibid* at 14.

be a lender to troubled institutions with the right to use agency run-off in lieu of liquidation, that risk-based premiums were impractical for the time being, and that CDIC's debt should be funded by CDIC's members. But beyond these few basic points, they differed in almost every respect. In lieu of the small corporation with a minimum staff and an unchanged board that Humphrys endorsed, Wyman recommended a larger, more expert staff working with a larger, more independent board and taking a much more active role in the supervision and monitoring of its members.

The Wyman Report also ignored Humphrys's "means to an end" approach. To Humphrys, universal deposit insurance had been important as the way to place all deposit-taking institutions under some level of common inspection and supervision. Wyman and his working group did not favour insuring all deposit-taking institutions; instead, it recommended that each such company be required to apply for insurance, which CDIC, in its discretion, could grant or refuse. Insurance was to be granted for a one-year term with renewal conditional upon meeting CDIC established standards. Government grants of new charters should be conditional upon the entity obtaining insurance from CDIC in a separate application. If a CDIC member company had a change of ownership, the company should be required to make a new application for insurance. CDIC should be kept fully informed by the regulators about the financial affairs of all of its members. And if CDIC became concerned with a member institution, it should be able to impose conditions on that member to maintain its insurance. To ensure compliance with its standards and orders, CDIC should be empowered to hold hearings, issue cease and desist orders, impose penalties, require changes in management and where appropriate seize control of the member's assets. Working with the Canadian Institute of Chartered Accountants, it should develop national standards for accounting and real estate valuation. It should also develop uniform standards for examinations of members, performance ratings, and a series of "breakpoints" or triggers for remedial action and liquidation. And working with the regulators, it ought to develop standards for adequate capitalization.

To achieve all of this, CDIC should have an expanded board that would include four private sector representatives, as well as its president and CEO. It should also hire four senior officers and "a small, highly qualified, experienced professional group not currently on staff."[29]

The Wyman Report accepted the CBA's criticism that deposit insurance as currently offered by CDIC discouraged market discipline and it recommended a regime of co-insurance.[30] A majority of the working group suggested that co-insurance start at dollar one and insure 90 percent of deposits to $100,000.

The Wyman Report was by no means the final word on the reform of CDIC. In fact, the release of the report in the summer spurred much further analysis and many more words on the subject. Committees of both the House of Commons and the Senate would study and comment on the report, as would the CBA and numerous economists.[31]

The CBA responded to the Wyman Report in September, presenting its comments to the Commons Standing Committee on Finance, Trade and Economic Affairs.[32] The CBA welcomed some of what they read in the Wyman Report but not all. It agreed that CDIC should focus on its dual mandate of providing deposit insurance to protect the small, unsophisticated depositor and of administrating the Deposit Insurance Fund. The CBA, somewhat reluctantly, accepted that CDIC could be a lender of last resort. Its hope was that

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29 Working Committee on the Canada Deposit Insurance Corporation, *Final Report of the Working Committee on the Canada Deposit Insurance Corporation (CDIC)* (Ottawa, ON: Minister of Supply and Services, 1985) at 7. See also at 53–56.

30 *Ibid* at 5–6. See also at 28–29.

31 See, for example, Alex McLeod, "Better Late Than Never" (1986) 12 *Canadian Public Policy* 484–98, and James Pesando, "The Wyman Report: An Economist's Perspective" (1986) 11 *Canadian Business Law Journal* 105–20.

32 The Canadian Bankers Association, *Comments on the Final Report of The Working Committee on the Canada Deposit Insurance Corporation* (Toronto, ON: CBA, 1985). The report is summarized in Robert MacIntosh, "Deposit Insurance Reform Comments by the Canadian Bankers Association on the Wyman Report" (1986) 11 *Canadian Business Law Journal* 121–34.

any such lending would be limited and on specific terms and conditions. CDIC's principal regulatory function, however, should be to withdraw or place conditions on the continuance of insurance. In reshaping CDIC, the emphasis ought to be upon equipping CDIC to prevent rather than deal with problems. The CBA thought that CDIC ought to be sharing more information about its members. It saw regular, timely public disclosure of information about CDIC's members as a preventative tool, permitting investors to better assess risks in dealing with certain members. It agreed that CDIC needed to work with industry members to develop standards and to be given powers to ensure compliance, but it wanted those powers limited to the withdrawal of insurance or the placing of conditions on its continuance. Other regulation and supervision ought to be conducted through the existing regulators. The CBA also welcomed the Wyman Report suggestion that CDIC work with the industry to develop trigger points and appropriate remedial measures. It very much disliked, however, the many other powers that the Wyman Commission wanted CDIC be given. Duplication was to be avoided, not encouraged.

The CBA reiterated its opposition to the agency run-off method of dealing with insolvent institutions. Any such approach would result in full compensation for uninsured creditors. In fact, the CBA did not even want full compensation for insured creditors. It strongly supported the Wyman Commission's advocacy of a return to market discipline. Recognizing that co-insurance as proposed by that commission might not be "politically attractive" (Barbara McDougall had disowned the proposal almost immediately),[33] they suggested that there be 100 percent coverage for the first $20,000 and 75 percent coverage above this to a maximum recovery of $75,000. This would protect the small, unsophisticated investor while offering some incentive for larger investors to be duly diligent.

The CBA endorsed the principle of risk-based premiums, but addressed the practical concerns set out in the Wyman Report. They agreed that it might be difficult to assess risk before problems

33 "Ottawa Rejects Proposal to Cut Deposit Insurance" *Montreal Gazette* (18 June 1985).

arose, but they suggested that the same effect could be achieved by granting premium rebates to institutions that had a good claims experience. If such rebates were based on experiences in particular industry sectors, the more conservative, well-run institutions in that sector could exert pressure on the risk-takers in the sector.

Where the CBA varied most from the Wyman Report was on the funding of CDIC's deficit. Having the industry pay to retire this deficit was "unacceptable." To the CBA, much of that deficit was attributable to political decisions made by the federal or provincial governments. These governments had provided inadequate supervision and when that created problems, they had tripled the deposit limit and then chosen to compensate uninsured depositors. At a minimum, the CBA thought that the amounts in excess of the $60,000 limit paid out by CDIC and the amounts attributable to the retroactive increase to $60,000 ought to be borne by the federal and provincial governments, not recouped from increased premiums.

The CBA was also very much against an across-the-board, ongoing increase in premiums. It would accept a temporary surcharge to deal with a portion of the current deficit, provided that it was part of an appropriate plan for deficit funding. It saw no need for a permanent increase in premiums once the immediate deficit was dealt with.

On a related note, the CBA endorsed the Wyman Report's suggestion that CDIC be tax exempt as was the Federal Deposit Insurance Corporation in the United States and several Canadian compensation funds. To tax the CDIC, in the opinion of the CBA, was to impose an additional tax on CDIC's members.

The CBA also endorsed the Wyman Report's suggestion that CDIC increase its staff to add a small group of professionals. This would improve decision making and better equip CDIC for the complexities that it now faced.

After considering the Wyman Report as well as the CBA and other submissions, the Commons Standing Committee issued its own report.[34] That report became known as the Blenkarn Report after

34 Canadian Financial Institutions, *Report of the Standing Committee on Finance, Trade and Economic Affairs* (Ottawa, ON: Queen's Printer, 1985).

its chairman Don Blenkarn, the Conservative MP for Mississagua South. It accepted the Wyman Report's conclusion that risk-based premiums could not be implemented and that the members of CDIC should fund the deficit reduction. The committee did, however, adopt much of what the CBA had put forward. Like the CBA it saw duplication between the existing regulators and the expanded role of CDIC. The committee suggested a way to deal with this duplication. It favoured a single super agency, which it dubbed the National Financial Administration Agency (NFAA), that would bring together the offices of the Inspector General of Banks and the Superintendent of Insurance as well as CDIC. The proposed NFAA was to be an autonomous crown corporation with a board composed of federal, provincial and industry representatives. Provincial financial institutions would have to comply with its requirements in order to receive deposit insurance.

The committee did not support co-insurance on the same grounds as Humphrys had rejected it. It would penalize unsophisticated investors and would not prevent runs on deposit-taking institutions. It favoured retention of the current $60,000 limit, but it suggested doing away with the five-year maturity limitation.

Not to be outdone, the Liberal-dominated Senate banking committee also issued a report on CDIC reform. Its fifty-three-page report was released in December 1985 and called for significant changes to CDIC.[35] Unlike their Conservative counterparts on the House of Commons Committee, they accepted the Wyman Commission's suggestion on co-insurance. Under their scheme, the first $25,000 of each depositor's money would be fully insured, but only 80 percent of the next $50,000 would be insured. Thus, a depositor with $75,000 in a failed institution would receive $65,000 back from CDIC. The senators also favoured the Wyman Committee changes to the powers of CDIC. The deposit insurer ought to be able to issue cease-and-desist orders to prevent members from engaging in

35 Senate of Canada, *Deposit Insurance*, tenth report (Ottawa, ON: Standing Senate Committee on Banking, Trade and Commerce, December 1985). See also, "Senators Propose Reforms for Bank Deposit Insurance" *Ottawa Citizen* (12 December 1985).

irresponsible business practices, they suggested. Perhaps the most intriguing proposal from the senators concerned cases where the government, for political reasons, chose to keep a member institution in business. In any such case, they thought, CDIC ought to be able to withdraw its coverage and leave the government with the responsibility for the propped-up institution.

The year ended with yet another government report. In June 1984, Ontario had established a task force to look into what government could do to improve the operation and regulation of financial institutions. They called upon a distinguished group to conduct the study. Stefan Dupre, the chair, was a respected political scientist. With a doctorate from Harvard, he had chaired the Department of Political Economy at the University of Toronto in the 1970s[36] and was well-versed in government. He was joined by Rendall Dick, then under-treasurer at the Law Society of Upper Canada and a former deputy attorney general of Ontario,[37] and by Alexander J MacIntosh, a lawyer who was a senior partner at Blake Cassels & Graydon and a former deputy attorney general of Nova Scotia.[38] After extensive consultation with members of the public and the industry, they reported in December 1985, producing an insightful and balanced final report. It wisely noted that the number of failures and near failures of the last few years had made it clear that any financial institution could fail irrespective of its jurisdiction of incorporation, the products that it offered, and its structure and ownership. It cautioned that the great changes in the industry, including the erosion of the barriers between the traditional four pillars (banks, insurance companies, stock brokers, and trust companies), had created new and greater risks. It further warned that the increasing number

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36 Victoria Ptashnick, "U of T Prof Remembered for Teaching Best Class" *Toronto Star* (7 December 2012).

37 Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers, 1797–1997* (Toronto, ON: University of Toronto Press, 1997) at 299, and Roy McMurtry, *Memoirs and Reflections* (Toronto, ON: Osgoode Society and University of Toronto Press, 2013) at 181.

38 *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 767.

of interconnections in the industry meant that a loss of confidence in one institution could have a ripple effect through the industry.[39]

The task force recognized the value of deposit insurance, but found it unacceptable that governments were propping up failing institutions and compensating depositors for their entire loss. These practices meant that the public, through its tax dollars, was assuming the risk of poor regulation and irresponsible behaviour. It advocated broader deposit insurance, extending this form of compensation through provincial bodies akin to CDIC for insurance companies and credit unions. But it emphasized that deposit insurance, whether offered by CDIC or these provincial bodies, ought to be uniform, and in each case, constitute a form of co-insurance. They suggested that a depositor should be fully compensated for the first $20,000 in deposits, but thereafter they would receive 75 percent or 50 percent, depending on the size of their deposit. They also pushed for better regulation and the development of an early warning system.

The management of CDIC would later summarize these studies and their different recommendations in this way:

> While emphasis has varied, a general consensus seems to have developed the CDIC should continue as an independent Crown corporation providing insurance to small depositors and that it be financed by member institutions as heretofore, but with premiums adjusted . . .[40]

If those remarks suggest that the CDIC management did not see a need to radically alter the organization, that was certainly not the case. In fact, by the time that the last of these reports had been issued, CDIC was already in the midst of significant change. A larger, more skilled, more active organization was emerging under the leadership of a dynamic, new chairman with a very different view of the role that CDIC ought to play. It was change born out of a very trying time.

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39 Joseph Stefan Dupré, A Rendall Dick, & Alexander J MacIntosh, *The Ontario Task Force on Financial Institutions: Final Report* (Toronto, ON: Queens Printer, 1985) at 1–2.

40 CDIC, "Chairman's Remarks" *Annual Report* (1985) at 6.

Chapter Six

A Very Difficult Period, 1985–1987

[A] very difficult period for all concerned.

— CHARLES DE LÉRY, 1985

AS ACADEMICS, INDUSTRY PLAYERS, and government officials pondered what CDIC's mandate, powers, and staffing ought to be, the deposit insurer itself was struggling. As its president would later say, CDIC was "inundated with problems and responsibilities well beyond its then existing resources."[1] Its management did not have the luxury of sitting quietly while waiting for these studies to be conducted, reports to be issued, and reforms to be implemented. Winding-down the operations of its many failed members and dealing with their assets was itself a herculean task, but CDIC's workload was about to get much heavier because several additional members were about to be added to its long list of failed members. These additions, however, would come with an asterisk — they were federally chartered banks. Not since the Home Bank collapse of 1923 had a Canadian bank failed, but that was about to change.

In March 1985, at a time when the Wyman working group was completing its work, the Office of the Inspector General of Banks

1 CDIC, "Chief Executive Officer's Review of Operations" *Annual Report* (1986) at 11.

(OIGB) and the Bank of Canada learned that one of the new western banks was in trouble.[2] The unsettled institution was Canadian Commercial Bank, known as CCB. The darling of both the Alberta and the federal governments, CCB had been chartered in 1975 to better serve Canada's western provinces and offer local competition to the big eastern-based banks. But serving the west in the last half of the 1970s meant serving the burgeoning oil and gas industry, and CCB soon learned what Fidelity Trust had come to know: overreliance upon a single industry, especially one subject to boom and bust cycles, was risky for any financial institution, and having your security tied up in western real estate was anything but secure.[3] On 11 March, Andre Brossard, the director of compliance in the OIGB received a call from the president of CCB, suggesting a new item for the agenda for a scheduled 14 March meeting.[4] He wanted to discuss his bank's exposure to non-performing oil and gas loans. To emphasize the seriousness of the situation, he noted that the meeting ought to consider possible mergers or liquidation. Brossard recognized the gravity of the situation and invited officials of the Bank of Canada to the meeting. These federal regulators had known for some time that CCB was having problems; two years before, they had encouraged five large chartered banks to provide CCB with a special facility to assist with liquidity.[5] The hope at that time had been that this facility would permit CCB to weather the downturn in

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2 There is a useful chronology of the CCB failure, together with a discussion of the government's response in Byron Lew & Alan J Richardson, "Institutional Responses to Bank Failures: A Comparative Case Study of the Home Bank (1923) and Canadian Commercial Bank (1985) Failures" (1992) 3:2 *Critical Perspectives in Accounting* 163–83 at 176.

3 The Honourable Willard Z Estey, *Report of The Commission of Inquiry into the Collapse of the Canadian Commercial Bank (CCB) and the Northland Bank* (Ottawa, ON: Minister of Supply and Services, August 1986) at 69 [Estey Report]. Estey considered the first two causes of the CCB collapse as "1. The excessive concentration of the loan portfolio in two of the most cyclical industries, real estate and energy; 2. Excessive concentration of loan assets in Western Canada whose economy is based on natural resources."

4 *Ibid* at 469.

5 James F Dingle, *Planning an Evolution: The Story of the Canadian Payments Association, 1980–2002* (Ottawa, ON: Bank of Canada, 2002) at 25.

the oil and gas industry. But that downturn had proved longer and more pronounced than expected. At the meeting, they learned that CCB management was convinced that their bank could not survive without further assistance. The falling oil prices and the resultant reduction in oil drilling meant that many of the bank's loans were in default.[6]

This was especially bad news for the federal regulators and the politicians they served. No one wanted to have Canada's first bank failure in over sixty years on their watch and certainly not one of the western regional banks. CCB, together with the Northland Bank, the Bank of British Columbia, the Mercantile Bank, and the Continental Bank represented an attempt by Western Canada to assert its economic independence. The fear was that the failure of CCB would contribute to the disappearance of these western-based banks.[7]

The day following the CCB meeting, officials from the OIGB informed the minister of state (finance), Barbara McDougall, about the situation, and an emergency meeting of the board of CDIC was held. Attending that meeting were Gerald Bouey, the governor of the Bank of Canada; and his special adviser, Serge Vachon; as well as Bob Hammond, the superintendent of insurance; Donald Macpherson, the assistant inspector general of banks (Bill Kennett was away on a holiday); and Marshall "Mickey" Cohen, the deputy minister of finance.[8] Macpherson and Bouey told the meeting that they thought that CCB could be saved. This was a bold assertion given the problems that had plagued the bank for several years — it might well have been a case of wishful thinking. Nevertheless, it became Bouey's working premise. He took on the role that Galt had played unsuccessfully in 1867. He set out to convince his colleagues to intervene to effect a bank rescue. Although times had changed and the federal government was now playing a much larger role

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6 The details of the CCB situation are set out in the Estey Report, above note 3.

7 Robert MacIntosh, *Different Drummers: Banking and Politics in Canada* (Toronto, ON: Macmillan Canada, 1991) at 219–20. In fact, he notes that this did happen: "All of the western-based banks were wiped out in the mid-1980s . . ." See also the Estey Report, above note 3 at 478.

8 *Ibid* at 477.

in Canadian banking, the Ministry of Finance was still reluctant to commit government money to a bailout. Mickey Cohen played the role that Macdonald and Cartier had played more than a century before. He suggested that it was up to the other banks to come to the rescue. Hammond raised another concern. How would it look, he asked, if the federal government stepped in to save a bank when it had allowed a number of provincial trust companies to fail?[9] Given these concerns, no consensus could be reached. But Bouey, like Galt before him, did not give up. Numerous meetings were held over the next few days. Again, in a distant echo of 1867, senior bank executives were approached to determine if a merger might be possible. It was soon learned that there was no willing partner. Meanwhile, Kennett had come back from his vacation and joined the discussions.

Ultimately, Bouey proved successful where Galt had failed because of the political situation. The new Conservative government did not want to start its mandate with Canada's first bank failure in over half a century, and it certainly did not want that failure to be one of the new western banks.[10] Reluctantly, in reliance on the incomplete information provided by CCB and a hastily conducted inspection by OIGB, the federal government decided to intervene to assist CCB. It was a victory that Bouey would later much regret having won.

But there was no time for second guessing or regrets in March 1985. The push was on to make the rescue a reality. Barbara McDougall created a special team to consider what form that rescue would take. Her team included representatives of the Department of Finance, the Bank of Canada, CDIC, the superintendent of insurance, senior legal counsel from the Department of Finance, a senior communications adviser, and the chiefs of staff or their delegates from her office and from the office of the minister of finance.[11] The

9 *Ibid* at 477.

10 In reporting to the House of Commons, Barbara McDougall would say that the action was in recognition of the importance of regional financial institutions and the importance of CCB to the Western economy. *House of Commons Debates*, 33rd Parl, 1st Sess, vol 5 (7 October 1985) at 7371.

11 Estey Report, above note 3 at 479.

province of Alberta quickly agreed to join the rescue effort. This team and its legal counsel worked quickly and quietly, concerned that if news of CCB's problems leaked out, it would start a run on the bank. First and foremost, they needed the support of the banking community, and a syndicate of large Canadian banks was cajoled into participating. The rescue team worked feverishly with these banks for several days to reach an agreement on the bailout package to save CCB.[12] It was tentatively agreed that the federal government, the government of Alberta and the syndicate would each put in $60 million for a total of $180 million. CDIC was called upon to contribute an additional $75 million, bringing the assistance being offered to $255 million. CDIC, of course, had no such money. It was already more than a billion dollars in debt. Its contribution would come from the federal Consolidated Revenue Fund, as did the other government bailout money. But unlike that other money, CDIC's contribution could be recovered from Canada's financial institutions through premiums. It was effectively a levy on these institutions, a way to roughly balance the public sector and private sector contributions to the package. Because its share was intended to be recovered in this fashion, CDIC was not given a claim on the assets of CCB.

On Saturday, 23 March, Michael Wilson, the minister of finance, joined Barbara McDougall, Bill Kennett, Gerald Bouey, and Mickey Cohen to brief Prime Minister Mulroney. After an extensive review, Mulroney approved the package. This cleared the way for a final push to settle the details with the bankers' group. Much of Sunday, 24 March was spent grinding out these details. Time was of the essence; an agreement had to be reached by 9 a.m. Monday morning in Atlantic Canada, or CCB could not open for business in Halifax. Just in case, the OIGB and CDIC made tentative arrangements to appoint a curator for the bank to oversee a wind-up. But the details were settled and on Monday, 25 March, the bailout program was

12 "Crown Deposit Insurance Firm Under Attack, But Carries On" *Montreal Gazette* (26 March 1985).

in place and announced to the public.[13] There was much self-congratulatory shaking of hands and slapping of backs. The Canadian banking industry had been saved, or so the rescue team thought.

Tellingly, the announcement of the CCB rescue created as many problems as it solved.[14] Northland Bank, which had been having its own difficulties, was in the midst of a public offering. It was trying desperately to sell both a preferred share and a debenture issue to raise additional funds. With the news that CCB needed a massive bailout, the market for these issues evaporated. Both issues were postponed. The debenture issue would be revived and closed about six weeks later, but it brought in less than $16 million. The preferred share offering was completely abandoned.[15] To make matters worse, some of Northland's other sources of funding dried up. Northland was forced to draw on the Bank of Canada as a lender of last resort.

Like CCB, Northland Bank had been chartered in 1975 with the express goal of serving the Prairie provinces. It had its head office in Winnipeg and an executive office in Calgary. It had tried to grow quickly, but it lacked the management to do so effectively. For a few years, the general prosperity of the west allowed the bank to grow despite these problems, but by 1983, it was in trouble.[16] New management, a work-out plan, some new capital, and a limited expansion into southern Ontario offered the prospect of a turnaround in the bank's fortunes. But problems persisted.

In these circumstances, the announcement that CCB could not weather the downturn in the western economy was "nearly fatal"[17] to Northland. If CCB, a larger bank that was less concentrated in Western Canada and less exposed to Alberta real estate and energy

13 The legislation permitting the government to provide assistance was assented to on 31 March 1985 as *Canadian Commercial Bank Financial Assistance Act*, SC 1985, c 9.

14 Brian S Hunt, *Northland Bank: An Historical and Organizational Perspective* (MBA Thesis, University of Alberta, 1989) at 126 [unpublished] [Hunt].

15 *Ibid* at 134.

16 See the Estey Report, above note 3 at Appendix E, "Formation and Evolution of the Northland Bank."

17 *Ibid* at 206.

loans with more stable and experienced bank management needed a bailout, how could Northland survive? Concerns spread about Northland's viability. By July, the press was speculating on its failure and a run was started on the bank. Northland continued to draw heavily on the Bank of Canada. On 20 July, Northland's management met with officials of the Bank of Canada, OIGB, and the Department of Finance seeking a CCB-like package. The federal government did not favour another publicized bail-out. The fear was that the announcement of yet another rescue would reinforce the opinions of those who questioned the viability of all the regional banks. Perhaps, it was suggested, CDIC and the Alberta government could quietly make non-interest bearing deposits with Northland to provide needed funding. Nothing came of the suggestion and the run on the bank continued. On 1 August, another meeting was held, but by this time the federal government officials had decided that a merger of Northland with a bank like the National Bank of Canada was a better solution. Discussions with National were held, but it was unwilling to accept any such merger. Things were looking bleak for the Winnipeg-based bank.

Meanwhile, it was becoming clear that the rescue of CCB had not had the desired effect. Despite the bailout — or perhaps even because of it — many institutional investors had lost confidence in CCB, and "lines of credit were being cut, deposits withdrawn and services [were] no longer provided."[18] The result was that CCB too was drawing heavily on the Bank of Canada to maintain liquidity.[19] This form of additional government funding of CCB was much resented by the consortium of banks that had participated in the March bailout. Under the *Bank of Canada Act*, the Bank of Canada had a first claim on the assets of any bank borrowing from it. By advancing hundreds of millions of dollars through the Bank of Canada, the federal government was undermining the security held

18 "Canadian Commercial Bank Debacle" *Montreal Gazette* (28 December 1985).

19 Table D-2 at 501 of the Estey Report, above note 3, provides a "Profile of Bank of Canada Advances to the CCB and Northland Bank between March-September 1985." More than $1.5 billion was advanced.

by the consortium and making it much less likely that the participating banks would ever be able to recover their advances. It would later be suggested that the consortium set out to scuttle the deal.[20] Whether this was true, by 1 September the OIGB concluded that both CCB and Northland were not viable. A curator was appointed for each and within ten days, steps were taken through CDIC to initiate the winding-up of both.

The public reaction was swift and negative. To some extent, the federal government had itself to blame. Over the last few months, in an effort to keep these western banks afloat, both Bouey of the Bank of Canada and Kennett of OIGB had repeatedly assured the public that the situation was under control and that the western banks would survive. Now both banks were being closed. It looked to many like the federal government had intentionally misled the public. The criticism of the Mulroney government for what was coming to be called the CCB "debacle"[21] was unrelenting. To help relieve the pressure, on 29 September, Justice Willard Estey of the Supreme Court of Canada was appointed "to inquire into and report on the state of affairs surrounding the cessation of operations of the Canadian Commercial Bank and the Northland Bank, and to make any consequential recommendations for changes in the control of the banking industry in Canada."[22]

Even before the Estey Commission began its work, the federal government decided that it had a moral obligation to compensate those who, in reliance on government assurances, had left their money in these banks. In October, legislation was introduced to provide up to $855 million in compensation to the uninsured depositors in CCB and Northland. CDIC, which was already charged with reimbursing the insured depositors, was put forward as the agent of the government to effect these additional compensation payments.

20 "PM: I'll Punish Banks if They Scuttled Bailout" *Montreal Gazette* (12 September 1985).

21 "Canadian Commercial Bank Debacle" *Montreal Gazette* (28 December 1985).

22 Estey Report, above note 3 at iii.

Ironically, while CDIC was being given this extended mandate, it had run into difficulty in fulfilling its existing one. Management and shareholders of the Northland Bank were contesting its winding-up and on Saturday, 19 October they obtained a restraining order from Manitoba's Court of Queen's Bench. The next day an emergency meeting of the CDIC board was held by telephone.[23] Some directors participated in this Sunday meeting from home, and others joined Harry McDonald in CDIC's Ottawa office. They discussed the situation with de Léry and CDIC's outside lawyers who were in the offices of Pitblado & Hoskin in Winnipeg. Charles Scott of Tory, Tory Deslaurier and Binnington (commonly called Torys) led CDIC's legal team with local assistance from several Pitblado lawyers. The board knew that Minister McDougall was anxious to pay out depositors, but the court order would not let them do so. It was decided to push to have the order vacated, which it eventually was.

Meanwhile, Liberal leader John Turner saw an unparalleled political opportunity to shame the Mulroney government for its handling of the CCB and Northland failures. He seized it with great vigour. As the successor to Pierre Elliot Trudeau, Turner had briefly been prime minister before things fell apart in the election of 1984. Now, a year later, he was able to point to a financial crisis where, as far as he was concerned, officials of the Mulroney government had intentionally and repeatedly misled the Canadian people.[24] In the House of Commons, Turner led a scathing attack on the proposed compensation plan. He noted that he and his party had supported the government's attempt to bailout CCB in March. They had done so, he explained, based on Barbara McDougall's assurance that this was "an isolated incident," "a temporary problem that was the result of a few bad management decisions," and that the bailout "would be successful and would render the bank solvent and viable again."[25] But the bailout had been anything but successful. Since March, the

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23 From the minutes of the CDIC board meeting (20 October 1985).

24 Paul Litt, *Elusive Destiny: The Political Vocation of John Napier Turner* (Vancouver, BC: UBC Press, 2011) at 288–301.

25 *House of Commons Debates*, 33rd Parl, 1st Sess, vol 5 (7 October 1985) at 7375.

Bank of Canada had been required to advance $1.5 billion of additional money to CCB. Yet another billion dollars had been advanced by the central bank to Northland.[26] Even with this additional funding, both CCB and Northland were insolvent. The government's answer, Turner pointed out, was to pay almost $1 billion more. And all of this, he stressed, was being done without proper disclosure. Where was this money going? Who were the depositors to be compensated? No answers were forthcoming; the government was asking Parliament to trust that they knew what they were doing. "Well," Turner said, "we trusted them in March, and six months later, not one but two banks have gone bankrupt!"[27]

Nevertheless, with its large majority, the Mulroney government was able to push through the compensation package. On 20 December, this legislation came into effect.[28] CDIC became the agent of the federal government to compensate the uninsured depositors in both banks. The understaffed institution that could barely supervise the many parties already working on its behalf was given even more work to do.

At least the "beleaguered" CDIC finally had a new chairman.[29] The government had not rushed to replace De Coster when he left in June. Instead, Bill Kennett had added interim chairman of CDIC to his title of inspector general of banks. This delay in choosing the new chairman was wise in the circumstances. The CDIC chairmanship was no longer the "sinecure for retired minds" as Patricia Best had dubbed it.[30] The chairman would now be a very public and very active individual. He or she would be the public face of an organization seen to be "under attack" and struggling to "keep its head above

26 Hunt, above note 14 at 132.

27 *House of Commons Debates*, 33rd Parl, 1st Sess, vol 5 (7 October 1985) at 7378.

28 *Financial Institutions Depositors Compensation Act*, SC 1985-6, c 51. See also CDIC, *Annual Report* (1985) at 7.

29 "Retired Executive Named to Head Troubled CDIC" *Ottawa Citizen* (28 September 1985).

30 Patricia Best & Ann Shortell, *A Matter of Trust: Greed, Government and Canada's $60 Billion Trust Industry* (Markham, ON: Penguin Books, 1986) at 282.

water."[31] As the federal government agency supervising and monitoring the numerous agents, liquidators, and receivers who were dealing with both Canada's many failed financial institutions and a huge real estate portfolio, CDIC had become a centre of attention.[32] It had real work to do, very important work, and it needed a chairman who could take the pressure and help it grow and reorganize. It needed someone with energy, leadership, and management skills, excellent judgment and media relations experience and expertise. The long-standing statutory requirement that the chairman be "a person of proven financial ability" needed to be given a broader meaning. As Charles de Léry would tell the board, this was "a very difficult period for all concerned."[33]

De Léry and Sabourin thought that they knew a person who had the financial abilities and skills needed. He was one of the agents, liquidators, and receivers with whom they were currently working — Ronald Archibald McKinlay. A Toronto born graduate of the University of Toronto, McKinlay had spent twenty years at the Clarkson Co Ltd, the trustee and bankruptcy arm of Clarkson Gordon, with the last three years as its chairman.[34] An engineer and an accountant, he was one of the leaders in Canada's bankruptcy industry, a master at the restructuring of insolvent companies. And he was battle tested in more ways than one. His time at university had been interrupted by a stint as an officer at sea in the Canadian Navy (Royal Canadian Naval Volunteer Reserve) during World War II.[35] He had also served for a time as an industrial adviser to the Bank of Montreal where he focused on troubled commercial accounts.[36]

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31 "Crown Deposit Insurance Firm Under Attack but Carries On" *Montreal Gazette* (26 March 1985).

32 CDIC, "Chairman's Remarks" *Annual Report* (1985) at 6.

33 From the minutes of the CDIC board meeting (11 October 1985).

34 David MacKenzie, *The Clarkson Gordon Story: In Celebration of 125 Years* (Toronto, ON: University of Toronto Press, 1989).

35 In 1949 he received his BASc from the Faculty of Engineering and in 1952, an MCom from the Business School.

36 See his obituary in the *Globe and Mail* (14 June 2007).

As far as de Léry and Sabourin were concerned, McKinlay had just the right skills and experience for the tasks facing CDIC. He knew business failures in a way that no other candidate did. The CDIC management duo worked behind the scenes and by September 1985, McKinlay had been appointed chairman, effective 1 October. That duo became the managing triumvirate at CDIC. Sabourin would work well with McKinlay and come to see him as a valued mentor and friend, but not de Léry. In McKinlay, de Léry got more than he had expected. The new chairman had drive and energy, and a take charge, get-things-done attitude. While de Léry would hold the title, McKinlay would become the de facto CEO. When meetings were held with various governments, it was McKinlay who would represent CDIC,[37] and when discussions were held with troubled members, it was almost always McKinlay and Sabourin who would attend.[38]

But the tension between CDIC's president and its chairman was in the future. In the fall of 1985, McKinlay was busy learning about CDIC and how much it had on its plate,[39] and both de Léry and Sabourin were pleased to help him. He soon learned that CDIC needed an "organizational upgrading" — more trained and experienced people on staff, and a new, more robust structure. The accounting firm of Touche Ross was retained to advise on what that structure should look like.[40] McKinlay and his two co-managers also saw the need for a corporate plan and appropriate corporate policies.

But these staffing and organizational issues were just the tip of the iceberg. Operationally, there was much that needed to be done. There

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37 For example, from the minutes of the CDIC board meeting (8 May 1986), when McKinlay explained about his meetings with Barbara McDougall.

38 On 30 October 1985, McKinlay and Sabourin met with the Alberta government (from the minutes of the CDIC board meeting, 6 November 1985). In November, McKinlay and Sabourin met with the agent of Fidelity Trust and with the provisional liquidator of CCB (from the minutes of the CDIC board meeting, 4 December 1985). These two also met with the BC government in July 1986 (from the minutes of the CDIC board meeting, 16 July 1986).

39 The following list is taken from the minutes of McKinlay's first board meeting on 11 October 1975.

40 From the minutes of the CDIC board meeting (11 October 1985).

was the disposition strategy for Fidelity Trust's affiliate, Patrician Land Corp, a task made more difficult by the lawsuits brought by Pocklington Financial Corporation and by Royal Bank over the handling of its assets.[41] A disposition strategy was also needed for the Cadillac Fairview properties, and there were ongoing negotiations with a possible buyer for Seaway Mortgage and other negotiations with the Quebec Deposit Insurance Board with respect to cost sharing for the run-off of Crown Trust. There were payouts under way for several companies under agency agreements; there was the development of appropriate procedures for the orderly and timely payouts of both insured and uninsured depositors of CCB and Northland Bank (once its legal wrangling was resolved) and the need to decide what to do with CCB's affiliate, CCB Mortgage. The substantial premium increase that the board had approved in June had to be shepherded through the legislative approval process[42] and presentations had to be made to the Estey Commission, as well as the parliamentary committees studying CDIC. It was a full plate indeed.

One of the staffing needs that McKinlay and de Léry identified in dealing with these issues was for a new lawyer. Externally, CDIC was represented by Torys — by both Charles Scott, who was then compiling the documents to be submitted to the Estey Commission,[43] and when required, by Jim Baillie. But internally, Harry Macdonald was to retire in December.[44] By November, G Ian Ferguson was brought in.[45] Like McKinlay, he was from Toronto and having worked at the Harries Houser law firm, he was familiar with commercial transactions and with the pace of work on Bay Street, Canada's financial centre.

41 "Royal Bank Sues CDIC" *Montreal Gazette* (15 June 1985).

42 "CDIC Board Agrees to Triple Deposit-Insurance Premiums" *Montreal Gazette* (21 June 1985). Gerald Bouey of the Bank of Canada had supported the premium increase in the Commons standing committee in July. "Raise Deposit Insurance Premiums: Bouey" *Montreal Gazette* (10 July 1985).

43 From the minutes of the CDIC board meeting (11 October 1985).

44 CDIC, "Chief Executive Officer's Review of Operations" *Annual Report* (1985) at 10.

45 From the minutes of the CDIC board meeting (11 October 1985).

Not long after Ferguson became general counsel and corporate secretary, CDIC management decided that they needed a junior lawyer to assist Ferguson as well as new external counsel to assist with the CCB and Northland liquidations. One can certainly understand why Ferguson would want some help in-house. But the need for special external counsel was less obvious — it arose because of a series of conflicts of interest. The first conflict left CDIC management facing a delicate matter. There were suggestions that the governor of the Bank of Canada was in a conflict of interest in sitting on the CDIC board and advising on the liquidation of CCB and Northland since the bank was the principal creditor of both banks and had a preferred creditor status not enjoyed by others. In dealing with this alleged conflict, CDIC management could not turn to Torys because of another alleged conflict. Jim Baillie of Torys was under attack for sitting on the board of Continental Bank of Canada, a competitor of CCB and Northland, while advising on their liquidation.[46] In the early months of 1986, McKinlay called on a long-time trusted colleague, Ronald Neil Robertson, to advise on the Bank of Canada issue. Robertson and his Bay Street law firm, Fasken & Calvin, were well known to McKinlay.[47] Hilda McKinlay, Ron's wife, had been a lawyer at Faskens for ten years before her appointment to the Ontario Court of Justice in 1983.[48] More importantly, he and Robertson had worked together on some of Canada's largest insolvencies, with McKinlay as the trustee in bankruptcy and Robertson as his legal counsel. Six years younger than McKinlay, Robertson was tall and ruggedly handsome with a deep, authoritative voice and a first-class mind. If given the choice, McKinlay might well have chosen Robertson as CDIC's principal legal adviser, but the Tory firm was well-respected and seemed well-entrenched in its

46 "Ottawa's Expert Denies Conflict" *Montreal Gazette* (8 October 1985).

47 C Ian Kyer, *Lawyers, Families, and Businesses: The Shaping of a Bay Street Law Firm, Faskens 1863–1963* (Toronto, ON: Osgoode Society and Irwin Law, 2013) at 234–35.

48 Christopher Moore, *The Court of Appeal for Ontario: Defining the Right of Appeal 1792–2013* (Toronto, ON: University of Toronto Press and the Osgoode Society, 2014) at 253.

position as CDIC's lawyers. It had deep connections to the ruling Conservative Party. Robertson was also well-connected. His older brother, Gordon, had been chief clerk of the Privy Council until 1980 and was then serving as the chancellor of Carleton University.[49] But Robertson's connections were with the previous Liberal government. The Baillie conflict, however, gave McKinlay a chance to bring Robertson on board for at least this one matter, and he took that opportunity.[50] Later in the year when the Tory firm had another conflict in the Royal Bank litigation, McKinlay again turned to Robertson and the Faskens firm.[51]

Meanwhile Charles Scott and CDIC's local counsel in Alberta and Manitoba continued to battle the shareholders of Northland over its winding-up. In November at a meeting in Calgary, Northland's dissident shareholders called on CDIC to replace Touche Ross, the proposed liquidator, with Coopers & Lybrand. Their contention was that Touche Ross was not independent since it was a Touche Ross report that CDIC had relied upon in reaching the conclusion that the Northland Bank ought to be wound-up. They suggested that in reaching that conclusion, Touche Ross had been unduly influenced by the opportunity to earn millions of dollars in fees as the liquidator.[52] CDIC argued that this was nothing more than a delay tactic. Retaining a new firm, unfamiliar with the bank's affairs, would add expense and time. These skirmishes would continue for several months. Finally, on 20 January, Justice Daniel Kennedy of the Manitoba court would approve the winding-up with Touche Ross as the liquidator.[53]

CDIC was also dealing with another set of complaints that arose from confusion in the minds of the public about which deposits were insured and which were not. In February 1985, when Pioneer

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49 Gordon Robertson, *Memoirs of a Very Civil Servant: Mackenzie King to Pierre Trudeau* (Toronto, ON: University of Toronto Press, 2000).

50 From the minutes of the CDIC board meeting (17 March 1986).

51 From the minutes of the CDIC board meeting (15 August 1986).

52 Hunt, above note 14 at 147.

53 "Judge Approves Winding-Up of the Northland Bank" *Montreal Gazette* (21 January 1986).

Trust of Regina had collapsed, the federal and Saskatchewan governments had passed special legislation to extend deposit insurance coverage to six- and seven-year investments. This had resulted from the fact that depositors had been misled as to the CDIC protection available. To clarify the issue, CDIC issued warnings through the Canadian Press. An article was made available to Canadian newspapers titled, "If [Your] Bank Fails, What Happens to [the] Money in Your Account?"[54] It warned that deposits were only insured if they were $60,000 or less in Canadian funds and invested for five years or less. People were cautioned against assuming that these limits would be waived in future.

Fear of further failures was no abstract concern. Troubled institutions still abounded. In September 1985, Toronto-based Continental Trust (unrelated to Continental Bank) was placed in receivership.[55] Mismanagement and a weak loan portfolio had brought the trust company to its knees in June. Approximately 95 percent of its $118 million in deposits were insured by CDIC.

In October 1985, CDIC advised the Columbia Trust Company, incorporated in British Columbia, that it had to change certain unsound business practices, or CDIC would terminate its deposit insurance.[56] Columbia Trust had lost $2.1 million in 1984 and a further $1.7 million in 1985. In April of the next year, CDIC reiterated its concern and gave notice of its intention to terminate the deposit insurance effective in June. Columbia Trust made some effort to comply with the requirements imposed by CDIC, but on 8 September 1986, the directors of Columbia Trust applied to wind-up the company. Shortly thereafter, the Government of British Columbia, pursuant to the *Trust Companies Act*,[57] suspended its registration. Clarkson Gordon, McKinlay's former firm, and Clive S Bird, Esq

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54 See, for example, "If Bank Fails, What Happens to Money in Your Account?" *Montreal Gazette* (5 August 1985).

55 "CDIC Begins Mailing Cheques to Failed Bank's Depositors" *Montreal Gazette* (24 September 1985).

56 See *Canada Deposit Insurance Corp v Columbia Trust Co* (1987), 13 BCLR (2d) 79 (SC).

57 *Trust Companies Act*, RSBC 1948, c 61.

were appointed on 26 September 1986, as provisional co-liquidators under the *Winding-up Act*.[58]

Meanwhile, in August 1986, Justice Estey's *Report of the Inquiry into the Collapse of the CCB and Northland Bank* had been published.[59] It was very critical of the handling of the whole affair, especially of the role that the Bank of Canada had played in promoting and conducting the bailout, and of OIGB's lack of action when initially provided with evidence of the practices and financial condition of these banks.

CDIC emerged generally unscathed in the critical report. Justice Estey saw CDIC as playing a key and quite positive role in the affair. Its funds had "represented a significant component of the CCB support package"[60] and following the failed rescue, CDIC had reimbursed depositors in both institutions for several hundred million dollars and had "successfully prosecuted the actions necessary to obtain the orders for the winding-up of CCB and Northland under the Winding up Act in the Courts of Queen's Bench of Alberta and Manitoba, respectively."[61] It had then been appointed an inspector in the winding-up proceedings for CCB and the agent of the Government of Canada for the purposes of the *Financial Institutions Depositors Compensation Act*.[62]

Justice Estey seemed puzzled that CDIC, which had been created in part to provide emergency liquidity funding to deposit-taking institutions, had not been used in this way with either of these two banks.[63] Instead, the Bank of Canada, with little experience or expertise in such matters, had led the bailout effort.

Justice Estey thought it unfortunate that CDIC had "only limited powers to prevent failures (particularly in the case of chartered banks) or to attempt to avoid future problems through inspection

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58 RSC 1970, c W-10.

59 Estey Report, above note 3.

60 *Ibid* at 60.

61 *Ibid*.

62 SC 1985, c 51.

63 Estey Report, above note 3 at 58.

procedures or by regulation."[64] He also noted that while CDIC was entitled to "prescribe standards of sound business and financial practices" for member institutions, there was "no clear guidance in the CDIC Act as to how such bank practices [were] to be discovered by CDIC. Nor [was] there any procedure for the issuance and enforcement of any corrective orders."[65]

In his view, CDIC ought to have been playing a larger role in such affairs, and he recommended that:

> the supervisory function should be placed within a framework which will contribute the primary element revealed by these events to be missing: the will to respond when the signals of trouble in a bank come to the regulator. The proposal is that the OIGB be integrated into a reorganized CDIC. The insurance function and the inspection function would be combined . . . such an organization, which might be called the Canadian Deposit Insurance Commission, will bring to bank regulation the necessary skills and experience to establish a procedure whereby troubles in a bank will come to the attention of the regulator in a timely fashion. Perhaps of even more importance, this recommendation is founded in the belief that a regulator so organized will have the interest, the will and the skill to respond quickly to troubles in a member of the banking industry, in time to head off ultimate collapse by rescue programs, mergers or other means.[66]

Although Justice Estey's principal recommendation would not be implemented, his report would contribute the next year to the merger of the offices of the inspector general of banks and the superintendent of insurance, creating the Office of the Superintendent of Financial Institutions or OSFI.

It was another aspect of this recommendation that resonated with Ron McKinlay. He noted Justice Estey's call for "the will to respond" and his encouragement to create an organization with "the

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64 *Ibid* at 59.
65 *Ibid*.
66 *Ibid* at 18–19.

interest, the will and the skill to respond quickly to troubles in a member of the banking industry, in time to head off ultimate collapse." McKinlay had come from an insolvency practice where the emphasis had been on restructuring and rehabilitating troubled companies. He wanted CDIC to play a similar role — to respond quickly and effectively to members in difficulty and help them stave off collapse.[67] To his mind, liquidation using traditional processes was "slow and costly."[68] Better methods were needed.

Not long after the Estey Report appeared, McKinlay and CDIC had the opportunity to do as the report had suggested. Like CCB, the Bank of British Columbia had suffered with the decline in the western economy, and like Northland, it had been adversely affected by the CCB rescue. Efforts to help the bank resolve its issues had failed, but McKinlay did not want to wind-up yet another financial institution. Bruce Robertson, a frequently consulted adviser to CDIC management, determined that a traditional liquidation would cost CDIC $600 million.[69] There was also some question about whether CDIC had sufficient borrowing capacity with the Consolidated Revenue Fund to pay out its insured depositors.[70] Rather than incur such a large additional debt, an effort was made to find a merger partner. The Hongkong Bank of Canada (now HSBC Canada), a subsidiary of the Hongkong and Shanghai Banking Corporation, was looking to expand its operations on Canada's West Coast. The Bank of British Columbia offered an establish base with thirty-two branches. The difficulty was that the Hongkong-based bank and the shareholders of the BC bank had very different views of the value of the troubled bank's assets. The former thought that those assets were insufficient to meet its liabilities; the latter thought that they had considerable residual value. CDIC, working with the Department of Finance, the Department of Justice, and OIGB, engaged in lengthy negotiations with both. In the end, CDIC played

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67 CDIC, "Chairman's Remarks" *Annual Report* (1986) at 6.

68 *Ibid.*

69 See the minutes of the CDIC board meeting (3 November 1986) and CDIC, "President and CEO Review of Operations" *Annual Report* (1986) at 9.

70 From the minutes of the CDIC board meeting (28 October 1986).

a key role in bridging the gap by offering to pay $200 million to the Hongkong-based parent on three conditions. First, it was to give $63.5 million of that money to the Bank of British Columbia shareholders. Second, its Canadian subsidiary was to acquire the assets of the Bank of British Columbia on a going-concern basis. And finally, the foreign parent was to give the Canadian government a guarantee that its Canadian subsidiary would operate within the OIGB regulations.[71] That offer was accepted and by November a tentative deal had been struck. Only one major hurdle remained: the transaction was contrary to the existing Bank Act. The Bank of British Columbia was a schedule A Canadian bank and as such it could not be foreign owned. In fact, no more than 10 percent of its shares could be held by any one shareholder. Special legislation would be needed to authorize the transaction. It was for this reason that the Department of Justice was part of the negotiating team. Its role was to assist in preparing the necessary legislation. While a legal team from Faskens was putting together the deal documents,[72] the task of getting that special legislation through Parliament fell to the new minister of state (finance), Tom Hockin. Barbara McDougall had been moved out of that post in June. Hockin, a forty-eight-year-old former professor of political science at York University and of business administration at Western University, was not tainted by the CCB debacle of the previous year.[73] With the help of Stanley Hartt, Prime Minister Mulroney's chief of staff,[74] and others, he was able to convince both the Liberals and the NDP to support the legislation. In addressing the House of Commons, Hockin stressed that the bank would remain a western-based regional bank, it would

71 The terms of the transaction are set out in the Senate Committee report summarized in *Debates of the Senate*, 33rd Parl, 2nd Sess, vol 1 (27 November 1986) at 269. See also CDIC, "Chairman's Remarks" *Annual Report* (1986) at 7 and the "President and CEO Review of Operations" at 9.

72 Interview of Douglas R Scott of Fasken Martineau DuMoulin LLP (2 August 2016).

73 "Hon Thomas A Hockin," *The Canadian Who's Who 2005* (Toronto, ON: University of Toronto Press, 2005) at 597.

74 "Stanley Herbert Hartt," *The Canadian Who's Who 2005* (Toronto, ON: University of Toronto Press, 2005) at 566.

continue as a going concern, and no federal funds would be used (since CDIC was funded through member premiums).[75] Even while agreeing to support the bill, John Turner could not resist criticizing the government for the "hasty, spontaneous, disorganized way" that the matter had come before Parliament.[76] It is hard to imagine more inappropriate words to describe the effort of those negotiating and implementing this sale and of the Department of Justice in preparing the legislation. That legislation was the result of months of careful analysis, planning, and hard work. What Turner's remarks demonstrate is the differing needs of the legislature and of those effecting the bank restructuring. Parliament had an entirely legitimate and understandable need for a full briefing on the issues, time to digest that briefing, and time to come to a reasoned decision following a public debate. But as Galt had recognized more than a century before, public debate would destroy any chance of a successful restructuring. Those effecting the restructuring needed a quick and quiet approval. In this case, a compromise was reached and the *Bank of British Columbia Business Continuation Act*[77] received royal assent in less than forty-eight hours.[78] It was an impressive effort all around. McKinlay would write proudly in the CDIC Annual Report for 1986 that "this collective effort was a demonstration of the 'will to act' as urged by Justice W.Z. Estey in his Report."[79]

CDIC took a similar approach working with the government of Alberta to restructure the North West Trust Company. In this case, CDIC contributed $275 million to a deal whereby the province acquired the shares of the company and undertook not only to comply with CDIC guidelines but also to indemnify CDIC against any reimbursement of depositors that might have to be made in the future.[80]

Meanwhile in June 1986, the federal government had passed the first of what would be several reforms to CDIC and Canadian

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75 *Debates of the Senate*, 33rd Parl, 2nd Sess, vol 2 (26 November 1986) at 1544.
76 *Ibid* at 1545.
77 SC 1986, c 47.
78 CDIC, "Chairman's Remarks" *Annual Report* (1986) at 7.
79 *Ibid*.
80 *Ibid* and "President and CEO Review of Operations" at 9–10.

banking regulation.[81] This first "interim measure"[82] amended the *CDIC Act* to increase CDIC's board by four. Significantly, those additional four directors were *not* to be from the civil service or a Crown corporation. Like the chair, they were to be from the private sector (but not from one of CDIC's member institutions).[83] For the first time, CDIC's board would no longer be just an extension of the federal bureaucracy. Private sector members would be in the majority and have the opportunity to influence CDIC management decisions. The CDIC board would later say in a resolution that this measure gave CDIC its own "directing mind and will."[84] This had the potential to reshape the way CDIC saw itself. Just a few months earlier, when the board had reflected on its mandate, it had concluded that CDIC's directors had to be mindful that CDIC was "an instrument of public policy" and that in reaching their decisions, they needed to consider not only CDIC's statutory mandate "but also general national policies."[85] This was not surprising given the fact that all but one of the directors were wearing two hats and were charged in their "day job" with helping to develop and implement those policies. But the new outside directors would not have this second hat[86] — their responsibilities would be defined by CDIC's mandate alone.

The Act also approved the increase in member premiums that the board had asked for earlier. To permit CDIC to start to eliminate its deficit and reduce its debt, the premiums charged to members

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81 *An Act to Amend the Canada Deposit Insurance Corporation*, RSC 1985, c 18 (2d Supp).

82 Barbara McDougall described the Act as "really interim measures" to start to reduce the deficit and to add a "new kind of expertise for CDIC's decision-making process." *Debates of the House of Commons*, 33rd Parl, 1st Sess, vol 7 (27 January 1986) at 10196 & 10197.

83 In addressing the Finance Committee of the House of Commons, Barbara McDougall noted that the government wished to avoid any conflict of interest that might arise if representatives of member institutions were on CDIC's board. See *ibid* at 10199.

84 From the minutes of the CDIC board meeting (11 December 1992).

85 From the minutes of the CDIC board meeting (5 March 1986).

86 The "two hat" versus "one hat" analogy was used by virtually all of the outside directors that I interviewed.

would rise from one-thirtieth of 1 percent of insured deposits to one-tenth of 1 percent.

While CDIC's managing triumvirate were undoubtedly pleased with these interim measures, the large banks were not. Gordon Bell, the president of the Bank of Nova Scotia, was very unhappy that member institutions would be asked for further funding of CDIC through another across-the-board premium increase. He saw no need for deposit insurance for Canada's banks at all.[87] But if the federal government was going to continue to mandate such insurance, he favoured having separate insurance for the banks and the near-banks. Different types of institutions subject to different government regulations meant different levels of risk. Why not let the banks set up their own deposit insurance scheme and have the government deal with the near-banks? While more changes were coming, they would ultimately not include Bell's suggestions.

Those additional changes were enacted in July 1987 under the *Financial Institutions and Deposit Insurance System Amendment Act.*[88] This statute was a companion piece to the *Office of the Superintendent of Financial Institutions Act*, which merged the Department of Insurance with the OIGB to create OSFI and established the Financial Institutions Supervisory Committee (FISC), composed of the superintendent of financial institutions (as chairperson), the governor of the Bank of Canada, the deputy minister of finance, and the chairman of the CDIC. FISC was the recreation of the old CDIC board in a different guise. It was intended to enhance the exchange of information among its members on all matters related to the supervision of financial institutions and to develop strategies for dealing with those institutions that were in trouble.[89] Minutes of FISC meetings were kept and shared with the minister of finance.

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87 "Bell Opposes Mandatory Deposit Insurance" *Ottawa Citizen* (10 September 1986).

88 RSC 1985, c 18 (3d Supp).

89 David Dodge, "Public Policy for the Canadian Financial System: From Porter to the Present and Beyond" in Fred Gorbet & Andrew Sharpe, eds, *New Directions for Intelligent Government in Canada: Papers in Honour of Ian Stewart* (Ottawa, ON: Centre for the Study of Living Standards, 2011) 81 at 88.

FISC was viewed as another means of strengthening the supervisor's "will to act" sought by Justice Estey.[90] The fact that the composition of FISC recreated the former CDIC board meant that the chairman of CDIC represented the organization, rather than its president. This gave the chair more prestige and influence than the president, and would be a point of friction later when the chair and president saw CDIC differently.[91]

The 1987 amendments were the federal government's response to the many studies of 1985. Among other things, they brought significant changes to CDIC's mandate, powers, and operations. The amount that CDIC could borrow from the Consolidated Revenue Fund was increased once again, this time to $3 billion. CDIC was also given the right to increase its premiums up to one-sixth of 1 percent with the actual rate to be set each year by the Governor in Council (the cabinet) on the recommendation of CDIC. The Act also expanded its objects. One of the objects of CDIC would now be to promote standards of sound business and to contribute to the stability and competitiveness of Canada's financial system. To achieve these goals, CDIC was given more powers to conduct inspections of its members (or require OSFI to do so), to review prospective members for insurability, and to impose conditions on its insurance coverage. To assure its members that the information collected would remain confidential, a section was added to the *CDIC Act* expressly requiring CDIC to keep secret everything that it learned about its members, except as permitted under the *OSFI Act*, which entitled all members of FISC to any information relating directly to the supervision of a financial institution.

As a result of these legislative initiatives and the fallout of the western bank failures, CDIC's board went through a complete transformation. First, two of its long-standing members, Gerald Bouey and Bill Kennett, left the board. Bouey's departure at the end of 1986

90 Walter Engert, "On the Evolution of the Financial Safety Net" *Bank of Canada Financial System Review* (June 2005). See also the history of OSFI online: www.osfi-bsif.gc.ca/eng/osfi-bsif/pages/hst.aspx.

91 Based on interview of Colin P MacDonald (19 October 2016).

was to be expected. He was sixty-six and his second seven-year term as governor of the Bank of Canada was coming to an end.[92] He would be replaced in 1987 by John William Crow, the new governor of the Bank of Canada.[93] Bill Kennett's departure was more of a surprise. He left in March 1986 at age fifty-four,[94] seemingly paying the price for the CCB/Northland "debacle." When Kennett told his fellow board members that he would be leaving, they held a tribute dinner for him and acknowledged the key role that he had played on the board for many years, most recently as interim chairman following De Coster's departure. Kennett would initially be replaced by Donald Macpherson, the acting superintendent of banks. In mid-1987 with the creation of OSFI, Michael Mackenzie, the new superintendent of financial institutions, would assume the board seat, with Macpherson becoming an alternate. The four private sector directors would be identified in 1987, but they would not take their place on the board until the next year. McKinlay called on the board to suggest names of people who could fill the four private sector representatives that were to be added. He suggested that the board needed competent lawyers, accountants, or retired financial institution executives.[95]

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92 Like Humphrys, Gerald Bouey was a long-time civil servant who had been born in Saskatchewan — in his case, in Axford in 1920. He had served in the Air Force during World War II and had then attended Queen's University. In 1948, he had joined the Bank of Canada in the research department. He became deputy governor of the Bank of Canada in 1969 and governor in 1973. See *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 132; Douglas H Fullerton, *Graham Towers and His Times* (Toronto, ON: McClelland & Stewart, 1986) at 85–86; and Bruce Muirhead, *Against the Odds: The Public Life and Times of Louis Rasminsky* (Toronto, ON: University of Toronto Press, 1999) at 242–43. Gerald Bouey is pictured with Rasminsky on the dust jacket of the book (and at 182).

93 *The Canadian Who's Who, 1990* (Toronto, ON: University of Toronto Press, 1990) at 213.

94 He had been born in Toronto on 4 September 1932. A graduate of the University of Toronto and the London School of Economics, he became the inspector general of banks in 1977. See *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 646.

95 From the minutes of the CDIC board meeting (16 June 1986).

Respect for McKinlay's recommendations is clearly evident in the appointments that were ultimately made. The people chosen also demonstrate the importance that the government placed on getting good quality people to address the serious issues being faced by CDIC. As McKinlay had proposed, all four were lawyers or accountants, and at least two of the four were people with whom McKinlay had worked extensively. One was McKinlay's friend and colleague, Ron Robertson. Another, H Marcel Caron, was a retired accountant who had been an executive partner in Clarkson Gordon's Montreal office.[96] Robertson and Caron were vetted and approved by the government. The other two added were E Susan Evans, vice-president of law and corporate affairs at Encor Energy Corp in Calgary, and Paul Gustav Morton, president of Global Communications. [97] All four reflected the government's desire to bring some diversity and regional representation to the board. There was a woman lawyer from Calgary, a male accountant from Quebec and a male lawyer from Winnipeg (turned business executive and prominent member of the Jewish community in Toronto),[98] and a male lawyer born and raised in Saskatchewan who was now practising in Toronto.

Recruiting people of this calibre and experience must have been challenging. A CDIC directorship was a relatively low-paying job with significant demands. In this period of restructuring and fundamental change, the board of CDIC was exceptionally active. In 1986, McKinlay called his board together twenty-three times. Most were all-day meetings, and several went much longer.[99] In 1987, the board was once again very active, meeting twenty-one times.[100] And a lot was being asked of these directors at those meetings. They were sitting on a board where almost half of the members were

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96 *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 195. See also David MacKenzie, *The Clarkson Gordon Story: In Celebration of 125 Years* (Toronto, ON: University of Toronto Press, 1989) at 87–89.

97 CDIC, *Annual Report* (1987) at 6.

98 "Paul Gustav Morton," *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 900.

99 CDIC, "Chairman's Remarks" *Annual Report* (1986) at 8.

100 CDIC, "Chairman's Remarks" *Annual Report* (1987) at 6.

holders of key offices in the federal government (or their alternates). These *ex officio* directors were experts in both financial matters and in the operation of government who met regularly with each other through FISC and SAC. The *ex officio* directors often came to board meetings with an agreed-upon view, reflecting both their shared expert opinion and knowledge of government policies and priorities. For the outside directors to bring their own independent judgment to bear on CDIC's issues was no easy task, especially where those views clashed with the views of the office-holders. It called for courage and self-confidence. Considering that these were senior people with important positions outside government, this was a huge and challenging commitment of their time and energy and unlike their *ex officio* government colleagues on the board, these private sector appointees were not permitted an alternate.

These new directors were joined at CDIC by many new officers and employees. In 1980, there had been a mere three employees. In 1983, when the Trust Companies Affair had brought the dramatic turn in CDIC's activities, the organization had grown to eleven employees,[101] and since that time there had been further hiring. Nevertheless, in January 1986, Touche Ross concluded in its organizational review that CDIC's staff was still "too small to execute even its *existing* mandate actively" and was "not equipped to perform its monitoring functions effectively."[102] These advisers proposed a much more robust organization with staff added to deal with risk assessment and economic analysis, monitoring members and financial analysis, supervising agents and liquidators, standards development, public and government relations, and data processing. They proposed an organization chart. Below the management committee consisting of McKinlay, de Léry, and Sabourin, it showed twenty-two positions with only nine names filled in. Six of the nine were support staff — CDIC's lawyer Ian Ferguson, its comptroller Bert Scheepers, two people in accounting, and an office manager for each

101 CDIC, "Chief Executive Officer's Review of Operations" *Annual Report* (1987) at 11.

102 Touche Ross, "Organizational Review" (23 January 1986) in the files of CDIC.

office in Ottawa and Toronto. "Two Vice-Presidents, Intervention," were the only operational people listed. There were blanks beside thirteen positions. De Léry and Sabourin had much hiring to do, and hire they did. In the 1987 annual report, McKinlay was able to report that all key positions had been filled.[103] By the end of 1987, CDIC had fifty employees.[104] It nevertheless remained a "relatively small organization dealing with large and sensitive matters."[105]

One of the new employees recruited for CDIC in 1987 was Guy Saint-Pierre.[106] He was an accountant by profession, and had started his career with Clarkson Gordon. After a few years, he left to join Canadian International Paper on the private sector credit side and then moved on to Petro-Canada, where he dealt with the treasury and finance. A friend who was a placement specialist recommended he join CDIC. Saint-Pierre knew very little about the deposit insurer, but he discovered that it needed someone who knew something about commercial lending and could help develop standards. He was hired to head the new standards and monitoring division.[107]

The end result of all of this activity was that the CDIC of December 1987 was a very different organization than the CDIC of January 1985. Those three years had altered CDIC significantly. The reluctantly active Chairman De Coster had been replaced by the enthusiastically engaged and highly skilled Chairman McKinlay. CDIC's tiny staff had been significantly augmented. Although still saddled with a large debt and an operating deficit, its premium income had been substantially increased. The "mighty mite" was still mighty — but no longer a mite — and its new chairman was about to give it a new focus.

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103 CDIC, "Chairman's Remarks" *Annual Report* (1987) at 7.

104 *Ibid.*

105 CDIC, "Chairman's Remarks" *Annual Report* (1986) at 8.

106 The following is drawn from an interview with Guy Saint-Pierre (6 August 2015) in offices of CDIC.

107 Things were hectic for Saint-Pierre. He would later say that when he arrived in CDIC's offices for his first day of work, he was given a plane ticket for Calgary to work on a failed trust company. When he returned from that transaction six months later, people in the office wondered who he was.

Chapter Seven

Less Undertaker and More Doctor, 1988–1992

[T]he Corporation's role is moving from that of an undertaker to that of a doctor.

— RA McKINLAY, 1987[1]

McKINLAY'S MANTRA WAS "FIX problems, don't bury them."[2] In 1987, CDIC had taken some steps in that direction, choosing to work to nurse two institutions back to financial health rather than wind them down. He was determined to make this approach the rule rather than an exception. Much of the preparatory work had been done, and he wanted to exploit this preparation to avoid further losses and to optimize liquidation proceeds. In his Chairman's Remarks for the 1987 annual report, he outlined what he called the "CDIC Thrusts Planned for 1988." He hoped for improvements in administration, better supervision of members, and better management of the liquidators of the twenty-one insolvent members. To achieve loss prevention, he wanted CDIC to work with regulators and its members to identify potential problems at an early stage "to effect cures before financial illness of members becomes terminal." He called for a new emphasis on member

1 CDIC, "Chairman's Remarks" *Annual Report* (1986) at 6.
2 Quoted by Brenda Dalglish, "Opening the Bank (Central Guaranty Trust merges with Toronto-Dominion Bank)" *Maclean's* (16 November 1992) [Dalglish].

business plans. This was sound business practice, but it would also permit CDIC to track member results against these plans to identify problems.

The board that he encouraged to adopt this agenda was almost entirely new. There must have been a lot of introductory hand shaking at the first board meeting of 1988 — only McKinlay and Hammond had been with the board for more than a year. In addition to the four new private sector members, there was a new deputy minister, Frederick William Gorbet.[3] As strange as it may sound, Michael Mackenzie and John Crow were the third- and fourth-longest serving members, despite having been on the board less than a year. There was even a new corporate secretary.[4]

With the expansion of the board, it was now possible to create standing committees.[5] McKinlay, Mackenzie, and Paul Morton were appointed to the executive committee and McKinlay, Hammond, Susan Evans, and Marcel Caron were selected for the audit committee, which Caron chaired.

As hopeful as McKinlay was, the audit committee had some troubling numbers to deal with. CDIC's deficit may have been reduced by $96.4 million in 1987 but it still stood at $1.1 billion, with borrowing from the Consolidated Revenue Fund totalling $1.257 billion. This was not a good time to owe such large sums. High interest rates approaching 10 percent meant that CDIC had paid about $100 million in interest on those borrowings the previous year, and there was every indication that at least as much interest would be payable in 1988. This meant that half of the $200 million received in premiums served no purpose other than to service CDIC's existing debt. As McKinlay said, if the deficit was going to be significantly reduced, CDIC had to avoid further losses and optimize liquidation proceeds. In 1987, the realizations on the members in liquidation

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3 *The Canadian Who's Who 1985* (Toronto, ON: University of Toronto Press, 1985) at 468.

4 Lewis T Lederman, the son of Professor William Lederman after whom the Queen's Law Library is named, replaced Ian Ferguson as general counsel and corporate secretary. See CDIC, *Annual Report* (1988) at 9.

5 *Ibid* at 7.

had brought in $154 million, but over a billion dollars in assets were still to be dealt with.

With the board's approval, CDIC's managing triumvirate set out to implement the planned "thrusts" with the goal of eliminating the deficit by 1994. One important aspect of that deficit reduction was trying to eliminate further failures with their large payouts. It was agreed that the ways of doing so were developing standards for member activities, improving compliance monitoring, and shaping an early warning system that would facilitate problem resolution.

Bob Hammond agreed to chair a CDIC committee charged with the development of standards of sound business and financial practices. Those standards would focus primarily on risk management. The basic staffing would come from CDIC, led by Guy Saint-Pierre, who was promoted to vice-president, insurance and risk assessment. Other organizations had volunteered to assist and it was decided that at a minimum there would be consultation with federal and provincial regulators, the Canadian Bankers Association (CBA), the Trust Companies Association of Canada, the Institute of Chartered Accountants, and with industry leaders.[6]

Getting this committee functioning, however, would prove more difficult than originally expected. By the end of the year, de Léry was noting in his Review of Operations that it was the one area where the corporation had fallen short of its objectives. He attributed this to "occurring emergencies, staffing shortages and the fact that [they] underestimated this large undertaking."[7] To address the staffing issues, it was decided that seven positions needed to be filled. This increased staff would work under Saint-Pierre. Given the need for industry and regulatory input, determining and putting in place the machinery for setting standards proved to be a "slow and painstaking task."[8] Finally in 1989, a steering committee was created with representatives from the Department of Finance, the Bank of Canada, Office of the Superintendent of Financial Institutions,

6 *Ibid* at 10.

7 *Ibid* at 13.

8 CDIC, "Chairman's Remarks" *Annual Report* (1989) at 10.

and CDIC to provide advice and research support to the standards subcommittee chaired by Hammond. In addition to Hammond and Saint-Pierre, that subcommittee consisted of J Martin Castonguay of Deloitte Touche; RC Mcdonald, the senior manager (lending) of Royal Bank; Ursula Menke, senior corporate adviser to the superintendent of financial institutions; and John R Moffat, vice-president and associate general counsel of Royal Trust. The subcommittee could also call on a standards advisory group made up of very experienced industry people, many of them retired.[9]

All of this work to get the standards project up and running was done in the absence of JP Sabourin. In 1988 he had been granted leave to pursue a masters of business administration degree at the University of Toronto. That leave of absence and graduate degree was reflective of a battle being fought for leadership at CDIC: McKinlay and de Léry had been bumping heads for some time. The chairman knew that de Léry's term as president and CEO was set to expire in 1989 and he preferred to have Sabourin, with whom he worked well, made president. There was, however, a major hurdle to achieving this result. Sabourin had little formal education and no management training. He had learned the job well by doing it, but having him appointed president and CEO of a major Crown corporation without those credentials was unlikely. Thus, Sabourin went to school and McKinlay went to work behind the scenes to try to get him promoted.

De Léry wanted to have his contract renewed and tried to use his network of contacts to achieve this result, but McKinlay was very well-respected and de Léry suffered from being associated with De Coster — McKinlay won the day. In 1990, Sabourin, with his newly minted MBA in hand, became the second president of CDIC. He set out to implement the management training that he had received. In his first year, CDIC adopted a more informative communications

9 They included Marcel Cazavan, retired chairman of General Trustco; Alan A Marchment, retired chairman of Guaranty Trustco; Graeme K Ruthledge of Deloitte Touche; and Robert A Utting, retired vice-president of Royal Bank. See CDIC, *Annual Report* (1989) at 14. Gillian Strong, a newly recruited in-house lawyer, provided assistance to these groups.

strategy, instituted at least quarterly meetings with federal and provincial regulators, formed stakeholder committees, developed a risk-monitoring model, formalized CDIC's debt management policies and interest rate limits, and began consultation on the two standards that had been completed (interest rate risk and liquidity management).[10]

One of the highlights of that first year was a trip to Washington in September with McKinlay to attend an international conference on deposit insurance hosted by the Federal Deposit Insurance Corporation. They joined delegates from twenty-six other countries to exchange ideas and experiences.[11]

While Sabourin was otherwise occupied, CDIC added someone who would play a key role. Thomas J Vice joined on 8 March 1989.[12] Vice was exactly the sort of person that CDIC was seeking. He was an economist who knew both banking and bank regulation. He had learned banking during eight years at the Bank of Montreal in its capital markets group; he had learned bank regulation in the previous two years in the Office of the Superintendent of Financial Institutions (OSFI). Vice had ended up at OSFI because he and his wife, both from Ottawa originally, wanted to start their family there. They had seen an article in the *Globe and Mail* about Michael Mackenzie, the new head of OSFI, and thought that the newly merged regulator might be their chance to move back to Ottawa. Vice had applied and landed a job with OSFI doing a review of Canadian banks. But Tom was not entirely happy at OSFI. While attending a seminar in Cornwall, he met Saint-Pierre, who was one of the speakers. Later over drinks, Saint-Pierre told Vice of the restructuring of CDIC following the Estey Commission. Shortly thereafter, Tom noticed CDIC was looking for someone in its risk assessment group and he applied. It was a stressful time in his life with a new baby, a new house, and a

10 CDIC, "President's Review of Operations" *Annual Report* (1990) at 15–17.

11 *Ibid* at 12. McKinlay spoke about Canada's new approach to standards development. It attracted much interest, as did the fact that CDIC could fulfill its mandate with a relatively small organization.

12 The following is drawn from an interview with Tom Vice (6 August 2015) in offices of CDIC.

new job, so he was pleased that it was relatively tranquil at CDIC. It would, however, turn out to be the lull before the storm.

At about this time the ghost of CDIC's very first failure paid a visit. It had been over twenty years since CDIC's board of directors had debated whether to accept Commonwealth Trust as a member and had reluctantly decided to do so. The company had been in liquidation for most of those twenty years with Central Trust, and later with Central Guaranty Trust. In 1990, as that liquidation was approaching its conclusion, it became known that there would be a surplus of about $1.8 million in the hands of the liquidator.[13] Commonwealth Investors Syndicate, the majority shareholder of Commonwealth Trust, thought that this surplus proved that CDIC had acted improperly in putting the company into liquidation all those years before. It brought an application to the BC Supreme Court seeking leave to bring a conspiracy allegation against CDIC and the liquidator, Central Guaranty Trust. The court rejected the application, but Central Guaranty Trust wanted no part of this fight and decided that it would resign. Rather than bring matters to a conclusion, this resignation started another fight over the replacement liquidator. To remind the shareholder that CDIC had lent substantial amounts of money to Commonwealth Trust without interest, CDIC applied to the court to require the new liquidator to use the surplus to pay CDIC interest on the money it had disbursed on Commonwealth Trust's behalf. Of course, the shareholders resisted. In 1995, the BC Supreme Court would hold that CDIC had waived its right to interest when it had accepted the formal compromise and arrangement with the liquidator in 1974.[14] This too would not bring the matter to a conclusion. In fact, it must have seemed as if nothing could bring the liquidation of Commonwealth Trust to an end. Legal actions, court motions, and applications came one after another; there would be twenty-eight reported court decisions regarding the Commonwealth Trust liquidation between April 1990

13 *Canada Deposit Insurance Corp v Commonwealth Trust Company (in liquidation)*, [1995] BCJ No 1834 (SC).

14 *Ibid.*

and 2004.[15] The accounts would not be finally approved until 2009, thirty-nine years after the liquidation started.[16]

Notwithstanding this distracting litigation, 1990 was the reasonably tranquil period for CDIC that Vice had been seeking. Although 1990 saw an economic downturn in the Canadian and the world economy and a significant reduction in property values, McKinlay thought that CDIC's members were in a better position to weather this storm than they had been in 1980. It was not that there were no problems: there was a $28.5 million loan to Settlers Savings and Loan Corporation of Winnipeg to assist in its orderly wind-down.[17] But CDIC's time without a payout to depositors of a failed institution continued, reaching two-and-a-half years. McKinlay attributed this reasonable tranquility to the early warning system that CDIC had been working on with OSFI and the provincial regulators.[18] With fewer crises to deal with, board meetings were now being held about once a month.[19] McKinlay cautioned that it would be unrealistic to expect CDIC as an insurer to not have claims from time to time, but he noted the success that CDIC was enjoying through "working co-operatively with regulators and with the management of member institutions having problems."[20] Nevertheless, he noted in the 1990 annual report that CDIC was engaged in a detailed policy review of a Financial Institution Restructuring Program (FIRP) to make the approach taken in the restructuring of the Bank of British Columbia available generally without the need for special, ad hoc legislation. Work had already begun in the preparation of draft amendments to the *CDIC Act* to implement FIRP.

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15 The many legal proceedings are catalogued in *Canada Deposit Insurance Corp v Commonwealth Trust Company (in liquidation)*, [2004] BCJ No 437 (SC).

16 *Canada Deposit Insurance Corp v Commonwealth Trust Company (in liquidation)*, [2009] BCJ No 2183 (SC).

17 CDIC, "Audited Financial Statements" *Annual Report* (1990) at 32, Note 3.

18 CDIC, *Annual Report* (1989) at 10.

19 From a high of twenty-three meetings in 1986, the number of board meetings had been in a steady decline — twenty-one in 1987, seventeen in 1988, thirteen in 1989, and fourteen in 1990.

20 CDIC, "Chairman's Remarks" *Annual Report* (1990) at 10.

The work on the FIRP proposal was less theoretical and prospective than McKinlay led his readers to believe. Even as he wrote these words, CDIC was facing a member failure akin to the Bank of British Columbia situation. Standard Trust Company, Canada's ninth-largest trust company, and its affiliated loan company were both in trouble. Not long after McKinlay and Sabourin returned from Washington, they got the early warning signal and put three teams into action.[21] A sales process team scoured the market for potential merger partners, what was referred to as a "going-concern solution." The Field Operations division assessed the value of Standard Trust's assets and CDIC's potential loss on a liquidation. The payout team drawn from the Field Operations division worked out how any payout to depositors would be effected. In doing so, they determined that Standard Trust's information systems were not up to the job, and decided that any payouts would have to be supported by a better database system provided by an independent third party.

To give the teams time to complete their tasks, CDIC entered into an assistance agreement with Standard Trust's clearing bank.[22] Under this agreement, CDIC provided a $17-million guarantee in return for undertakings from Standard Trust's management. That guarantee was never called on, but the undertakings were carefully monitored by CDIC's Insurance and Risk Assessment division.

The sales process team discovered that Laurentian Bank was a willing purchaser. CDIC worked with that bank and the parent company of Standard Trust to put together a plan under which Laurentian would acquire the assets of Standard Trust much as CDIC had done with the Bank of British Columbia a few years before. Again, CDIC would have to provide money to bridge the gap between

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21 Much of the description of the Standard Trust failure and subsequent sale is drawn from CDIC, "President's Review of Operations" *Annual Report* (1991) at 15–18.

22 Each deposit-taking institution that is not a direct clearer in the Canadian Payments Association, clears funds (cashed cheques, transferred accounts, and the like) through an institution that is. These are referred to as indirect clearers. See James F Dingle, *Planning an Evolution: The Story of the Canadian Payments Association, 1980–2002* (Ottawa, ON: Bank of Canada, 2002).

the value of the assets to the acquiring bank and the value that Standard Trust's parent company placed on those assets. In this case, that gap proved harder to bridge because the parent company could not accept the offer — it was itself insolvent and facing bankruptcy. Standard Trust's creditors rejected the Laurentian offer and petitioned the parent into bankruptcy. CDIC and OSFI therefore sought and received permission from the government to initiate winding-up proceedings. CDIC went to Ontario's courts seeking a winding-up order for each of Standard Trust and Standard Loan. Those winding-up orders were issued on 25 April 1991. By the end of June, CDIC had paid out $1.3 billion to the insured depositors. But now with the court overseeing the disposition of the assets of the two companies, CDIC was able to revive the deal with Laurentian. Within a few weeks of the payout, CDIC received $650 million as a result of a court-approved sale of most of the Standard Trust assets to Laurentian on a going-concern basis.[23] It was not the scenario that Sabourin and McKinlay had hoped for, but it was close.

The CDIC teams, however, could not rest on their laurels for long. The watch list for potential member failures maintained by Vice had other names on it and as result, CDIC was about to get busy "beyond all reason."[24] On 5 July, OSFI would seize control of four branches of the Bank of Credit and Commerce Canada (BCCC) following allegations that its foreign parent had been engaged in fraud and money laundering.[25] BCCC's 3,400 insured depositors would be paid about $22 million.[26]

Over the summer and into the fall, CDIC worked with Saskatchewan Trust to find a going-concern solution to that company's financial woes.[27] Several interested parties were identified and discussions

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23 CDIC, "Chairman's Remarks" *Annual Report* (1991) at 5.

24 Interview with Tom Vice (6 August 2015) in offices of CDIC.

25 CDIC, "Chairman's Remarks" *Annual Report* (1991) at 6. For a somewhat jaundiced view of the "Bank of Crooks and Creeps International," as he refers to BBCI (the parent company), see Walter Stewart, *Dismantling the State: Downsizing to Disaster* (Toronto, ON: Stoddard, 1998) at 124–27.

26 CDIC, "President's Review of Operations" *Annual Report* (1991) at 18.

27 *Ibid.*

held. Some negotiations were started, but with no deal to be found, all hope of such a solution was gone by mid-October. On 31 October, the Saskatchewan Trust Company was ordered to be wound-up. After two-and-a-half years without a payout, CDIC paid out depositors for the third time in 1991. In this case, $58 million was paid to about 4,500 depositors. That brought the total paid out that year to $1.4 billion.

Unfortunately for CDIC, things were about to get much worse. The economic slowdown continued, and with the value of property on the decline, numerous trust companies found themselves on Vice's watch list. CDIC ended 1991 working with two members who faced failure. In early December, they conducted a special examination of Shoppers Trust.[28] It was a review triggered by the 1991 inspection of the company by the Ontario regulators. CDIC noted that the company's capital was insufficient and the Ontario regulator restricted the company's investment and deposit taking activity. This resulted in all of Shoppers Trust's directors resigning. By March, OSFI was in charge, and a winding-up order was obtained. About 99 percent of Shoppers' $496 million in deposits were insured by CDIC. To lessen its payout, negotiations were conducted with National Trust to assume some of its deposits. On 23 April, National Trust took $5 million in deposits held by 800 depositors. For the first time, CDIC used an automated insurance payment program to permit CDIC to provide funds to those depositors in need of money quickly.

Even before CDIC began dealing with Shoppers, it had been devoting a great deal of time and attention to First City Trust and First City Mortgage. These companies had 186,000 depositors with $3 billion in deposits. Throughout 1991, CDIC worked with the companies and with an investment banker retained by First City Trust to find a going-concern solution. In parallel, it assessed their assets and the costs of a possible liquidation. The range of possible purchasers had been broadened by the federal government's moves to lessen the restrictions on banks and insurance companies owning

28 CDIC, "President's Review of Operations" *Annual Report* (1992) at 22–23.

trust companies. Given the size and complexity of the proposed transaction, CDIC followed the same approach as it had done with Standard Trust. It also commissioned an independent analysis of the situation to ensure that the proposed transaction would be better than a simple liquidation. By 14 January 1992, CDIC issued a press release indicating that it would support a transaction whereby North American Life Insurance Company would acquire both First City companies. For months thereafter, CDIC engaged in extensive negotiations with the parties involved.

By this point CDIC had put in place a skilled negotiating team. That team was led by Saint-Pierre, who had deferred his standards development work to get these deals done. He worked closely with Donald Milner, the partner leading the Faskens legal team. They complemented each other. Saint-Pierre knew what he wanted from CDIC's perspective; he was "the ideas guy."[29] Milner had an encyclopedic knowledge of insolvency law and a creativity that allowed him to shape legal solutions to fit Saint-Pierre's ideas.[30] Neither was deterred by complexity, and the deal struck to facilitate the First City acquisition was certainly complex.[31]

North American Life Insurance created a company known as NAL Trustco to acquire First City. This new holding company acquired shares in First City for $51 million. It put an additional $175 million into First City, which it received from CDIC, thus increasing First City's capital by over $225 million. The CDIC money was a loan evidenced by promissory notes and secured by NAL Trustco's interest in First City. Meanwhile, the First City shareholders and debt holders exchanged their shares and debt instruments for promissory notes from NAL Trustco. In this way, NAL Trustco became the sole shareholder of the renamed North American Trust, and those with an interest in the former First City converted that interest into debt of the new parent company. CDIC's notes, referred to as senior notes,

29 Interview with Guy Saint-Pierre (6 August 2015) in offices of CDIC. A separate interview with Donald Milner (29 September 2015) confirmed this.

30 Interview with Guy Saint-Pierre (6 August 2015) in offices of CDIC.

31 This description of the First City transaction is taken from CDIC, "President's Review of Operations" *Annual Report* (1992) at 24–25.

had priority of payment over those held by First City shareholders and debt holders, known as junior notes. By acquiring First City and not just its good, performing assets, NAL Trustco was assuming certain non-performing or "soft" assets. To make this more attractive to North American Life Insurance, CDIC entered into a deficiency arrangement whereby the purchasing company was able to claim up to $300 million from CDIC if losses were experienced on these "soft" assets in the next three years. If even more was lost on these assets than was covered by the deficiency arrangement, NAL Trustco could offset those losses first against the junior notes of the shareholders and debt holders and then against the senior notes of CDIC. In this way, the purchaser was protected against possible losses, but CDIC and the First City shareholders and debt holders would be repaid if the bad assets were not as bad as feared. To cover other contingencies, CDIC provided a series of other guarantees having a cumulative value of $70 million. To reduce its risk and to reflect the involvement of other jurisdictions, CDIC also put in place arrangements with both the Quebec deposit insurer and the government of Alberta whereby those parties shared any deficiency claim. By 30 June 1992, the deal had closed. It was a masterful, if complicated, piece of work.

As complex as the First City transaction was, it paled in size, importance, and complexity with CDIC's last deal of 1992, the acquisition of Central Guaranty Trust by the Toronto-Dominion Bank (TD Bank) in December. That transaction would be the largest transaction of its sort in Canadian history and it would indirectly reshape CDIC yet again.

Just under a decade earlier, Central Guaranty Trust had assisted CDIC in the run-off of Crown Trust. At that time, it had been the darling of the markets. Celebrating its one hundredth anniversary in 1987, it commissioned a corporate history from veteran writer Harry Bruce.[32] His history ended by stating that "the beginning of its second century could not be anything but exciting." The company

32 Harry Bruce, *A Century at Central Trust: The Story of its Growth* (Halifax, NS: Nimbus Publishing, 1985) at 69–72.

was "stronger than ever before."[33] For a short while that seemed true. After all, in 1986, Central Capital, its parent company, had done what was then the largest private placement of securities in Canadian history.[34] This was followed in July 1987 by the acquisition of Guaranty Trust and its merger with Central Trust to form Canada's fourth largest trust company, Central Guaranty Trust.[35] This was but one of many acquisitions of smaller companies. It seemed that Central Guaranty Trust was destined to be one of Canada's financial powerhouses. But that rapid growth, coupled with the collapse of the real estate market, spelled disaster. Only five years into its second century, Central Guaranty Trust found itself the subject of a CDIC rehabilitation effort. It would be the biggest such effort CDIC had mounted. Central Guaranty Trust had about $10.6 billion in deposits, of which $9.8 billion were insured. There were 1.7 million accounts held by 885,000 customers.

Again, CDIC followed a two-track approach, seeking out a going-concern solution while preparing for liquidation in case such a solution could not be found. Each track required CDIC to learn as much as it could about Central Guaranty Trust's financial position. The Field Operations division worked with a team of real estate and banking experts to evaluate the company's asset portfolio. At the same time, CDIC worked with the company to retain an investment banker to solicit offers for the company. Forty-five potential buyers were approached. Two offers were received, both conditional on CDIC financial aid. The board of Central Guaranty Trust chose the offer from TD Bank.

Throughout the late summer and early fall, Guy Saint-Pierre, Donald Milner, and their team worked with TD Bank and Central Guaranty Trust to finalize a deal that could be presented to the CDIC board.[36] Meanwhile, CDIC's Field Operations division prepared to make the biggest payout in its history, just in case.

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33 *Ibid* at 99.

34 *Ibid* at 90.

35 *Ibid* at 100.

36 The board was kept apprised of the negotiations. Each board meeting for months began with a report on the issues being discussed with TD.

By 9 October, the essential terms of the TD Bank purchase had been worked out. Central Capital and its subsidiary were to pay TD Bank $1.36 billion to take the assets, since the value of the assets being acquired was less than the liabilities being assumed. This money would come from CDIC by way of a secured loan. CDIC, of course, did not have this money, so it would borrow it from the Consolidated Revenue Fund. Again, a three-year deficiency coverage agreement was proposed. The assets being acquired by TD Bank were grouped into several categories. On performing residential mortgages and personal loans, CDIC agreed to cover 95 percent of any losses to a maximum of $990 million. On performing commercial loans, CDIC agreed to cover 95 percent of any losses to a maximum of $500 million. CDIC provided an additional $1.5 billion in deficiency coverage for other performing commercial assets. "Soft" assets that TD Bank did not want were to be transferred to a specially incorporated company, referred to colloquially as "Softco" that would be managed by a third party in a run-off. CDIC's board weighted the cost of the TD Bank deal against the cost of liquidation and decided to proceed with the deal.[37]

With this approval in hand, Saint-Pierre and Milner went back to the negotiating table to finalize the necessary documentation. Finally, at midnight on 1 January 1993, the deal was done.[38]

McKinlay was proud of what the CDIC team had accomplished, but as Brenda Dalglish reported in *Maclean's*,

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37 McKinlay would later be quoted as saying that winding-up Central Guaranty would have been "horrendously complex." It would have created serious problems for the trust company's depositors, borrowers, and employees, and would have required such massive borrowing by the federal government that financial markets could have been harmed. Even the administrative costs would have been exorbitant. "We calculated that the cost of postage stamps alone would have amounted to almost a million dollars": Dalglish, above note 2.

38 But much work remained. Each province where Central Guaranty held money in trust for customers had to pass special legislation authorizing the transfer of those trust accounts to the TD Trust Company. See for example, *TD Trust Company Act*, SNS 1993, c 13, s 1 and *The TD Trust Company and Central Guaranty Trust Company Act of Manitoba*, SM 1997, c 62.

> The deal, however, is far from perfect. It is certain to mean that CDIC, the federal agency that guarantees that depositors in failed member financial institutions are reimbursed for their losses up to a maximum of $60,000, will have to increase its $1.9-billion debt to the federal government, and that it will continue to be exposed to risk from Central Guaranty, particularly if the economy continues to deteriorate. In addition, the CDIC's member institutions —143 banks and trust companies that are directly responsible for bearing the cost of the failure — can likely expect that their deposit insurance premiums will increase significantly next year. When the buck finally stops, it will be the consumer who pays most of the bill.[39]

Those words would be the epitaph for the chairmanship of Ron McKinlay.[40] His doctoring days were over. With some encouragement from the Conservative government, he retired at the end of 1992. His last task as chairman would be to write his seventh and last Chairman's Remarks in the 1992 annual report. He began with the words, "From a financial point of view, 1992 could be viewed as the worst year in the twenty-five-year history of Canada Deposit Insurance Corporation."

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39 Dalglish, above note 2.

40 The CDIC board had some kinder words for their departing chairman. At the 11 December 1992 meeting, they passed a resolution that said:

> While Chairman, Ron became an active and critical member of the Management team; oversaw the expansion of the Board from its original base of four *ex officio* members to include as well four members drawn from the private sector; helped adapt the Corporation to a broadened statutory mandate; and assisted in the development of a staff of skilled professionals. During the seven years of his administration, CDIC in essence "came of age"; developed its own "directing mind and will"; and firmly adopted the approach of operating through multi-disciplinary teams of professionals. The role of CDIC became pro-active and more efficient, promoting stability and competitiveness in our financial system as a whole.

William (Bill) Player, pictured here in 1983, is the man whose imaginative scheme to acquire the Cadillac Fairview properties would indirectly reshape CDIC in the early 1980s.

Barbara McDougall, the minister responsible for CDIC, calls for a study of deposit insurance in 1985.

Bailout places study of CDIC in limelight

By CATHRYN MOTHERWELL

The participation of Canada Deposit Insurance Corp. in the bailout of the Canadian Commercial Bank has placed a committee reviewing CDIC in the spotlight and has increased concern about the protection that the federal agency offers depositors.

While the three-member private sector committee pores over submissions on the financial institution insurer, CDIC has contributed $75-million to the CCB salvage package.

The committee, appointed in January by Barbara McDougall, the federal Minister of State for Finance, is headed by Robert Wyman, chairman of Pemberton Houston Willoughby Inc. of Vancouver. The other members are Les

tions failed, all depositors recovered their savings regardless of the insurance limits. Not all Pioneer Trust depositors were covered after that company's collapse, however, and the CAC believes this inequity should be resolved.

In the past, depositors have been forced to rely on their provincial governments to lobby the federal Government and CDIC for full repayment of lost savings. The CAC says there should be a uniform policy.

"It seems to me that the people with Pioneer Trust are being unduly victimized as a consequence of the (federal) Government's failure to come to grips with the whole deposit insurance question," said Tom Delaney, a member of the CAC's economic issues committee.

As the Wyman working group studies deposit insurance, CDIC participates in the Canadian Commercial Bank (CCB) bailout in April 1985.

Guy Saint-Pierre, CDIC's deal-maker of the 1980s and 1990s, who would later become its third president (shown in 2007).

Chapter Eight

Virtually Every Aspect Transformed, 1993–1999

> [V]*irtually every aspect of the Corporation has been transformed.*
>
> — GRANT REUBER, 1999

THE COLLAPSE OF CENTRAL Guaranty Trust triggered real concern in the minds of many including David Dodge, Canada's new deputy minister of finance. Dodge was a plain-spoken, clear-thinking economist who had left a successful academic career to bring his expertise to government.[1] His alternate, Marcel Caron, had sat on the CDIC board in late 1992 and kept him informed of the two options available to deal with the Central Guaranty Trust situation. To Dodge's mind, avoiding a CDIC payout of more than $9 billion, even at the cost of having CDIC assume billions of dollars in contingent liability under the deal, was the right approach. But the funding of CDIC going forward was what worried him. How was CDIC to fund its growing deficit and its accumulated large debt? That was a serious question that had to be addressed.[2] Premiums for members would have to be raised significantly and that would not be

1 On becoming deputy minister, he is reported to have said to his department, "I don't know if anyone's noticed, but we are broke." See David Olive, "The Nerve of David Dodge" *Toronto Star* (27 April 2007).

2 Based on a telephone interview with David Dodge (28 July 2016).

well received. He knew that the government needed industry buy-in for a significant increase in premiums and that it would not be forthcoming unless those members were given some say in what CDIC did and how it did it. The Canadian Bankers Association (CBA) was already lobbying to change deposit insurance, calling on Parliament to adopt co-insurance, risk-based premiums, or both.[3] He decided to create a senior industry advisory group to obtain industry feedback and buy-in.[4] In early November 1992 as Saint-Pierre's team was finalizing the Central Guaranty deal, Dodge's Department of Finance was creating the Deposit Insurance Review Advisory Committee, known informally as the Dodge committee.[5] Nothing was off the table. Even the scope of the forthcoming review would be determined by this public-private sector advisory body. This was to be a forum for serious policy debate in the hopes of reaching a consensus on how to

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3 Shawn Cooper, vice-president of financial institutions at the CBA, was quoted in *Maclean's* magazine as saying that deposit insurance should be modified to "build incentives into the system so that institutions are encouraged to manage their risks more conservatively." See Brenda Dalglish, "Opening the Bank (Central Guaranty Trust merges with Toronto-Dominion Bank)" *Maclean's* (16 November 1992).

4 Canada Deposit Insurance Advisory Committee: Committee of the Deputy Minister of Finance to Review the CDIC (the Dodge Committee).

5 Department of Finance, Press Release, 92-080, "Deposit Insurance Advisory Committee Members Appointed" (6 November 1992). See also Department of Finance, "Enhancing the Safety and Soundness of the Canadian Financial System" (Ottawa, ON: Department of Finance, 1995) at 3 ["Enhancing the Safety"] where it states:

> In the fall of 1992, the Department of Finance initiated a deposit insurance review, to explore means of reducing the costs of the federal deposit insurance plan. A public/private sector advisory committee (the deposit insurance advisory committee), chaired by the Deputy Minister of Finance, was struck to obtain views from a number of different perspectives. In addition to considering a number of means to reduce the costs of providing deposit insurance, the committee considered matters such as earlier intervention and the transparency of the supervisory process. The committee, which completed its discussions in the summer of 1994, provided valuable input to the policy development process.

fund and improve deposit insurance.[6] Given this mandate, it was crucial that the people recruited be respected, thoughtful, and representative of the different stakeholders involved — and they were. The members of the Financial Institutions Supervisory Committee (FISC) represented the public sector. They were joined by thirteen private sector appointees. Those appointees included senior executives of Canada's financial institutions, lawyers with deposit insurance experience, and academics. The financial executives were John Cleghorn, the president and COO of Royal Bank; Peter Nicholson, vice-president of the Bank of Nova Scotia; Dominic D'Alessandro, the president and CEO of Laurentian Bank; Rowland Fleming, the president and CEO of National Trust; Maxwell Rothstein, the chairman of the Trust Companies Association and CEO of the Municipal Trust Company; and Robert Astley, the president and COO of the Mutual Group. The lawyers were Jim Baillie, CDIC's principal legal counsel for many years, and Hy Calof, a former assistant attorney general in the Department of Justice who had left the federal government in 1990 to join the firm of Gowling, Strathy Henderson. The academics were Professor Robert R Kerton, an economist at the University of Waterloo who focused on consumer issues, and Dean Michael Goldberg of the Faculty of Commerce and Business Administration at the University of British Columbia. Rounding out the private sector group were John Evans, the president and CEO of the Trust Companies Association, and Helen Sinclair, the president and CEO of the CBA. This was the very accomplished, knowledgeable, and respected baker's dozen that Dodge brought together to ponder and advise. They were supported by a public-private steering committee and a small task force in the Department of Finance. Just seven years after the Wyman working group and the other studies of 1985, deposit insurance and CDIC were again to be the subject of much scrutiny.

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6 To facilitate informed discussion, in October 1992, Nathalie Pothier of the Economics Division of the Library of Parliament prepared a briefing document on CDIC's history, mandate, legislation, and key issues. It is available online: publications.gc.ca/Collection-R/LoPBdP/BP312-e.htm.

While these high-powered advisers help Dodge chart CDIC's future direction, the federal government appointed a new chairman. Ron McKinlay's chairmanship had been brought to a somewhat premature end (it had been slated to expire in September 1993)[7] because the government was introducing austerity measures. Programs were being cut and Crown corporation spending, limited.[8] Civil service salaries had been frozen and no bonuses were being granted.[9] The federal government wanted CDIC to be included in these measures, but McKinlay had not favoured this approach for two reasons. First, CDIC's salaries were funded from its premiums — they were not a drain on the government. Second, as Paul Morton had pointed out at a CDIC board meeting, the organization was "counter-cyclical": at its busiest in bad economic times.[10] To freeze CDIC salaries in bad times meant that when people were working their hardest, they would not be financially rewarded. But the government had not been convinced and McKinlay was encouraged to retire.

The CBA was able to convince the Mulroney government that the right person to implement the government's austerity measures at CDIC was Grant Louis Reuber, the retired former president and CEO of the Bank of Montreal.[11] Like Dodge, Reuber was a distinguished economist who knew Canada's financial sector as both an academic and a bureaucrat. Reuber had been deputy minister of finance in the short-lived Joe Clark government of 1979–80. More importantly for the CBA, he knew the banking industry from the inside: he had chaired the government relations committee at the CBA.[12] He could be counted on to question the operations and

7 His initial five-year term had been extended three times for one-year terms. From the minutes of the CDIC board meeting (11 December 1992).

8 *Spending Control Act*, SC 1992, c 19.

9 Finance minister Don Mazankowski introduced these measures in a mini-budget on 2 December 1992.

10 From the minutes of the CDIC board meeting (11 December 1992).

11 Based on an interview with Grant Reuber (27 September 2016) in the offices of the Bank of Montreal in Toronto [Interview, Grant Reuber].

12 *Ibid*.

approaches of CDIC and find ways to save money. He would be the perfect "doubting Thomas."

This would be Reuber's fourth brush with CDIC. In the 1960s as dean of the Economics Department at Western University, he had co-authored the study of Canada's trust companies that had indirectly inspired Dick Humphrys to suggest CDIC.[13] Then as deputy minister of finance, he had briefly been a member of CDIC's board at the time of the Astra Trust affair. After leaving the federal government, he had seen CDIC from the perspective of one of its largest members, the Bank of Montreal. For several years, he was that bank's chief economist, and for four years its president and chief operating officer.

It did not take Reuber long to make it crystal clear to JP Sabourin that his chairmanship would differ from that of his predecessor. At the very first meeting with Sabourin, Reuber stated that he did not believe in deposit insurance.[14] In his view, it distorted the marketplace, reduced market discipline, and was costly, and he was not alone in this opinion — many Canadian economists were of a like mind.[15] Yet CDIC existed, so Reuber had to make the best of it. He explained to Sabourin that CDIC had to improve its efficiency and effectiveness.

It must have been a very frustrating time for Sabourin and his staff. They had just completed a huge, challenging transaction that had kept them incredibly busy and away from their homes and families for months. And now rather than being thanked by the new chairman

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13 When I suggested to him that a comment made by the Western University professors might have inspired the Federal Government to create CDIC, Reuber, *ibid*, quipped, "Isn't that typical of government — take an offhand remark and turn it into an institution."

14 Interview with JP Sabourin (7 August 2015) in Ottawa. Confirmed in an interview with Reuber, *ibid*.

15 See, for example, JL Carr, GF Mathewson, & NC Quigley, *Ensuring Failure: Financial System Stability and Deposit Insurance in Canada* (Toronto, ON: CD Howe Institute, 1994). They state (at 92) that "[d]eposit insurance of the type provided by [CDIC] is an unnecessary and highly costly means of protecting depositors . . . a major impediment to the efficient operation of the Canadian financial system."

for their efforts and lauded for saving CDIC from an enormous payout, their salaries were being frozen and their policies and procedures were being questioned. But Reuber too was frustrated. Had he been free to do so, he would have made more fundamental changes to CDIC. At a minimum, he would have introduced co-insurance.[16] But, as he would later note, this and other options were not yet available. Such options required legislative changes and were beyond his mandate and the control of CDIC. But Reuber knew of and relied upon the Dodge committee to consider and perhaps recommend such changes. Then it would be up to Parliament: "What legislative changes [might] eventually evolve out of the current review of Canada's deposit insurance system [remained] for the Government and Parliament to decide."[17] His task was "to improve efficiency and effectiveness," and in the process, eliminate the deficit and reduce any further borrowing.

Reuber's approach and concerns are amply reflected in the 1993 annual report. That report was a striking contrast to those that had preceded it. First, it was an impressive, detailed report, well presented, and laid out with charts and graphs. But more importantly it began with "general observations" under the names of both Reuber and Sabourin. No longer was there a separate Chairman's Remarks and President's Overview. And the tenure of these observations was strikingly different. These were remarks meant to convey to the reader that Canada's deposit insurance system was undergoing a thorough rethinking. They noted that this was being driven by two main factors — the increasing cost of deposit insurance (then representing about 10 percent of the annual pre-tax profit of deposit-taking institutions) and the effect that deposit insurance (or rather "the system of market incentives embedded in present arrangements") was having on the financial services industries.[18] These remarks may have borne both names but they are written

16 Interview, Grant Reuber, above note 11. See also CDIC, "General Observations" *Annual Report* (1993) at 6–7.

17 *Ibid* at 7.

18 *Ibid* at 7–8.

in a different style and clearly reflected Reuber's doubts about the effectiveness and efficiency of deposit insurance as previously conducted under McKinlay and Sabourin. There was a discussion, for example, of the advantages of introducing co-insurance, as well as ceasing to cover interest on deposits (so that only the principal would be insured), eliminating layering or stacking (that is, ceasing to insure different types of deposits and deposits in affiliated institutions separately), and instituting risk-based premiums.[19]

As different as Reuber's approach seemed to be, it was in fact picking up on one aspect of McKinlay's program. In 1989 when introducing the standards development project, McKinlay had said that even an early-warning system left the problem unrecognized until it was too late. It was the proverbial "closing of the barn door after the horse [had] gone."[20] True, it was better to learn of problems before they developed beyond the remediation point, but why not try to prevent problems from developing at all? Reuber and the CDIC board agreed. On 11 August 1993, they were able to bring the Standards of Sound Business and Financial Practices into effect.[21] In October, the board approved a new application for insurance and a revised policy of insurance to build on those standards and require members to keep appropriate records. Then in January 1994, the board passed a bylaw allowing CDIC to apply a premium surcharge if a member failed to follow the standards, failed to keep the appropriate records, breached an undertaking to CDIC or its governing statute.[22]

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19 Reuber was not alone in these concerns. See, for example, Ronald J Daniels, "Bad Policy as a Recipe for Bad Federalism in the Regulation of Canadian Financial Institutions: The Case of Loan and Trust Companies" (1994) 31:3 *Osgoode Hall Law Journal* 543–87 [Daniels]. Daniels talks of "the corrosive effect" of "market-suppressing policies" (at 546) such as "the federal government's commitment to flat-rate based deposit insurance and, frequently, to de facto full protection for insured depositors" (at 550) and of the "perverse incentives" introduced into the market by these policies.

20 CDIC, "Chairman's Remarks" *Annual Report* (1989) at 9.

21 CDIC, *Annual Report* (1993) at 16.

22 *Ibid* at 16–17.

CDIC's board and management recognized that the emphasis on the monitoring of standards had the potential to bring CDIC into conflict with the Office of the Superintendent of Financial Institutions (OSFI) and the provincial regulators who were already monitoring member performance. It was therefore seen as essential that CDIC co-ordinate its efforts with those regulators. To facilitate "closer collaboration between OSFI and CDIC," a liaison committee was created. Jointly chaired by Michael Mackenzie and Reuber, it included three senior people from each organization. CDIC's representatives were Sabourin, Saint-Pierre, and Tom Vice. But CDIC management under Reuber's leadership did not want to stop there. It decided to strengthen and improve co-operation and collaboration with the provincial regulators as well as the Bank of Canada, the Department of Finance, and the various industry organizations like the CBA.

Despite this increased emphasis on standards, the early-warning system remained very important. Taking a page out of the Dodge playbook, Reuber encouraged the board to establish its own public-private sector advisory committee to develop a better warning system and a more cost-effective way of dealing with member failures.[23] This advisory body was charged with considering how risk assessment and intervention policies could be improved. It included Saint-Pierre with Milner as legal counsel, but it was clearly meant to provide private sector constructive criticism of their recent endeavours. It was chaired by Peter Maurice, the deputy chairman of Canada Trust, and included Max Rothstein, as well as William Brock of TD Bank and Richard Buski of Coopers & Lybrand. Their guidance was sought on the criteria and timing of undertaking special reviews, placing members on the watch list, and determining the most appropriate time and method of CDIC intervention.

Similar private sector input was sought for CDIC's field operations.[24] CDIC found itself with claims on some $4.2 billion of assets. It is true that many of those assets were impaired in some fashion, but could CDIC do a better job of turning those claims into cash? A

23 *Ibid* at 5 and 64.
24 *Ibid* at 5 and 65.

committee with volunteer members from five major banks and six accounting firms was established to advise on the means and costs of liquidating failed members and to suggest options for enhancing recoveries at reduced cost. The committee prepared a report with a number of suggestions, and importantly for Wayne Acton and his Field Operations division, it concluded that CDIC's Field Operations was playing an effective and valuable role.[25] Even while CDIC was studying what further changes ought to be made, the board also adopted a new policy whereby CDIC would bring legal actions against officers and directors of failed institutions if the evidence indicated that they had intentionally or negligently caused the failure.

Because many of the assets that CDIC had claims upon continued to be real property, the Real Estate Advisory Committee was reconstituted as the Real Estate Advisory Panel under the chairmanship of Daniel P Sullivan of Scotia McLeod.[26] Bill Poole continued from the former committee (as did Ken Rosenberg), but a number of new members were recruited. CDIC's newest director (who had succeeded Paul Morton), Bernard Ghert, had extensive real estate expertise. He was tasked with serving as liaison between the CDIC board and this panel.

One can see both the bank president and the academic in Reuber's approach. He could be charming when he wanted to be, but he did not often see the need.[27] He took charge, forcefully issuing orders and demanding compliance. But he did not act until after he had collected data and done his analysis. In the first two-and-a-half years of his term, he literally submitted every aspect of CDIC to an external assessment. In addition to the advisory groups mentioned, he had Price Waterhouse look at the Operations and Finance divisions; had Ernst & Young (working with Stikeman Elliott) assess the Legal division, as well as procurement and contracting; had the Phillips Group consider Human Resources; had Likely Communications Strategies assess corporate communications; and had additional

25 *Ibid* at 24.

26 *Ibid* at 23 and 65.

27 Interview, Grant Reuber, above note 11.

advisory groups make suggestions about cash and debt management and consumer information.[28] All of these bodies reported to him and CDIC's board.

CDIC's board soon reflected Reuber's emphasis on order and discipline. Before the 27 January 1993, board meeting he met privately with each director explaining the approach he wished to take. Then at the meeting he instituted a seating plan[29] and handed out a set of detailed rules for how board meetings would be conducted. None of Reuber's rules are startling, but they do underline his orderly, disciplined approach. The corporate secretary was to ensure that the agenda and supporting materials for each agenda item (as approved by Reuber or another director), were in the hands of the board members seven days before board meetings. Minutes were to be circulated after each meeting in a timely manner. Meetings were to open with the corporate secretary reminding all participants that the meetings were strictly confidential and that any potential conflicts were to be promptly disclosed before any vote. In the meeting, oral presentations from staff were to be no more than five to ten minutes. At the conclusion of each meeting, there would be a directors-only forum to provide an opportunity for members of the board to raise any matter they wished to discuss privately among themselves. One item in Reuber's rules was expressly intended to remind Sabourin of his place:

> The President of the CDIC as its chief executive officer participates in discussions at Board meetings but, not being a Board member, has neither voice nor vote on the decisions made. The President is responsible for ensuring that all substantial issues are brought to the attention of the Board in a timely manner, that the Board is presented with full and accurate information on issues before the Board, that the Board is made aware of all matters pertinent to the decisions it is being asked to make and that the Board is presented

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28 CDIC, *Annual Report* (1994–95) at 8.

29 Interview with Paul Morton (10 February 2017). Morton was deeply troubled by Reuber's approach as reflected in the seating plan, and he soon resigned his board seat.

> with well-reasoned effective presentations on agenda items and with clear and implementable recommendations.

The fact is that Reuber and Sabourin did not work well together. Many factors contributed to this. Reuber, as a prominent member of Canada's academic community, respected well-educated people and Sabourin had little formal education beyond his MBA. Instead, he had learned on the job. Reuber also brought the perspective of the big banks, while Sabourin had been taking a position opposed to those banks for years. Sabourin was proud of what CDIC had accomplished and of his role. He was decisive, a man of action. Reuber saw Sabourin's approach and record as evidence of the problems plaguing CDIC. It was under Sabourin's leadership that the large deficit had been created. Sabourin had acted without proper study and detailed analysis, as far as Reuber was concerned.

The tension between the new chairman and the long-standing president concerned the board of directors. As head of the board's HR committee, Colin MacDonald felt an obligation to help Reuber and Sabourin improve their working relationship. He set out to develop a detailed job description for the chair and the president, looking for ways to minimize their competitive interference with each other and smooth their interaction. After some time and many meetings, he got sign-off. No small achievement, especially when you consider the rocky start that Reuber had with MacDonald. In 1994 when MacDonald joined the board, Reuber was none too pleased. He saw his new board member as a political hack. He remembered the last time they had met in 1980. MacDonald, then the executive assistant to Allan MacEachern, the minister of finance in the new Liberal government, had attended the meeting where Reuber had been informed that that government would be appointing a new deputy minister. Gradually, MacDonald won Reuber over. The key was that MacDonald, although a lawyer, was an economist by training with a master's degree from McMaster University. MacDonald had read and understood Reuber's articles and could hold his own in a discussion of economic issues. And he had the people skills that Reuber lacked. CDIC was the beneficiary.

CDIC, however, could not make these issues its only focus. There were still many members on the watch list and several of then faced immediate failure. Royal Trust, which was even larger than Central Guaranty Trust, began 1993 with an announcement that it was facing financial difficulties and was seeking a merger with a well-capitalized institution. For several months CDIC worked with OSFI, the Bank of Canada, and the Department of Finance to develop contingency plans in the event that Royal Trust was unable to complete such a merger.[30] By 18 March, a deal had been reached with Royal Bank that closed in September without CDIC involvement. CDIC also monitored but did not participate in the April 1994 merger of Montreal Trust and the Bank of Nova Scotia.[31]

CDIC played a much larger role in handling the failures of Dominion Trust, Prenor Trust, and Monarch Trust. Dominion and Monarch were Ontario trust companies. Prenor was federally incorporated. All three had excessive exposure to the falling real estate market. In each case after a special examination, CDIC worked with the companies to try to find a going-concern purchaser, but none was found.[32] On 10 November 1993, Dominion Trust applied for a winding-up order. It was granted, and Peat Marwick Thorne was appointed its liquidator. On 3 December, Prenor Trust also applied for a winding-up order. In this case, Deloitte & Touche was appointed liquidator. Then on 8 February 1994, Monarch Trust went through the same process with Coopers & Lybrand as the appointed liquidator. In the Dominion Trust case, CDIC was able to avoid a payout by inducing National Trust to assume the insured deposits of its 17,000 customers for a fee. It was also able to reduce its financial payout in the Prenor Trust case. Working with Deloitte & Touche, CDIC was able to sell many of the assets of Prenor Trust to Laurentian Bank. CDIC received $600 million, leaving only $200 million to be borrowed to fund its payout. No such arrangements

30 CDIC, *Annual Report* (1993) at 10.

31 *Ibid* at 10–11.

32 *Ibid* at 11–12.

could be worked out in Monarch Trust's case. Here, CDIC made payments to its 1,700 insured depositors totalling $65 million.

Problems in the real estate market also spelled the end of one of Canada's oldest life insurance companies, Confederation Life, and its federal trust company subsidiary, Confederation Trust. As Royal Trust had done the year before, Confederation Life began 1994 by announcing that it was in financial difficulty and seeking a merger partner.[33] But unlike Royal Trust, Confederation Life could not work out a deal. In August, the acting superintendent of financial institutions (Michael Mackenzie's term having ended), assumed control of the insurance company and its trust company affiliate and sought a winding-up order. By October, CDIC had negotiated an arrangement with National Bank under which the trust company's insured deposits were transferred to National Bank.[34]

In late 1994, CDIC also took action with respect to the Income Trust Company, a federal trust company operating in Ontario.[35] A special examination revealed that it was not in compliance with the Standards of Sound Business and Financial Practices bylaw. It was told that if it did not bring itself into compliance by 31 March 1995, its policy of insurance would be terminated. When it failed to do so, the policy was cancelled and OSFI assumed control of the company. On 6 March, a winding-up order was obtained from the Ontario court.

Meanwhile, CDIC learned that North American Trust, the company that it had helped create in 1992 to acquire the assets of First City Trust, had not been able to make a go of it.[36] CDIC was able to arrange for the sale of NAT's non-performing real estate assets to a US-based investment fund, Brazos Fund LP, which acquired the assets in September 1995, and its shares went to Laurentian Bank

33 On the story of how one of Canada's oldest and largest insurers came to collapse, see John Daly, "The Fall of a Giant: Confederation Life Is Closed Down by Federal Regulators" *Maclean's* (22 August 1994).

34 CDIC, *Annual Report* (1994–95) at 27. CDIC had changed its year end from 31 December to 31 March, so from this point forward, annual reports overlap the calendar year end.

35 *Ibid* at 27–28.

36 CDIC, *Annual Report* (1995–96) at 15.

in October. The transactions required about $150 million of assistance from CDIC, in addition to what it was already committed to as result of the 1992 transaction.

Although it had no idea that this was the case at the time, the last failure of CDIC's first fifty years occurred in June 1996, when Calgary-based Security Home Mortgage Corporation closed its doors for good. About 2,600 Canadians had deposited a total of $42 million with this company. Of that amount, all but $10,000 of the deposits was insured. Within three weeks, CDIC had made payment of all insured deposits.

While the last of CDIC's failures were being dealt with, the new Liberal government in Ottawa had been shepherding a series of amendments to the *CDIC Act* through Parliament. These were the results of the rethinking that had started at the end of 1992. The Dodge committee had completed its review in 1994 and the Senate's standing Committee on Banking Trade and Commerce had completed its own review, resulting in forty-two recommendations. The combined result had been distilled into a government policy paper issued in February 1995, entitled "Enhancing the Safety and Soundness of the Canadian Financial System."[37] It proposed changes to both OSFI and CDIC in support of an earlier intervention policy. Attached to the government paper was a set of guidelines on intervention developed by OSFI in co-operation with CDIC. These guidelines set out when the parties would intervene and what steps each would take. The paper did not support co-insurance, even though the Senate committee had done so.[38] But it did propose risk-based premiums for CDIC members so that those institutions that were run prudently would pay lower premiums that those that were not.[39]

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37 "Enhancing the Safety," above note 5.

38 The Senate recommendation was for full coverage for the first $30,000 of deposits and 90 percent of the next $35,000. See "Enhancing the Safety," *ibid* at 11.

39 Academics like Ron Daniels had been pushing for differential premiums for some time. See Daniels, above note 19 at 553, where he states that "under a system of flat-rate based insurance, the insurer is unable to charge a variable premium — one that is commensurate with the actual risk that the institution brings to the insured pool — the shareholders and managers of that

It also proposed some limits on stacking (the separate coverage of deposits in the parent company and its affiliates).

When the legislation was actually prepared and passed, risk-based premiums were authorized, but the limits on stacking were not. The legislation also eliminated the reference to the competitiveness of Canada's financial system from CDIC's mandate. Reuber proposed this change because to his mind, CDIC had no means available to it to effect the purpose of promoting competition and it was in conflict with its other purposes.[40] Ironically, the government paper upon which the legislation was based had justified deposit insurance because it lowered barriers to entry in the financial services sector and promoted competition.[41] The new legislation also increased CDIC's powers under the Financial Institution Restructuring Program (FIRP) and gave it the right to go to the market to borrow rather than having to borrow its funds from the Consolidated Revenue Fund.[42]

For the remainder of his term (which was extended in 1997 for a year and a half to December 1999), Reuber worked successfully, if not always painlessly, with his board and CDIC management to implement the policies and priorities that he had set in 1993. Differential premiums like standards a few years before turned out to be more of a challenge than originally anticipated. But a plan had been worked out under the supervision of Saint-Pierre by 1998 and CDIC's differential premiums bylaw had come into effect for the

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institution will, assuming no other countervailing pressures, operate the institution in a riskier fashion than if the institution were uninsured."

40 CDIC, *Annual Report* (1998–99) at 2.

41 "Enhancing the Safety," above note 5 at 10. Reuber would later question the wisdom of this in a presentation to the Commons Standing Committee of Finance: "[W]hile allowing new entrants . . . may be a desirable goal, the basis upon which it is permitted can make a major difference to the safeness and soundness of the entire system." Minutes of Commons Standing Committee of Finance (29 October 1998) at 1535.

42 SC 1996, c 6, ss 21–48. There is a summary of the legislation in CDIC, *Annual Report* (1995–96) at 10–12.

premium year beginning 1 May 1999.[43] Under the plan, every member institution was slotted annually into one of four premium categories. This classification was based on a system that scored each member on such factors as capital adequacy, profitability, asset quality, and concentration. In conjunction with this change, the CDIC insurance policy was amended to make it clear that members were prohibited from disclosing the premium rating information that they were given by CDIC.[44]

In CDIC's 1998–1999 annual report, Reuber could look back on his six-and-a-half years and say that "virtually every aspect of the Corporation has been transformed." He proudly pointed out that CDIC's debt and accumulated deficit had been eliminated, that adequate reserves had been established to cover potential future losses, and that the premium rates for most members were at near all-time lows. This was not only a result of an improved economy and three years without a failure, but also the decision of the board to not fund a large deposit fund. It also helped the large banks (which had grown even larger with the acquisition of most trust companies and securities dealers) that the premium rates were now based on a member's risk profile instead of being a flat rate for all members. The number of members on its watch list was close to historical lows because of the improved economy. CDIC's bylaw development and updating was, to Reuber's mind, virtually complete. Financial data and data systems had been greatly enhanced. Working with OSFI and the Bank of Canada, CDIC had helped develop and implement a tri-agency database for the financial information collected from institutions, which was hosted at a centralized data storage facility.[45] In addition, the human resource function had been enhanced. Both Reuber and Sabourin were people who favoured documented

43 The bylaw undergoes regular reviews (including a 2015 comprehensive review) and has been amended on numerous occasions based on consultation with member institutions, their associations, and regulators.

44 OSFI would later be criticized in the press when it sought to prohibit its supervised institutions from revealing its ratings. See "OSFI Wants Ratings Kept Secret" *Globe and Mail* (13 May 2000).

45 CDIC, *Annual Report* (1998–99) at 32.

policies and procedures so this had been well done. And last but certainly not least, corporate governance had been reviewed, clarified, and strengthened.

But before Reuber could step down as chairman, a new set of problems arose for CDIC in the guise of the report by the task force on the future of the Canadian financial services sector, referred to as the MacKay Report. This industry task force had been created in 1996 by Finance Minister Paul Martin. It was, at least to some extent, a reaction to the actions of Canada's large chartered banks in buying up their competition. The near-bank problem had been solved in a way that the federal government had long feared: the trust companies had all failed or been purchased by large banks. This had the dual disadvantages of reducing competition and increasing the barriers to entry in the financial services industry. It came as no surprise when the report of the task force, entitled "Change, Challenge and Opportunity" stressed that one of its main themes was "Enhancing Competition and Competitiveness." It stated:

> We believe that Canadians will be best served by a dynamic, competitive marketplace, open to the world, with many successful Canadian providers and with opportunities for many new entrants.[46]

Its recommendations were aimed in part at

> enhancing the ability of existing institutions, particularly life insurance companies, credit unions and caisses populaires, and mutual fund companies to compete with the chartered banks; removing barriers to entry for new domestic competitors; increasing the opportunities for foreign banks to enter Canada and provide financial services in our marketplace; and empowering consumers so that they can act as a disciplining force in the market and make competition more effective.[47]

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46 Task Force on the Future of the Canadian Financial Services Sector, *Change, Challenge and Opportunity: Report of the Task Force on the Future of the Canadian Financial Services Sector* (Ottawa, ON: Dept of Finance, 1998) at 14.

47 *Ibid* at 15.

Much of this report troubled Reuber, as he explained in October 1998 to the House of Commons Standing Committee on Finance. He noted that "this is an era of turbulence in the financial services sector . . . Turbulence means risks."[48] As a deposit insurer, CDIC sought to mitigate against risk. He therefore asked the committee to consider whether this was the time to shake up the industry and promote competition.[49]

What particularly concerned Reuber and the CDIC was recommendation 114 of the MacKay Report, which called for CDIC to cede its standards mandate to OSFI, which would assume responsibility for maintaining these standards and monitoring compliance with them. The report stated that there was no valid reason for CDIC to develop and monitor standards. To Reuber, this was nonsense. The CDIC standards mandate was logical. It supported CDIC's preventative strategy, and it was an important part of ensuring that there were no further failures by encouraging good management and appropriate risk mitigation. Once again, he questioned whether an appropriate study had been conducted. He retained the Washington-based regulatory advisory service of PricewaterhouseCoopers to look into this recommendation.[50]

The PWC study was presented to the Senior Advisory Council in June 1999. It seems a well-reasoned, well-presented rejection of this recommendation.[51] It found that there were indeed valid reasons

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48 Minutes of Commons Standing Committee of Finance (29 October 1998) at 1535.

49 A similar concern was expressed in March 1999 by Gordon Thiessen, the governor of the Bank of Canada, "Financial Sector Reform, the Economy, and Monetary Policy" (Address to the Mennonite Savings and Credit Union delivered in Kitchener, Ontario, 22 March 1999).

50 PWC Regulatory Advisory Services, *Report on Recommendation 114 of the MacKay Task Force* (June 1999) at 1 (also known as the "Bench Report") [unpublished]. The retainer is said to have commenced 28 April 1999 and to have been "constrained by a relatively short deadline tied to the development of a Canadian Government paper on the Task Force."

51 Bob Bench, C Westbrook Murphy, & Gary Welsh, PWC Regulatory Advisory Services, "Summary Presentation on Recommendation 114 of the MacKay Report before the Senior Advisory Council" (Presentation delivered at the CDIC board meeting, Ottawa, Ontario, 2 June 1999) [unpublished].

for CDIC to retain this mandate. CDIC as an insurer needed to be in a position to mitigate its risks, and the standards were an effective way of doing so. It found little real overlap with OSFI requirements. CDIC's standards tended to be qualitative, while those of OSFI were quantitative. They were, in their opinion, complementary. Transferring responsibility for the standards would, in their view, "significantly undermine the system of supervisory checks and balances between the agencies created by the 1987 legislation."[52] It did, however, see a need to update the standards and to reduce the extent and the frequency of the reporting on compliance with the standards. It also suggested that CDIC and OSFI could work better together.

When Paul Martin, the minister of finance, announced the new policy framework for Canada's financial sector a few weeks later, the move of standards from CDIC to OSFI was not part of the proposal.[53] Reuber was undoubtedly pleased. But this topic would soon be replaced by an even more challenging proposal — to merge CDIC and OSFI completely. That battle, however, would be fought with a different chairman at the helm of CDIC.

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52 Above note 50 at 3.

53 Department of Finance, Press Release, 1999-059, "Minister of Finance Announces a New Policy Framework for Canada's Financial Services Sector" (25 June 1999), online: http://www.collectionscanada.gc.ca/webarchives/20071115232559/http://www.fin.gc.ca/news99/99-059e.html.

Chapter Nine

Thinking and Rethinking, 2000–2007

Working at CDIC is like working for the fire department. The hardest part is keeping sharp when there are no fires.

— DAVID DODGE, CDIC DIRECTOR AND FORMER GOVERNOR OF THE BANK OF CANADA[1]

THE CANADA DEPOSIT INSURANCE Corporation started the twenty-first century with the appointment of its seventh chairman, Ronald Neil Robertson. He may have been new to the position, but he was certainly not new to CDIC. He had been providing advice (legal and otherwise) to the organization for almost fifteen years. For six of those years, he had served on CDIC's board. No other person had come to the chairmanship with such deep knowledge and understanding of the organization. He was also the first member of the legal profession to hold this office. This very distinguished and accomplished Bay Street lawyer was available to assume the chairmanship of CDIC because he was facing the challenge of growing old in a profession that now favoured the young. Law, as practised in the large Bay Street firms, no longer let its older partners age gracefully while enjoying generous financial rewards. At age seventy, Robertson was no longer eligible to be a partner in the firm. CDIC was the beneficiary of this law firm policy.

1 From a telephone interview with David Dodge (28 July 2016).

Robertson wanted to remain active and use his considerable talents, and CDIC gave him the opportunity to do so.[2]

Robertson was not only the first lawyer, but he was the first chairman in two decades who did not face a crisis upon assuming office. De Coster had become chairman of an understaffed organization struggling to deal with the fallout from the trust companies affair. McKinlay had commenced his tenure following the CCB–Northland "debacle" when numerous CDIC members were on the watch list. Reuber had started immediately following the Central Guaranty Trust arrangement when CDIC's accumulated deficit and debt were at all-time highs. By contrast, Robertson inherited a well-run, focused organization whose accumulated deficit and debt had been eliminated, and whose watch list was much reduced. Like McKinlay, he was a leading expert in insolvency and restructuring; unlike McKinlay, those were not the skills that he would need as chair. Instead it would be Robertson's personality, analytical skills, diplomacy, and talents of persuasion that would be called upon.[3]

He set the tone for his chairmanship early by personally meeting with and listening to the concerns of the chairmen and presidents of all the major banks. He found that Reuber's tenure had addressed

2 Although he was eminently qualified for the position, this, of course, was to some extent a political appointment. In 1999, Jean Chrétien's Liberals were in power. Robertson had been a lifelong Liberal and was well-known in Ottawa. He was the younger brother of Gordon Robertson, the former chief clerk of the Privy Council under Pearson and Pierre Trudeau. His former Faskens partner, Allan Rock, was minister of health, and another former partner, Bill Graham, was chair of the House of Commons Standing Committee on Foreign Affairs and International Law. See C Ian Kyer, *Lawyers, Families, and Businesses: The Shaping of a Bay Street Law Firm, Faskens 1863–1963* (Toronto, ON: Irwin Law, 2013) at 234–35.

3 In her telephone interview with the author, Tracey Bakkeli stressed that Robertson was a gentleman in everything that he did. He would listen to what everyone had to say and then find a way to build consensus, but he was no pushover. His "huge personality" could not be ignored. Telephone interview with Tracey Bakkeli (12 December 2016) [Interview, Tracey Bakkeli].

many of their concerns and that they were not as unhappy with CDIC as the news accounts suggested.[4]

Robertson, however, had no intention of sitting back and enjoying the good times. Almost a century before, another senior partner from the Faskens firm, William Henry Beatty, had faced a similar situation when he assumed a leadership position in Canada's financial sector. On being made president of Canada Permanent Trust during a time of economic prosperity, Beatty had advised that it was not a "time for the mariner at the helm of a business ship to throw out a reef in his mainsail, but rather to double-reef it against storms that may be gathering."[5] Robertson too saw the good economic times as the time to prepare for the bad that would inevitably come. His forty years of experience as an insolvency lawyer had taught him that CDIC would soon face another downturn in the economy. He noted in his Chairman's Report for 2000–2001 that:

> CDIC's strength has always been its preparedness for any situation. Although Canada has enjoyed strong economic growth in the past few years, all positive economic cycles have an end. I think it is important therefore to ask ourselves — have we used the good times of the recent past to prepare for the possible challenges ahead?

He was a believer in anticipatory (*ex ante*) funding of future failures. A time of prosperity was a time to set aside funds to help weather future storms. Under Reuber's leadership, the CDIC board had abandoned the deposit insurance fund.[6] Robertson saw this as a mistake. He stated that:

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4 Osgoode Society Oral History interview with Mr Ronald Robertson (29 January 2010, revised July 2013) at his offices in downtown Toronto.

5 Quoted in GB Stevens, *The Canada Permanent Story, 1855–1955* (Toronto, ON: Canada Permanent Mortgage Corporation, 1955) at 38.

6 Reuber had noted CDIC, *Annual Report* (1998–99) at 5 that there was no legal requirement to maintain a large deposit insurance fund. To keep member fees lower, he encouraged the board to let the fund decline. On the pros and cons of *ex ante* funding, see Nikoletta Kleftouri, *Deposit Protection and Bank Resolution* (New York, NY: Oxford University Press, 2015) at 44–50.

> Having paid off its debt and eliminated its deficit in 1999, the Corporation is in a stronger financial position but we have to remember that within the past decade we have had to borrow in excess of $3 billion in order to meet our obligations. Accordingly, we are now taking a close look at our insurance provisioning methodology and the establishment of a deposit insurance fund.

CDIC also had to address the criticisms that had been made of its Standards of Sound Business and Financial Practices. While the PricewaterhouseCoopers Bench Report of 1999 had convinced people that there was value in the CDIC standards, it had also pointed out the need to update those standards and to reduce the banks' burden in complying with the standards' annual reporting procedure. Standards updating and report streamlining became significant projects for the CDIC staff. Both projects required close collaboration with industry, as CDIC by itself could not fully modernize the standards. As the Bench Report had noted, the standards were good, but no longer reflected the latest thinking in the financial industry. Robertson's experience had taught him "that well-managed institutions are better equipped to face difficult times," and he wanted CDIC to encourage such management. CDIC's standards needed a stronger emphasis on the essentials of good corporate governance and on risk management within the complex, multi-faceted financial marketplace.[7] They needed to be aligned with current management practices at well-run institutions, while allowing flexibility to accommodate varying organizational structures and management processes. And they needed to ensure consistency and compatibility with other federal or provincial statutory and regulatory requirements[8] to "dovetail with the risk-focused approach to supervision of both the Office of the Superintendent of Financial Institutions (OSFI) and provincial regulators, and the changes contained in the new financial services sector legislation."[9] But at the same time, CDIC had to respond to the concerns of its members

7 CDIC, "Message from the Chairman" *Annual Report* (2000–01) at ii.
8 CDIC, *Annual Report* (2000–01) at 8.
9 CDIC, "Message from the Chairman" *Annual Report* (2000–01) at ii.

about the burden associated with its standards, including not only reporting to CDIC, but also to the bank's board of directors.[10] To achieve these goals, CDIC issued a consultation paper in January 2000 for review and comment. Then in the summer of 2000, it put out a second paper with a draft of the proposed revised standards, and in the spring of 2001, a third paper dealing with the proposed streamlined reporting. The new standards and reporting process came into effect in late 2001, with the first reports due in July 2002.

The new *Financial Consumer Agency of Canada Act* of June 2001 brought some other changes to CDIC. The Act created a new agency to supervise financial institutions to determine whether they were in compliance with the consumer provisions applicable to them.[11] Among other changes to the *CDIC Act*, this new statute added the commissioner of the new agency to the CDIC board as an *ex officio* member and increased the independent members to five, thus increasing the board to eleven.

There was, however, another project that began to take up considerable CDIC staff time. It had been a decade since Sabourin had accompanied Ron McKinlay to an international deposit insurance conference in Washington sponsored by the Federal Deposit Insurance Corporation (FDIC). The interest in deposit insurance around the world and CDIC's international activity had increased in those ten years. In 1994, CDIC had become one of the founding members of the International Bank Researchers Group and the next year it had hosted the group's second international meeting.[12] That international experience had proved helpful. In developing its differential premiums bylaw, for example, CDIC studied approaches taken to such risk assessments by the Bank of England, the FDIC, and the Office of the Controller of the Currency in the United States. It had also brought CDIC's experience and expertise to the attention

10 Michèle Bourque, who would later become president of CDIC, recalls many bank officials saying that the biggest burden for the banks was providing sufficient evidence to their boards that the bank was in compliance with the standards. Interview with Michèle Bourque (8 February 2017) in Toronto.

11 SC 2001, c 9.

12 CDIC, "35 Year History," CDIC in the World *Annual Report* (2003).

of other countries. CDIC had begun to receive regular queries and the occasional visit from countries looking into how best to provide such insurance. But as Ron Robertson's tenure began, CDIC's international involvement increased substantially. In November 1999, the recently created Financial Stability Forum (FSF),[13] which brought together the finance ministers and central bankers from the G7 countries, thought that it might be advantageous to consider a working group to look into why and how deposit insurance might be implemented where it did not yet exist and improved where it did.[14] The first step was to undertake a feasibility study. But who ought to lead the study? FDIC was by far the world's largest and most sophisticated deposit insurer, but that very fact militated against its leadership. The FDIC model was not easily reproduced: it was a huge organization with thousands of employees and a very broad mandate that included a large regulatory component. Besides, many countries would be reluctant to follow the United States' lead for fear of being seen as being dictated to by the world's super power. CDIC, however, was much respected, and Canada less feared.[15] A Canadian, John Palmer of OSFI, had already chaired the

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13 The FSF was created by the G7 in February 1999 "to promote international financial stability through enhanced information exchange and co-operation in financial supervision and surveillance." See the Bank for International Settlements, Press Release, "Financial Stability Forum Endorses Policy Actions Aimed at Reducing Global Financial Vulnerabilities" (26 March 2000), online: http://www.bis.org/press/p000326.htm [Bank for International Settlements, Press Release]. See also Shawn Donnelly, "Institutional Change at the Top: From the Financial Stability Forum to the Financial Stability Board" in R Mayntz, ed, *Crisis and Control: Institutional Change in Financial Market Regulation* (Frankfurt: Campus, 2012) 261–75.

14 Financial Stability Forum Working Group on Deposit Insurance, *A Consultative Process and Background Paper* (June 2000), online: www.iadi.org/en/assets/File/Core%20Principles/Consultation_Paper_English.pdf at 1 [FSF Working Group].

15 The noted economist William R White, who spent twenty-two years at the Bank of Canada (including a term as deputy governor), and more than a decade at the Bank for International Settlement, noted that Canada had several advantages. It had good quality, modest people with respected ideas who were not entirely self-serving. But it helped that Canada itself was "relatively small and non-threatening." See William R White, "Discussion 3" in *Policy Panel:*

working group on offshore financial centres.[16] Sir Andrew Crockett approached Sabourin about Canada's participation and his leadership of the initial study. This task fell to Crockett, a British banker, because he chaired the forum as head of the Bank for International Settlements in Basel, Switzerland, which provided the secretariat for the FSF. When approached, Sabourin felt honoured. To him, it was an important endorsement of what CDIC had achieved. And of course, he had long enjoyed the limelight and international travel. He led the initial study that recommended proceeding with the full working group. In March 2000, at a meeting of the FSF in Singapore, it was decided to accept the recommendation and create the working group. Again, Sabourin was asked to take the lead.

After some discussion, the CDIC board endorsed CDIC's participation and Sabourin's chairmanship of the working group. Some members of the board questioned whether an organization funded by Canadian financial institutions ought to be undertaking international work.[17] Others noted that the project would take much of Sabourin's time, as well as the time of Guy Saint-Pierre, who would be Canada's delegate; Claudia Morrow, the CDIC lawyer who would act as secretary to the group; and John Raymond LaBrosse who would act as Sabourin's adviser. Nevertheless, they endorsed the initiative. They were confident that CDIC staff could continue to meet its other obligations.[18]

For the next four years, much of Sabourin's time was dedicated to the international scene. His involvement began with the working group but it did not end there. Sabourin and CDIC hosted numerous delegations from around the world. In 2000 and 2001, for example, people came from Hong Kong, Jamaica, Korea, Mexico, Ukraine, Venezuela, and Zimbabwe to meet with and learn from CDIC.[19] The

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Canada's Role in International Macroeconomic Policy (2010), online: www.bankofcanada.ca/wp-content/uploads/2010/08/policy_panel.pdf.

16 Bank for International Settlements, Press Release, above note 13.

17 Interview, Tracey Bakkeli, above note 3.

18 *Ibid*. Bakkeli also pointed out that this project would help keep CDIC's staff motivated and engaged.

19 CDIC, *Annual Report* (2000–01) at v.

simple fact is that CDIC had more practical experience than most countries. It had been more than thirty years since it had been created. In those years, much thought had been given to deposit insurance and many refinements had been made to the organization and its mandate. It had dealt with forty-three member failures and had developed procedures for dealing with the many variations on that theme. In the years since its last failure, it had, in consultation with industry and OSFI, improved its risk assessment and mitigation tools and had developed standards of good management. It had important knowledge that it could share, and it was more than willing to do so. On occasion, CDIC was called upon to work overseas. In 2000 and 2001, some CDIC employees travelled to Manila to provide advice on risk assessment to the Philippine Deposit Insurance Corporation and the Hong Kong Monetary Authority.[20]

But the FSF working group was CDIC's principal international endeavour. The other activities supplemented and often grew out of the working group. Besides Canada, the working group drew its membership from Argentina, Chile, France, Germany, Hungary, Italy, Jamaica, Japan, Mexico, Philippines and the United States. Sabourin would later say that he

> was able to harness the considerable talent within [CDIC] and the 12 representatives from other countries and international financial organizations (International Monetary Fund and The World Bank) in the development of guidance on deposit insurance for use by countries considering the adoption of an explicit limited-coverage deposit insurance system or the reform of an existing system.[21]

An outreach session was held in Basel in May 2000, at which twelve newly established deposit insurers met with the members of the working group.[22] This was followed by a two-day conference on deposit insurance issues attended by more than sixty countries. The mandate of the group called for a consultative approach. To

20 CDIC Annual Report 2000-1 at 11

21 CDIC, "President's Report" *Annual Report* (2001–02) at v.

22 FSF Working Group, above note 14 at 1–2.

facilitate informed discussion and comments, sixteen subgroups were created to look into different issues and aspects of deposit insurance and produce discussion papers. Given the limited time available, the discussion papers drew on existing academic research, and discussed the trade-offs and implications of each approach to deposit insurance. From these studies, issue papers and background reports on the practical aspects of establishing and operating a deposit insurer, as well as key issues like the "moral hazard" were prepared and circulated through the Internet. To collect feedback and insights, these papers were debated in a series of outreach sessions. It was a very busy schedule.[23] In early October 2000, the working group met in Mexico and held an outreach session with deposit insurers from the Caribbean and Latin American region and a seminar hosted by the Independent Payment Advisory Board.[24] Later that month, Sabourin participated in a World Bank video conference broadcast to government officials in China, Indonesia, Korea, Thailand, Vietnam, Poland, Romania, Ukraine, the Russian Federation, and Bosnia. Just two weeks later, the working group met in Hungary, and held a round-table session and a related seminar with deposit insurers from central and Eastern Europe. In mid-December, they participated in a conference at the Federal Reserve Bank of Chicago that gave the local academics a chance to have their say. By mid-January the working group was in Malaysia in connection with a conference. In March, the group held an outreach session in Berlin hosted by the German Ministry of Finance that was attended by countries from the European economic area and Switzerland. Just two weeks later the working group was in Argentina, hosting an outreach session with central bank governors from Latin America in advance of the Third Symposium on Deposit Insurance. April found the working group in Italy holding an outreach session with African and Middle East countries.

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23 On the schedule, see Financial Stability Forum, *Working Group on Deposit Insurance Progress Report — Notes for Financial Stability Forum Meeting on 22/23 March 2001* (5 March 2001), online: http://www.fsb.org/2001/03/r_0103.

24 The Independent Payment Advisory Board, or IPAB, is a fifteen-member United States government agency that was created in 2010.

An interim report was generated in September 2000 and another in March 2001, and the final report, entitled "Guidance for Developing Effective Deposit Insurance Systems" was presented and endorsed by the forum in September 2001.

The FSF was very pleased and it was decided to create an International Association of Deposit Insurers. Known colloquially as IADI (pronounced eye-ad-ee), it was created under the watchful eye of Sabourin who headed its executive committee and became its first president.

With Sabourin so heavily committed internationally, it was decided that Guy Saint-Pierre should be made CDIC's executive vice-president and COO. He became responsible for its day-to-day operations.[25]

In 2002, CDIC celebrated its thirty-fifth anniversary. To mark the occasion, CDIC welcomed thirty-two delegates from nineteen countries to an international open house in November. They came to learn about Canada's deposit insurance program and about OSFI.[26] CDIC also produced an attractive nineteen-page supplement[27] to its annual report, outlining its thirty-five years of existence. Robertson characterized it with these words:

> The historical insert in this year's annual report offers a brief retrospective of some of the changes that have taken place over the three and a half decades — both in CDIC and in its operating environment — as the Corporation dealt with 43 failures of banks, and trust and loan companies, with a total of $23.4 billion in insured deposits. As that insert shows, CDIC has developed from being called upon only after a failure to become an active risk minimizing insurer and, in the process, has matured into one of the most highly regarded deposit insurers in the world, as evidenced by the large number of other countries which seek our advice.[28]

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25 CDIC, Press Release (2003).

26 CDIC, *Annual Report* (2004) at 16.

27 Thirty-eight pages if one counts both the French and English versions.

28 CDIC, "Chairman's Remarks" *Annual Report* (2003) at ii.

The historical insert was no glossy vanity piece. It was a serious reminder to CDIC's critics of the important role that it had played in helping Canada weather several financial crises. And such a reminder was timely. CDIC may have been leading the thinking about deposit insurance internationally, but back home in Canada there were those in government who were then rethinking Canada's need for a separate Crown corporation providing deposit insurance.

As Jean Chrétien's finance minister, Paul Martin had looked for ways to "restore fiscal responsibility"[29] by streamlining government and making it more efficient. In his 1994 budget speech, he had talked of this.[30] Now as prime minister, he encouraged his finance minister, Ralph Goodale, to achieve even more in this regard. Meanwhile, the CBA was again complaining that it was funding both OSFI and CDIC and having to comply with two different sets of standards. The Department of Finance saw a way of finding Martin's sought-after efficiencies and, at the same time, placating the CBA. Working with Nicholas Le Pan, the superintendent of financial institutions, they revived the idea of merging CDIC into OSFI. It was an idea that had been raised on numerous occasions since it was first broached in 1985 by Justice Estey (although in a different context and with a different purpose). The FDIC in the United States was both a regulator and a deposit insurer. Why should Canada not do the same? Both functions in a single organization would eliminate unnecessary regulatory overlap, avoid duplication of effort, and improve efficiencies. There could be a single administration, a single human resources department, a single information technology function, a single communications group, a single acquisitions group. Surely, it was suggested, this would reduce the administrative overhead, foster better co-ordination, and reduce friction. The Department of Finance alluded to the merger in the 2004 budget. That document stated:

29 Department of Finance, *The Budget Plan* (Ottawa, ON: Queen's Printer, 1994), online: http://www.budget.gc.ca/pdfarch/1994-sd-eng.pdf at 13.

30 "We are looking at every government-appointed board, commission and agency": *ibid* at 13.

> The Government is committed to maintaining the present level of deposit insurance protection. However, there may be opportunities to improve the efficiency and effectiveness of the delivery of federal financial services regulation. To that end, the Government will seek views on how best to address any overlap in prudential, administrative and corporate services functions between OSFI and CDIC. The Government is undertaking this initiative with a view to introducing any changes before the end of this year.

The reaction from CDIC's management was quick and negative. They had built a strong, well-functioning operation that was doing a good job serving Canada's financial system. Why change it now? Le Pan and OSFI were taken aback by the strong negative reaction from Sabourin and his team at CDIC. Relations between the two organizations fell to a new low. It was a very tense time.[31]

Luckily, Robertson was able to utilize his considerable talents and experience to find a viable solution that could work for all parties involved. For years, he had convinced creditors and shareholders to accept some plan of arrangement. He understood the need for compromise in getting things done. He also knew that personalities could sink the best deal. The fact was that Le Pan and Sabourin did not like each other, and Sabourin was every inch a street fighter. Robertson recognized that he had to convince Sabourin to let Saint-Pierre take the lead in the behind-the-scenes efforts to save CDIC as an independent Crown corporation. Saint-Pierre was bright, had years of successfully negotiating difficult deals behind him, and did not take the proposed merger so personally.

It was significant that the Liberal government's budget did not definitively call for the merger of the two organizations. It asked for suggestions "on how best to address any overlap in prudential, administrative and corporate services functions." Robertson, with the concurrence of the board, created a special committee consisting of all of the independent CDIC directors to examine how CDIC and OSFI could be maintained as separate entities but work better

31 Interview with Julie Dickson (23 August 2016).

together. It was thought best to not have the *ex officio* directors directly involved. Among the independent directors was the well-connected and very able Gar Emerson. Robertson and Emerson had known each other for a long time. Emerson had started his career with Robertson at Faskens before going on to become one of Canada's leading corporate lawyers at Davies Ward and Beck. Recently he had rejoined Faskens as counsel and chairman of the firm and he had been appointed to the CDIC board. Robertson would be the public face of this initiative, while Emerson worked behind the scenes.[32]

What arguments could they make in favour of the status quo? As already noted, the merger idea was not new. It had been recommended in the past and Quebec had already merged its regulator and deposit insurer.[33] But the merger idea had not had much support federally. Reuber, no fan of deposit insurance and inefficiencies, had considered the idea in the 1994-1995 annual report and had concluded that there was significant value in having "two independent assessments rather than one."[34] He also thought that this could avoid the "moral hazard of assigning responsibility for supervision and regulation with insuring deposits to one agency." Regulators ought not to be able to cover their mistakes through insurance, any more than insurers ought to be able to avoid payouts through excessive regulation. Having two independent agencies working closely together was the best way to avoid these issues.

Like Reuber, the authors of the very critical book, *Ensuring Failure*, had also considered the merger of CDIC and OSFI and had rejected it.[35] Professors Carr, Mathewson, and Quigley, the economists who authored that scathing attack on CDIC's operations,

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32 Interview with Guy Saint-Pierre (6 August 2015) [Interview, Guy Saint-Pierre].

33 Since 1 February 2004, the agreement between CDIC and the Régie de l'assurance-dépôts du Québec (RADQ) has been extended to the Autorité des marchés financiers (AMF), the Quebec regulator that had assumed responsibility for deposit insurance in Quebec.

34 CDIC, "General Observations" *Annual Report* (1994–95) at 13.

35 JL Carr, GF Mathewson, & NC Quigley, *Ensuring Failure: Financial System Stability and Deposit Insurance in Canada* (Toronto, ON: CD Howe Institute, 1994) at 80.

stated that "it is not clear that amalgamating the two institutions would solve the problems of Canada's deposit insurance scheme."[36] Who better to call upon to support CDIC's independence than these critics of CDIC? No one could accuse them of unquestioningly supporting CDIC. These arguments were put forward by Robertson and the committee. In the cover letter that he sent with the committee report to Minister Goodale, Robertson noted the many studies that had led to the current CDIC mandate. He cautioned against making changes that had not been the subject of similar study.

But these opinions about the value of a second set of eyes (what Robertson referred to as checks and balances) did not address the Department of Finance's push for efficiencies. CDIC retained Deloitte & Touche to do a study of the potential for savings in the proposed merger. That report would prove very helpful because it questioned whether any real savings could be achieved, noting that CDIC was not funded by the federal government.[37]

Meanwhile Robertson and the special board committee were considering ways to reduce friction between CDIC and OSFI. It soon became apparent that the best way to reduce friction was to cede CDIC's standards mandate to OSFI, as the MacKay Report had recommended. Robertson knew that CDIC's more active role — culminating in the adoption of the standards — had been encouraged by the studies done following the failures of the 1980s, and that those standards had contributed in part to the reduction and eventual elimination of failures in the 1990s.[38] Nevertheless, the fact remained that if the standards were retained but the administration of them was switched to OSFI, the benefits could be enjoyed with less friction between the institutions and a lower regulatory burden for CDIC members. CDIC's role could be focused on the end or threatened end of a financial institution's life with its doctoring functions limited to the emergency ward, while OSFI would play the role of a general practitioner focused on a financial institution's

36 *Ibid.*

37 Interview, Guy Saint-Pierre, above note 32.

38 CDIC, "Message from the Chairman" *Annual Report* (2005) at 4–6.

day-to-day health. For Sabourin, this was a giant step backwards, but for Robertson, Saint-Pierre, and the special board committee, it was a saleable compromise.

While this position was being formulated, Saint-Pierre set out to reduce the operational costs of CDIC and to restore its good, working relationship with OSFI. He would later testify in a Parliamentary hearing that:

> To align ourselves with the new reality, together with our CEO I led a strategic reorganization of CDIC in 2003 to reduce costs. Then in 2004 I conducted consultation with the industry to solicit their views on reducing regulatory burden and improving deposit insurance in Canada.
>
> Our chairman and I met with the CEOs of a cross-section of our members to hear from them directly about what we are doing well, and of course about what we could do better. More recently, I led the CDIC in its dialogue with the government and the federal regulator, the Office of the Superintendent of Financial Institutions, OSFI, to reduce unnecessary overlap and duplication.[39]

The CDIC special committee was certainly not the only interested party letting its views be known on the subject — the CBA submitted several recommendations.[40] Significantly, the CBA did not support a merger, but it was of the view that CDIC ought to have no supervisory functions whatsoever. Furthermore, the CBA thought that CDIC ought to rely upon OSFI for its risk assessments. CDIC would still be able to intervene at appropriate times to deal with troubled institutions and to cancel insurance, but in reaching these conclusions it ought to rely upon OSFI's risk assessments. The CBA believed that this more limited mandate would mean that CDIC could reduce its staff and its costs.

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39 Guy Saint-Pierre before the Standing Committee on Finance (5 May 2005).

40 Canadian Bankers Association, *The 2006 Financial Services Legislation Review: Improving the Legislative Framework for Canadian Consumers* (1 June 2005), online: https://fin.gc.ca/consultresp/06Rev_37e.pdf at 106–7.

The decision on the merger was announced in the 2005 federal budget.[41] CDIC and OSFI would remain separate organizations, but OSFI would assume sole responsibility for setting prudential standards. OSFI would also become solely responsible for reviewing new federal entrants into the financial sector. CDIC would, however, retain its principal roles and responsibilities as a deposit insurer acting for the benefit of depositors and promoting financial stability. Although OSFI would become the party responsible for financial institutions in good standing, CDIC would remain concerned about risk mitigation, and would conduct its own analysis of OSFI data and evaluate members at risk.[42] At the same time, the government decided that the limit on deposit insurance would be increased to $100,000 from the current $60,000.[43]

Sabourin, however, did not remain to oversee the new regime. On 1 April 2005, he left CDIC to assume leadership of the Malaysian deposit insurer. He had been with CDIC virtually his entire working life, rising from a bookkeeper in 1977 to president and CEO. He had done much to shape CDIC, but CDIC had also shaped him, providing a training ground to hone his skills, developing his knowledge of deposit insurance, and providing a platform to showcase those skills and that knowledge both domestically and internationally.

Not surprisingly, Saint-Pierre became CDIC's third president and CEO. There was a hearing before the Parliamentary committee to confirm the appointment, but he had amply demonstrated his credentials over the last few years.

For a time, it looked like CDIC would also lose its chairman. In 2005, Robertson was to turn seventy-five, and once that happened

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41 Department of Finance, *The Budget Plan 2005* (Ottawa, ON: Queen's Printer, 2005) at 161–64.

42 CDIC, "Message from the Chairman" *Annual Report* (2005) at 6–7.

43 In October 2004, David Newman, a deposit broker with Fiscal Agents in Oakville, Ontario, had publicly called on the federal government to increase the protection provided by CDIC up to $100,000 from the current level of $60,000 because that protection had been seriously eroded by inflation. See Doug Watt, "Deposit Broker Calls for CDIC Overhaul" Advisor.ca (26 October 2004), online: http://www.advisor.ca/news/industry-news/deposit-broker-calls-for-cdic-overhaul-35650.

an extension of his term was not possible. But he was still an active and effective chair, so a little creativity was used:

> I was Chairman until the day before my 75th birthday, October 13th, 2005, because if I was 75 I was not eligible to be appointed Chairman, or to be Chairman . . . so they then . . . appointed me acting Chairman of the CDIC because my age didn't matter for that. And I was appointed acting Chair for a number of 90 day periods until my successor was appointed . . . June 30, 2006.[44]

Despite Sabourin's departure, CDIC remained very active in IADI. In 2005 and 2006 that organization's Research and Guidance Committee produced several reports that seemed drawn from CDIC's recent experience. One dealt with resolution of bank failures — it set out the sort of multi-stream approach that CDIC had used successfully in the case of the Central Guarantee Trust case and other failures. Another report provided guidance on developing a differential premium system; yet another offered assistance on effective inter-relationships with other financial safety net participants. These reports may well have influenced IADI's decision in 2006 to give CDIC the International Deposit Insurance Organization of the Year award. On receiving the award in Rio de Janeiro, Brazil, Saint-Pierre addressed the IADI annual meeting. He noted that:

> At CDIC we believe in the importance of building strong relationships and in promoting international cooperation among deposit insurers. Sharing knowledge, expertise and experiences helps us all build more effective deposit insurance systems.

He acknowledged the key role that his predecessor, Sabourin, had played in creating IADI and pledged CDIC's continued support for the organization:

> This past year, I have been fortunate to work with an experienced and energetic subcommittee on developing guidance for the governance

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44 Osgoode Society Oral History interview with Mr Ronald Robertson (29 January 2010, revised July 2013) at his offices in downtown Toronto.

> of deposit insurance systems; and my staff have been collaborating with the KDIC on their funding discussion paper, the FDIC on claims and recoveries and Jordan on developing guidance for effective deposit insurance system mandates. And, our employees continue to be active in publishing their research through fora such as the Journal of Bank Regulation, the Inter-American Development Bank and SEACEN. . . . CDIC is also developing a new version of the International Deposit Insurance Survey which we introduced in 2003. We look forward to working with CDIC-Taiwan, the FDIC and Jordan on using the survey information collected to develop a truly comprehensive international deposit insurance database.[45]

While CDIC's support for IADI may have remained unchanged, the political climate within which CDIC operated was about to undergo substantial change. In March 2006, the lengthy period of Liberal government leadership in Ottawa came to an end with the election of a minority Conservative government led by Stephen Harper. Just before the election, Bryan Davies had been informed that he would be appointed chairman of CDIC. When the Harper government came to power, Davies wondered whether that government would have a different candidate in mind.[46] But he need not have worried: Harper's new finance minister, Jim Flaherty, knew and respected Davies. They had both spent time in the Ontario government. Flaherty recognized how lucky he and his government were to have someone of Davies's calibre appointed as chair of CDIC. Davies, an accountant by profession, may not have come to the chairmanship with the deep knowledge of CDIC that Robertson had brought or with Robertson's "huge personality,"[47] but he knew government and financial services like few others. His contacts in and out of government were extensive, and there was a feeling that

45 Remarks from Guy Saint-Pierre, president and CEO, Canada Deposit Insurance Corporation, for the Acceptance of the IADI International Deposit Insurance Organization of the Year Award, 2006 IADI Fifth Annual General Meeting and Conference.

46 Interview with Bryan Davies (26 July 2016).

47 Interview, Tracey Bakkeli, above note 3.

"[h]e knew everyone."[48] During his brief time in private practice in the 1970s, he had specialized in government assistance programs. One of his clients had been the CBA. That work had brought him to the attention of the Ontario government, who recruited him. Within the Ontario civil service sector, he had risen to be deputy treasurer. He had been in the Ontario government during the financial crisis of the 1980s, and had worked on the Dupuis commission, which had looked at what had gone wrong. That commission had led to the creation of a new Ministry of Financial Institutions, and Davies had been chosen as its deputy minister. Ironically, among his first visitors in his new job was a delegation from CDIC. Ron McKinlay, JP Sabourin, and Guy Saint-Pierre had come to discuss how the Ontario trust company situation was to be handled. Davies had left that position about the time of the Central Guarantee Trust failure, joining Rob Pritchard's executive team at the University of Toronto. But Davies knew governments and financial regulation too well to stay in academic administration very long. He used that knowledge to become the senior vice-president of regulatory affairs at the Royal Bank of Canada. As such, he became active in the CBA, chairing its Policy Committee. Always on the lookout for a new challenge, Davies had returned to the Ontario government in 2002 as the superintendent of the newly created Financial Services Commission of Ontario. He thought that he would retire in 2005, but he was approached to participate in a special project of the federal Treasury Board, looking into the possible privatization of Crown corporations. One of those with whom he worked on this project was Ian Bennett, the deputy minister of finance, who approached Davies about the CDIC position.

Another person with whom Davies had worked on his special project was OSFI's Nic Le Pan. In an odd twist of fate, as Davies was taking the position at CDIC in the summer of 2006, Le Pan was surprising many by tendering his resignation as SOFI, to be effective in October.[49] Davies, who was a master at building bridges and

48 Telephone interview with Shelley Tratch (14 December 2016).

49 "Le Pan Exit Comes as a Surprise" *Globe and Mail* (14 July 2006).

fostering teamwork, would not get to work with Le Pan to rebuild and strengthen the bridge between CDIC and OSFI. Instead, he would interact with Julie Dickson, the deputy superintendent, who succeeded Le Pan as SOFI. Davies, Saint-Pierre, and Dickson would prove a very good team.[50] The tensions between OSFI and CDIC became a thing of the past.

The strengthening of the relationship between CDIC and OSFI was timely. Years before, Robertson had warned that hard times would return. Those hard times, driven in part by the changes in the financial world beyond Canada's borders, would soon arrive and CDIC and OSFI would have to face those challenges together. Luckily, the new leadership at each institution had some time to settle in before those bad times arrived late in the summer of 2007.

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50 Interview with Julie Dickson (23 August 2016).

Chapter Ten

Adapting to Rapidly Changing Times

[T]here is no sign that the pace of change is likely to diminish in the near future.

—RONALD N ROBERTSON, 2000

IN 2007, TIMES WERE good. A year that would bring a changed global financial order and initiate a new era at CDIC began quietly enough for Canada's deposit insurer. In his book *Too Big to Fail*, Andrew Sorkin explains that 2007 represented "the peak of the economic bubble," a time when "the financial services sector had become a wealth-creation machine."[1] In March, Harry Koza of the *Globe and Mail* noted that things had been "booming for so long . . . that everyone's forgotten how tough things were . . . during the recession in the early 1980s." He knew that eventually the boom would end, but he was not worried. He pointed out that even when the inevitable downturn came, Canada's financial system would survive. Its regulatory regime had been improved to such an extent that he proclaimed that Canada had created "a fortress of solvency."[2] While not given to such hyperbole, the Office of the Superintendent

1 Andrew Ross Sorkin, *Too Big to Fail* (New York, NY: Penguin Books, 2010) at 3 [Sorkin].

2 Harry Koza, "Canada's Banking System Has Created a Fortress of Solvency" *Globe and Mail* (16 March 2007).

of Financial Institutions' annual report was similarly reassuring. It noted that as of 31 March 2007, none of its regulated institutions had been assessed as high risk. Almost all of these institutions had been given a low or moderate risk rating.[3] CDIC's annual report also noted the good times. In writing his first report as chair,[4] Bryan Davies stated proudly that CDIC had not experienced a member failure for more than a decade.[5] He attributed this happy state of affairs in part to CDIC's improved working relationship with the other members of Canada's financial safety net and in part to CDIC's preparedness and constant monitoring of its members' performance.

Domestically, Canada's financial institutions were doing well, but OSFI warned that those institutions had become "highly international. Their health is affected by economic and financial conditions . . . abroad."[6] Indeed, globalization was a growing trend. As a result, both OSFI and CDIC needed to be concerned about developments beyond Canada's borders. They recognized that failures of foreign institutions could trigger problems in Canada and that it was likely that any such problems could prove more difficult to deal with than the purely domestic problems that they had dealt with in the past. Seven years before, on taking over the chairmanship, Ron Robertson had noted how dramatically Canada's financial scene was changing. He had characterized it as

> a vastly different place than any of us could have envisioned even a decade ago. An increasingly global marketplace, sophisticated payments, clearing and settlement systems and a widening array of financial products that are supported by electronic tools and

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3 OSFI, *Annual Report* (2007) at 9.

4 Annual reports were taken very seriously at CDIC. The year before (March 2006) CDIC had been selected to receive the 2005 Auditor General of Canada Award for Excellence in Annual Reporting by Crown Corporations. Canada's auditor general, Sheila Fraser, had presented the award to Ron Robertson and Guy Saint-Pierre at a board meeting. CDIC would receive the CICA Award for Excellence for Corporate Reporting — Large Federal Crown Corporation for the 2007 annual report that Davies was helping to prepare.

5 CDIC, *Annual Report* (2007) at 5.

6 OSFI, *Annual Report* (2007) at 27.

> technologies — these are just some of the changes we face today. And there is no sign that the pace of change is likely to diminish in the near future.[7]

CDIC was not alone in noting these changes. In May 2007, the International Association of Deposit Insurers (IADI) organized an international symposium in Basel, Switzerland, to address the challenges of complex, multi-jurisdictional bank failures. The people attending the Basel symposium may not have seen the financial meltdown just over the horizon, but they certainly knew that the world of banking had changed dramatically in the last few years and that deposit insurers had to prepare to face these new challenges. Bryan Davies, one of the first speakers, led the CDIC delegation.[8] When he spoke, he shared his views on the importance of information sharing among financial safety net members and the need to establish formal procedures to enable such sharing, as CDIC had done with OSFI.[9]

Following Davies was Martin Gruenberg, then the vice-chairman of the Federal Deposit Insurance Corporation (FDIC). Gruenberg outlined the steps that the US agency was taking to prepare for large, complex cross-border failures and the role that IADI and the Basel banking committee could play in developing international standards. One wonders whether Gruenberg realized how soon the FDIC's preparations would be put to the test.

Certainly Gruenberg knew that the boom in the United States was fuelled by the "widening array of financial products" that Ron Robertson had noted some years before. In an effort to reduce risk, banks and investment houses had bundled debt instruments like

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7 CDIC "Message from the Chairman" *Annual Report* (2000–01) at ii.

8 The CDIC delegation must have felt right at home. The conference was opened by two CDIC alumni, JP Sabourin and John Raymond LaBrosse. LaBrosse, an economist with degrees from the University of Calgary, had learned about deposit insurance through his work at CDIC after a stint at the Bank of Canada. Under Sabourin's presidency, he became the founding secretary general of IADI and a member of its Guidance Advisory Group. He left CDIC in 2004.

9 IADI, *Research Letter*, vol 2, issue 18 (23 May 2007).

mortgages in a "securitized" pool held by a special purpose trust (or "conduit," as it was called) that issued short-term notes. Institutional investors saw these asset-backed notes as a safe, secure investment. How could they not be? These promissory notes were not only secured by the mortgages and other debt instruments held by the trust, but they were backstopped by one or more limited bank guarantees. Nevertheless, as Sorkin points out in *Too Big to Fail*, rather than reduce the risk, this practice merely spread it among a larger group.[10] In fact, the practice had become so widespread, with trillions of dollars of asset-backed notes sold off in this fashion to many institutions, that the entire global market shared the risk. When the quality of the mortgages backing the notes became poorer (fuelled by the US banks granting subprime mortgages to riskier buyers), and the total value of the issued notes became higher and higher, that risk increased. A collapse in the US housing market could cause many buyers to default, abandoning their mortgages. In such a scenario, the mortgages securing the notes would be inadequate and the guaranteeing banks might not be able to meet the huge liability that they had taken on. If that happened, it would not have a ripple effect throughout the industry. It would be a tsunami felt around the world. Spreading the risk had seemed like a good idea, but instead the resulting "ultra-interconnectedness"[11] among global financial institutions proved to be an Achilles heel.

The vulnerability of that heel became obvious by the fall of 2007. Initially, when US property values tumbled and cracks began to appear in the US subprime mortgage market, Ben Bernanke, the chairman of the Federal Reserve in the United States, told the US Congress that it was "likely to be contained."[12] But that was not to be. By August, the US financial system was in distress. Huge financial institutions, commercial and merchant banks, and insurance companies, teetered on the brink. Over the next two years, many in the United States and throughout the world began to fail. In the

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10 Sorkin, above note 1 at 3.

11 *Ibid* at 5.

12 *Ibid*.

United States, twenty-five banks closed in 2008. One, Washington Mutual, with $307 billion in assets, experienced a ten-day bank run on its deposits and failed on 26 September 2008. Governments in many countries had to step in to prop up their largest financial institutions. The FDIC in the United States faced an enormous task. It created the Temporary Liquidity Guarantee Program in an effort to restore confidence in the financial system and provide liquidity. Under that program, the FDIC guaranteed newly issued senior unsecured debt of financial institutions and provided complete coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount.[13] The US Congress passed special legislation ("more than 450 pages of legislative legalese")[14] to bail out financial institutions and to try to restore the people's confidence in them. Under that legislation, the deposit insurance limit of the FDIC was temporarily raised from $100,000 to $250,000.[15] Notwithstanding this legislation, 140 more US banks failed in 2009 and another 157 in 2010. Similar problems were experienced and similar government efforts were undertaken in many countries, including all G20 countries. It truly was a financial tsunami.[16]

That tsunami battered up against Canada's "fortress of solvency." That fortress stood up better than many outside Canada expected, but some cracks were exposed. Canada's banks may not have been as adventuresome as their US counterparts, but they were quite different from traditional banks. Canada's banks owned securities dealers and wealth management firms and insurance companies. The products that they offered included some securitized pooled investment products. In Canada, these products were known as asset-backed commercial paper or ABCP, and that segment of Canada's money market experienced trouble in the late summer of 2007.

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13 Wikipedia contributors, "Federal Deposit Insurance Corporation" *Wikipedia, The Free Encyclopedia*, online: https://en.wikipedia.org/wiki/Federal_Deposit_Insurance_Corporation#2008.E2.80.932010_Financial_crisis.

14 Sorkin, above note 1 at 507.

15 This increase was subsequently made permanent.

16 Sorkin, above note 1 at 5 uses a different analogy. He states that the "$2 trillion subprime market had collapsed, unleashing a global contagion."

This asset-backed commercial paper took the form of thirty-day and sixty-day notes. ABCP made up almost a third of Canada's $360-billion short-term debt market.[17] These notes were popular with businesses and investors who were looking to "park" their money for the short term, including government-related entities like the Canada Mortgage and Housing Corporation (CMHC). These ABCP products paid the highest interest rates available and had good credit ratings. The fly in the ointment, however, was that many of the issuing trusts funded redemptions of maturing notes by selling new ones. In the parlance of the industry, the notes needed to "roll over." When news of the problems with the US subprime mortgages came to the fore, many of the usual Canadian buyers of the ABCP notes stopped buying, especially where the notes were issued by non-bank related entities. The buyers suspected that at least some of the notes being sold included US subprime mortgages. They did not know for sure because the actual assets in the pool were not disclosed. No purchaser wanted to acquire notes backed by these "toxic" US assets. One key buyer in the ABCP market was Quebec's Caisse de dépôt et placement du Québec (CDPQ). In fact, the CDPQ was Canada's largest ABCP buyer, holding more than $14 billion of the notes. When the CDPQ and other buyers stopped buying, Canada's ABCP market, especially the non-bank segment of that market, experienced a liquidity crisis. With insufficient new money coming in, there was not enough money to retire the old notes. A real crisis loomed.

That looming crisis was addressed in an emergency meeting called by the CDPQ. The meeting brought the players in Canada's ABCP market together in Montreal. Fortunately, the crisis was averted. A "short-term" truce was negotiated, known as the Montreal Accord, under which it was agreed that no one would declare anyone

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17 Boyd Erman, Jacquie Mcnish, Tara Perkins, & Heather Scoffield, "ABCP: Anatomy of a Panic" *Globe and Mail* (17 November 2007). This excellent article provides a detailed chronology of the late summer and early fall ABCP crisis in Canada. See also National Bank of Canada, Press Release, "National Bank To Acquire All Asset-Backed Commercial Paper (ABCP) of National Bank Mutual Funds" (20 August 2007).

in default, no one would sue, and no one would call for a backstopping loan. This sixty-day standstill arrangement was intended to provide a period of time during which the ABCP notes could be turned into longer-term debt instruments with good security. Jim Flaherty, Canada's finance minister, praised the initiative:

> [W]hat I've been hearing internationally is some envy of the fact that we have a Montreal accord working to create some time for informed valuations to be accomplished. That is not happening everywhere. In fact it's a unique process in Montreal. That's to Canada's credit.

He added that he was "confident that a lot of work [was] being done."[18] Indeed it was. That sixty-day truce stretched to two years as a host of lawyers, led by the aging superstar of Canadian corporate law, Purdy Crawford, worked to complete this restructuring.[19] The federal government, together with the Ontario, Quebec, and Alberta provincial governments provided a senior funding facility to help.[20]

Notwithstanding the Montreal Accord, OSFI, CDIC, the Bank of Canada, and the Department of Finance were all on high alert. They looked for signs of stress in Canada's financial sector. The FISC committee met quite often, sometimes twice a day.[21] The CDIC staff carefully reviewed every member's financial condition and the results were presented to its board. Where potential problems were identified, OSFI and CDIC quietly worked behind the scenes with

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18 "Flaherty Sings the Praises of ABCP's Montreal Accord" *Globe and Mail* (14 September 2007).

19 On Crawford's role, see Gordon Pitts, *Fire in the Belly: How Purdy Crawford Rescued Canada and Changed the Way We do Business* (Halifax, NS: Nimbus Publishing, 2014).

20 International Monetary Fund — Monetary and Capital Markets Department, *Canada: Financial Sector Assessment Program, Canada: Crisis Management and Bank Resolution Framework — Technical Note*, IMF Country Report No 14/67 (Washington, DC: IMF Publication Services, 7 March 2014), online: http://www.imf.org/en/publications/cr/issues/2016/12/31/canada-financial-sector-assessment-program-crisis-management-and-bank-resolution-framework-41403 at 18 [IMF, *Technical Note*].

21 Interview with Julie Dickson (23 August 2016).

the member to address the concerns. Liquidity became an issue for some, and the Bank of Canada provided some liquidity funding.[22] At least in part, as a result of such timely action by the members of Canada's safety net, there were no bank failures and no government bailouts. Some weaker members were acquired by stronger ones, as often happens in economic downturns, and not surprisingly, CDIC played a role in ensuring a suitable outcome. The National Bank of Greece (Canada) was purchased by Bank of Nova Scotia and the Portuguese owned BCPBank Canada was acquired by Bank of Montreal.[23] The Bank of Nova Scotia also acquired Dundee Bank.[24] Ubiquity Bank of Canada amalgamated with Bank West.[25] But generally, CDIC and the others in Canada's financial safety net found less cause for concern than did their fellow insurers and regulators south of the border and elsewhere in the world. With some assistance, the "fortress of solvency" seemed to be withstanding the tsunami.

Canada did in fact fare much better than the rest of the world. It is estimated that Canada's six largest banks lost $11.7 billion owing to the subprime mortgage downturn, but that number pales in comparison with the losses in the United States and elsewhere.[26] People began to comment that Canada's "big and boring" regulatory regime was superior to that in the United States.[27] Canada's banks were better capitalized and supervised, their lending practices more

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22 "Canadian Banks Received Billions to Support Operations in '08–09" *Guelph Mercury* (1 May 2012) A10. This discussion of the short-term liquidity support provided by the Bank of Canada (all of which was repaid) was based on a report by the Canadian Centre for Policy Alternatives. For a different perspective, see Tara Perkins, Kevin Carmichael, & Boyd Erman, "Financial Crisis: Loan Support Too Costly to Tap, Banks Say" *Globe and Mail* (24 October 2012) B5.

23 CDIC, *Annual Report* (2008) at 71 and 77.

24 Gary Norris, "Scotiabank Buys Shares of Dundee Bank" *Toronto Star* (18 September 2007).

25 Above note 23.

26 Robert Elliott, "In Crisis, Canadian Banks Survive and Thrive" *Forbes Magazine* (11 December 2008) [Elliott].

27 "Financial Prudence Pays" *Globe and Mail* (14 December 2009) BB2.

conservative, and their exposure to downturns in the real estate market lower.[28] Rob Elliott, a leading Canadian banking lawyer, explained in *Forbes Magazine* that "[t]hrough a combination of regulatory discipline and cultural mind-set, Canada's banks have long operated with a conservatism that until recently seemed out of step with its peers worldwide."[29] But that conservatism came to be much appreciated — even US President Obama chimed in, saying that "Canada has shown itself to be a pretty good manager of the financial system and the economy in ways that we haven't always been."[30]

Nevertheless, the financial crisis of 2007–2009 was a game-changer for CDIC. Bryan Davies started his second report as chair of CDIC in a very different way than he had his first. He noted the "significant change and upheaval in the global financial markets" and stressed CDIC's increased focus on the economic environment and the financial market and its efforts to identify any impact on CDIC's members.[31] Guy Saint-Pierre, who had dealt with the consequences of many economic downturns over the last several decades, noted in his president's remarks an increase provision for loan losses and an increase in CDIC's *ex ante* funding to $1.6 billion.[32]

The biggest changes came about as a result of the G20's reaction to the international financial crisis. In 2008–2009, the Financial Stability Forum began to formulate its plans for worldwide regulatory reform, and not everyone wanted Canada to join in. The CBA,

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28 See for example, Keith B Richburg, "Worldwide Financial Crisis Largely Bypasses Canada" *Washington Post* (16 October 2008). For a later, more detailed analysis see John Raymond LaBrosse & James F McCollum, "An Evaluation of the Canadian Financial Safety Net during the Global Financial Crisis" in John Raymond LaBrosse, Rodrigo Olivares-Caminal, & Dalvinder Singh, eds, *Managing Risk in the Financial System* (Northampton, MA: Edward Elgar Publishing, Inc, 2011) 416–33. See also Tony Porter, "Canadian Banks in the Financial and Economic Crisis" (Paper prepared for the Policy Responses to Unfettered Finance Workshop, North-South Institute, Ottawa, 8–9 June 2010) [Porter].

29 Elliott, above note 26.

30 Porter, above note 28 at 1.

31 CDIC, *Annual Report* (2008) at 4.

32 *Ibid* at 6.

on behalf of Canada's banks, warned the Canadian government that it ought not to try to fix the Canadian system that was not broken. For two years in a row, they noted, the World Economic Forum had ranked Canada's financial system as the most stable in the world.[33] But change was bound to come internationally and Canada, as a key player in the world of international bank regulation and deposit insurance, could not sit idly by. The whole point of the new global regulatory regime being created was to ensure a similar, co-ordinated approach to international banking problems to the fullest extent possible — "a global solution to a global problem."[34]

As already noted, just before the crisis had hit, Martin Gruenberg, the chairman of the FDIC, had used the IADI conference to outline the roles that IADI and the Basel banking committee could play in developing international standards. After the crisis hit, those bodies did just that. In October 2007, the G7 ministers and Central Bank governors asked the Financial Stability Forum (FSF) to undertake an analysis of the causes and weaknesses that had produced the turmoil, and to set out recommendations for increasing the resilience of markets and institutions going forward. The FSF was asked to report to the G7 ministers and governors at their meeting in Washington in April 2008. In that April 2008 report, the FSF noted that recent events illustrated the importance of effective depositor compensation arrangements. The report stressed the need for an international set of principles for effective deposit insurance systems. Meanwhile, Mario Draghi, who was then the chair of FSF, was in discussions with Martin Gruenberg about IADI taking the lead on these core principles. Gruenberg, with the approval and encouragement of Guy Saint-Pierre, asked David Walker of CDIC

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33 "Better Banking: Why Canada's Banks are thriving despite the Global Financial Crisis" *Globe and Mail* (14 December 2009) BB1, and Nancy Hughes Anthony (CBA President), "Our Banks: A Key Strategic Industry for Canada" *Globe and Mail* (14 December 2009) B4.

34 Andrew Gracie, "A Practical Process for Implementing a Bail-In Resolution Power" (Paper delivered at the British Bankers' Association, London, UK, 17 September 2012), online: http://www.bankofengland.co.uk/archive/Documents/historicpubs/speeches/2012/speech600.pdf at 2.

to chair the working committee.[35] By February 2008, IADI had published its core principles for deposit insurance.[36] In July 2008, IADI agreed to work with the Basel Committee on Banking Supervision and decided to develop an internationally agreed upon set of core principles, using the IADI core principles as a base. A joint working group was established to develop these international core principles. Again Guy Saint-Pierre freed up David Walker so that he could serve as co-chair of the joint committee.[37] Saint-Pierre shared Canada's experience and approach with Walker so that he could share it with the committee. Although the development of the core principles was very much a group effort of FDIC, CDIC, Korea, Japan, and others, reading the principles is like taking a walk through CDIC's history over the previous four decades.[38] I am not suggesting that CDIC's experience alone, or even principally, shaped these principles — that would be claiming too much. FDIC and others had adopted some of these principles years before. Nevertheless, these principles reflect the many hard lessons that CDIC had learned over the years.

The efforts of Mitchell Sharp, Dick Humphrys, and the others who created and shaped CDIC is reflected in principle 1 about clearly establishing public objectives;[39] in principle 8, which advocates

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35 Walker had joined CDIC in the 1990s and had assisted CDIC in the establishment of IADI. In 2016, he left CDIC to become IADI's Secretary General.

36 Basel Committee on Banking Supervision & International Association of Deposit Insurers, *Core Principles for Effective Deposit Insurance Systems* (18 June 2009), online: http://www.iadi.org/en/core-principles-and-research/core-principles/ at 1 [*Core Principles*].

37 IADI, Press Release, "International Association of Deposit Insurers Announces Selection of New Secretary General" (25 May 2016), online: http://www.iadi.org/en/assets/File/Press%20Releases/IADI%20-%20Press%20Release%20May%202016%20SG%20Appointment%20(25_05_2016).pdf.

38 IMF, *Technical Note*, above note 20, rated Canada and CDIC highly on compliance with the core principles. See their analysis at 61–62. There are a few exceptions — cross-border issues, which are the focus of principle 7, reflect CDIC's past less than its present and future; principle 10 deals with transitioning to a CDIC-like deposit regime.

39 Canada came to accept that the principal objectives were contributing to the stability of the financial system and protecting insurers. Not surprisingly, those are the primary objectives set out in the core principles. Promoting

compulsory membership for all financial institutions accepting deposits (this, of course, was the goal of CDIC from its very inception — a goal largely, but not entirely, realized); and in principle 9 about clearly defining what is and is not a deposit.[40]

The suggestion in principle 13 that deposit insurers and their employees should be protected from lawsuits for decisions taken in good faith brings to mind the action against Humphrys in the early 1980s and the endless Commonwealth Trust Company litigation.

The debates of the 1980s and 1990s are reflected in the discussion of principle 2 about mitigating moral hazard[41] and in principle 11 on funding, which suggests that the cost of deposit insurance should be borne by the banks.[42] The 1980s also saw the establishment of the FISC and SAC committees, which is reflected in principle 6 with its emphasis upon a framework to facilitate close co-ordination and information sharing on a routine basis between members of the financial safety net.

Ron McKinlay's new approaches of the late 1980s and early 1990s is much in evidence in principles 3 and 4, which call for a clear mandate and the granting of appropriate powers. McKinlay's push for the Federal Institution Restructuring Provisions (FIRP) comes

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competition, which for a time formed part of CDIC's objectives, is mentioned in the explanatory notes as a further possible objective. *Core Principles*, above note 36 at 9.

40 Dick Humphrys and the early directors of CDIC "define[d] clearly in law, prudential regulation or by-law what an insurable deposit is" and, equally importantly, what is not, excluding deposits in foreign currency and certain types of investment: *Core Principles*, *ibid* at 12. They initially used a bylaw supported by regulations but this was subsequently made part of the *CDIC Act*.

41 Co-insurance, which came to be rejected in Canada, is not discussed. Rather, the suggestion is that moral hazard can best be dealt with by limiting the amount insured, excluding certain classes of investment, adopting risk-based differential premiums, promoting good corporate governance and risk management in the banks, and working with the other members of a strong safety net like the regulators — all things that CDIC came to adopt through its experience and the frequent studies carried out. *Core Principles*, above note 36 at 9–10.

42 What of principle 10? It deals with transitioning from a blanket guarantee to a limited-coverage deposit insurance system.

to mind. McKinlay's approach is also seen in principle 15. In fact, in reading about this principle, one can almost hear Ron McKinlay advising that the deposit insurer needs to be part of a system for early detection, timely intervention, and for the resolution of troubled banks.

Principle 16, calling for effective resolution processes, reflects the pioneering work of Guy Saint-Pierre and Donald Milner working under the watchful eyes of McKinlay and Robertson in resolving Central Guaranty Trust and so many others.

Grant Reuber's approach is mirrored in principle 14 when it states that the deposit insurer should be able to seek legal redress against those at fault in the bank. The core principles take an agnostic approach to *ex ante* versus *ex post* funding, which is reflective of CDIC's move away from *ex ante* funding during the Reuber years and back to it in the Robertson era.

And so much CDIC history is tied up in the reference to the need to be able "to increase premiums, charge additional levies and receive the proceeds of liquidation,"[43] and in principles 17 and 18 dealing with informing and reimbursing depositors and recovering funds by managing the disposition of assets of failed institutions.

CDIC's public awareness campaigns over the years surely help shape principle 12 which advises that the general public be kept informed on an ongoing basis.

Principle 5, a call for an independent but accountable insurer insulated from undue political and industry influence, recalls the ongoing debate about the nature and structure of CDIC.

The Financial Stability Board (FSB), which replaced the Financial Stability Forum, appreciated the principles but wanted to go further. As major financial institutions in the United States and elsewhere collapsed or teetered on the brink, the FSB wanted each country to establish a resolution authority with appropriate powers to "resolve" large, complex bank failures. As the Canadian government would later say, "the crisis further highlighted that some banks are 'systemically important' — so important to the functioning of the

43 *Core Principles*, above note 36 at 16.

financial system and economy that they cannot be wound down under a conventional bankruptcy and liquidation process should they fail without imposing unacceptable costs on the economy."[44] Resolution offered the possibility of restructuring a failed institution or operating it under government control until it could be wound down in an orderly way. CDIC, of course, had been resolving failed Canadian institutions for some time, but not on the scale contemplated here and without some of the special powers being proposed. The FSB principles became known as the Key Attributes of Effective Resolution Regimes for Financial Institutions, or KAs. The goal was to maintain financial stability by enabling resolution authorities to resolve any large, complex bank failure in a way that would protect insured deposits while maintaining the availability of critical financial services, protecting the economy, and minimizing the risk to taxpayers[45] — no small task.

There was some question as to who that resolution authority ought to be in Canada. Some thought that the Bank of Canada was best suited to this role;[46] the central bank had been chosen in other jurisdictions. Others were of the opinion that a separate body needed to be developed that had experience and jurisdiction over financial markets. The problem with CDIC, these people suggested, was that it was focused on traditional banking and deposit-taking, but it was other forms of investment banking that had created the recent crisis.[47] Bryan Davies, CDIC's chair, understood both the issues being debated and how government functioned. He represented CDIC in

44 Taxpayer Protection and Bank Recapitalization Regime: Consultation Paper (August 2014).

45 On bank resolution, see Nikoletta Kleftouri, *Deposit Protection and Bank Resolution* (Oxford, UK: Oxford University Press, 2015) at 157–89 [Kleftouri].

46 Interview with David Dodge (28 July 2016).

47 Alexandra Lai & Adi Mordel, "The Resolution of Systemically Important Financial Institutions" in Bank of Canada, ed, *Financial System Review* (June 2012), online: www.bankofcanada.ca/wp-content/uploads/2012/06/fsr-0612-lai.pdf at 37–42. They give as an example the 2008 collapse of the Lehman Brothers group consisting of 2,985 entities operating in fifty countries. Resolving the group's members presented challenges for regimes "designed for commercial banks that raise retail deposits."

the discussions and shared its extensive experience with financial institution resolution.[48] In the end, that experience won over the critics, and CDIC was chosen. Although its mandate would not formally change until 2017, CDIC added the resolution authority role for Canada's large banks to its de facto mandate in 2011.[49]

CDIC assumed this new role under a new president and CEO. Guy Saint-Pierre retired in April 2010 after twenty-three years at CDIC. It seems only fitting that Saint-Pierre should retire after seeing CDIC through the 2007–2009 financial crisis; he had helped it through so many other downturns in the past. And it is equally fitting that CDIC should enter its new post-crisis era with its first female president. Of course, Michèle Bourque was not new to CDIC. She had joined in 1992 as an economist.[50] She had earlier worked at CMHC, Bell Canada, and the Royal Bank in Montreal. While at the Royal, she had been a sectoral economist, assisting with early risk management. She did an MBA in finance before joining CDIC, where she had been hired as an analyst, doing risk assessment and risk management. It was her job to watch for CDIC exposure through potential member failures and to assess if a special examination was required and if the members ought to be added to the

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48 Interviews with Bryan Davies (26 July 2016) and Nancy Lockhart (24 November 2016). Michèle Bourque stressed the importance of CDIC's experience in a 2017 presentation to the CD Howe Institute: "It is worth stressing that our experience was in resolving, not saving, banks to ensure that we were imposing losses on shareholders and creditors, not taxpayers. This market discipline approach was not one generally followed in many countries, whether for small or big banks, a fact that was underscored during the crisis:" "CDIC at 50: Are We Ready for the Next Crisis?" (Lecture delivered at the CD Howe Institute, 19 January 2017) [Bourque, "50 Years"] unpublished, but available on the CDIC website: http://www.cdic.ca/en/newsroom/speeches-announcements/Documents/speaking-notes-michele-bourque-cd-howe-institute.pdf.

49 President Michèle Bourque described CDIC's new role in a CD Howe Institute address: "CDIC'S New Role as Canada's Resolution Authority" (Lecture delivered at the CD Howe Institute, 9 June 2014), online: https://www.cdic.ca/en/newsroom/speeches-announcements/Documents/Speech_MBourque_CDHowe_jun2014.pdf [Bourque, "CDIC's New Role"].

50 The following is drawn from an interview with Michèle Bourque (5 August 2015) in offices of CDIC.

watch list. During the next two decades, she worked her way up the CDIC corporate ladder, taking on more and more responsibility until she became executive vice-president and then president. It was an impressive achievement for an impressive individual.

Bourque's dynamism and determination brought a renewed energy and focus to the organization. In the words of one of Canada's leading businesswomen and CDIC board member, Nancy Lockhart, she was "quietly determined, quietly efficient and very collaborative."[51]

As leader of Canada's resolution authority, that effective, determined woman charged her staff with considering the impossible — what would happen if one of Canada's big six banks failed? As Bourque would later say, "[t]he financial crisis has shown us that things we may think are impossible can quickly become reality."[52] Each of those big six had been designated by OSFI as Domestic Systemically Important Banks (D-SIBs). Since the creation of CDIC forty years before, it had always been assumed that those banks would never fail — they were stable, well-run financial institutions. The CBA had repeated again and again that Canada's banks were safe and that the risk of failure was largely confined to the smaller, less well-run trust companies. True, CCB, Northland, and some of the other smaller regional banks had failed but, if anything, they were seen as the exception that proved the rule. Even when Royal Trust and Central Guarantee Trust — very large trust companies — failed, they were not viewed in the same way as the big banks. They were in fact "rescued" through an acquisition by two of the big banks, Royal Bank and TD. But the developments in the United States and elsewhere were proving that size alone was no guarantee of stability and longevity. The US institutions that were failing were larger than the Canadian banks and seemingly more profitable. Nevertheless, they were failing.

51 Telephone interview with Nancy Lockhart (24 November 2016). Shelley Tratch echoed those words, characterizing Michèle as a team player, open to new ideas and collaborative. Telephone interview with Shelley Tratch (14 December 2016).

52 Bourque, "50 Years," above note 48.

The expression "too big to fail" took on a new meaning. No longer did it mean that an institution was so large that it would not fail; now it meant that the institution was too large for a government to permit it to fail in the usual way. Extraordinary measures were needed. But what were those measures? Bourque and her staff could not wait until one of these large institutions failed to see what worked. They needed to consider just what could and should be done now. Bourque stated that in 2008, while she "recognized there was a statistical possibility that a systemic bank could fail,"[53] she was far from believing anyone could handle such a catastrophe outside of bailing them out. CDIC "had to consider questions in ways that had no precedent in Canada. In fact, there were few precedents globally from which we could draw upon."[54]

For CDIC, those measures started with Bourque establishing an entirely new arm of CDIC, the Complex Resolution Division in September 2011. She turned to Tom Vice, one of CDIC's most experienced executives, to head it. Tom became senior vice-president, Complex Resolution Division, reporting directly to Bourque. What made Bourque think that Tom was the person she should work with in tackling this daunting task was that he was one of the few CDIC employees who remained from the teams who had resolved member failures in the 1980s and 1990s. To assist, Bourque recruited some of Canada's leading banking and restructuring experts to serve on an Advisory Panel on Resolution, people like Ron Lalonde. Before his retirement in 2010, Lalonde had been vice-president, Technology and Operations at CIBC. This new division worked with each of the big six banks, the D-SIBs, on the development of resolution plans, then known as living wills. CDIC did "resolvability assessments" of each of these banks.[55] Simulated failures were carried out to help develop and test procedures.

CDIC's new role brought with it many challenges. Obviously resolving the failure of any of these huge institutions would be

53 *Ibid.*

54 *Ibid.*

55 Bourque, "CDIC's New Role," above note 49 at 4.

no easy task, especially given the fact that these banks are really bank groups, with securities, wealth management, and insurance arms carrying on business not only in Canada but internationally. Convincing these international giants to work with a Canadian deposit insurer was the first hurdle to overcome. CDIC's excellent reputation helped, as did the considerable efforts of Bourque, Vice, and others. In addition, CDIC had to "reach out to financial market infrastructures, capital market regulators and ratings agencies to ensure they understand CDIC's role and the kind of actions [CDIC] would take to resolve a troubled large bank."[56] And it needed to develop some subject matter expertise in these areas.

It was also necessary for CDIC to share information with other resolution authorities and to co-ordinate its resolution planning and preparation with those foreign authorities. It negotiated a memorandum of understanding with numerous resolution authorities, including the FDIC. The FDIC MOU was announced in June 2013, following a signing ceremony in Ottawa when Michèle Bourque (on behalf of CDIC) and Martin Gruenberg (by then chairman of FDIC) pledged to work together to plan for the possible failure of a large, complex financial institution operating in both countries.[57]

In addition, CDIC needed "more flexible and far-reaching resolution tools that permit [it] to act faster."[58] It had been given the power to force the sale of a failing bank if a buyer could be found. If one could not be found within an acceptable time, the minister of finance, in consultation with CDIC, OSFI, and the Bank of Canada, was empowered to incorporate a CDIC-owned "bridge bank." This new bank would preserve the critical functions of a troubled bank

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56 *Ibid* at 5. Former Bank of Canada governor, David Dodge, considers this the greatest challenge that CDIC faces as a resolution authority. CDIC as a deposit insurer has not previously required the experience, expertise, and jurisdiction to deal with such matters as securities regulation. Based on a telephone interview with David Dodge (28 July 2016).

57 FDIC, Press Release, PR-51-2013, "FDIC Announces Memorandum of Understanding with Canada Deposit Insurance Corporation" (12 June 2013), online: FDIC https://fdic.gov/news/news/press/2013/pr13051.html.

58 Bourque, "CDIC's New Role," above note 49 at 5.

until it could be sold, thus bridging the gap between the intervention and the sale.[59] In the case of a bridge bank, CDIC was authorized, at a minimum, to transfer the insured deposits, other key liabilities, and potentially other assets into this new bank, which could be operated until the sale. This was intended to avoid some of the problems that CDIC had experienced in the past where a failed institution continued to be owned and potentially influenced by its shareholders and subordinated debtholders. With a bridge bank, those would be left behind with the failed bank as it went through liquidation. This approach also provided "an alternative to the creation of a 'megabank' by amalgamation with another D-SIB, and losses are borne by creditors and shareholders, rather than taxpayers."[60] As Michèle Bourque would say in a public address, "The key principle is that shareholders and investors, who enjoy the upside when times are good, are exposed to loss, while taxpayers and insured depositors are not."[61]

That key principle was also behind the latest resolution mechanism introduced in Canada — the bank recapitalization, or "bail-in" regime. In 2016, the federal government passed legislation to implement this regime as recommended by the Financial Stability Board.[62] This legislation, once regulations have been prepared and implemented, will allow the government to direct CDIC to convert specified eligible shares and liabilities of the D-SIBs into common shares in the event that such bank is no longer viable. It is intended to avoid a government bailout by requiring preferred shareholders and holders of long-term senior debt to convert their holdings into

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59 The bridge bank powers had actually preceded CDIC's designation as the resolution authority for Canada. Those powers had been bestowed in the *Budget Implementation Act* of 2009. (SC 2009, c 2, ss 233–58.) This power was similar to one granted to the FDIC in the *Competitive Equality Banking Act of 1987*, Pub L No 100–86, 101 Stat 552. See Kleftouri, above note 45 at 213.

60 Bourque, "50 Years," above note 48.

61 *Ibid.*

62 For a good summary of the legislation and its impact, see Blair W Keefe & Eli Monas, "Bill C-15 Implements Bank Recapitalization Regime" Torys Newsletter (22 April 2016), online: http://www.torys.com/insights/publications/2016/04/bill-c15-implements-bank-recapitalization-regime.

common shares, thus reducing the bank's debt and increasing its capital.[63] This approach has an obvious appeal and CDIC lent its support.[64] Bank of Canada Governor Mark Carney went so far as to say that "bail-in as a component of addressing systemic risk . . . is an absolutely necessary element, it doesn't solve everything but it's absolutely necessary."[65] It seeks to ensure that those who are in the best position to assess the state of the bank and influence its direction are the first to suffer a loss.[66] But there are challenges. To be effective, there needs to be more than just a recapitalization. As Andrew Gracie, the director of the Special Resolution Unit of the Bank of England, has said, "bail-in cannot, and should not, be used in isolation from other tools and powers. Writing down and converting debt into equity may help to restore solvency, but on its own it cannot restore viability."[67] To be effective, the bail-in needs to be part of a comprehensive resolution strategy and that is the approach that CDIC intends to adopt.

As if the daunting task of addressing these issues was not enough, CDIC and other deposit insurers face other challenges including

63 Chris D'Souza & Toni Gravelle, Bank of Canada, and Walter Engert & Liane Orsi, Office of the Superintendent of Financial Institutions, "Contingent Capital and Bail-In Debt: Tools for Bank Resolution" in Bank of Canada, ed, *Financial System Review* (December 2010), online: www.bankofcanada.ca/wp-content/uploads/2011/12/fsr-1210-dsouza.pdf at 51–56. See also Koker Christensen, "Federal Government Launches Consultation on Proposed Bail-In Regime" (2014) 33 *National Banking Law Review* at 65–69.

64 See Statement by Chantal Richer, CDIC Vice-President Corporate Affairs and General Counsel to the Senate Committee on Banking, Trade and Commerce, News Release, "CDIC Tells Senate Committee 'Bail-In' Would Help Protect Depositors in a Large Bank Failure" (19 May 2016), online: http://www.cdic.ca/en/newsroom/newsreleases/Pages/senate-committee.aspx.

65 The Canadian Press, "Bank 'Bail-In' Plan Shouldn't Worry Canadians, Carney Says" *CBC News* (18 April 2013), online: www.cbc.ca/beta/news/business/bank-bail-in-plan-shouldn-t-worry-canadians-carney-says-1.1320808.

66 Not all regulators are in favour of this initiative. The bail-in is referred to as "the most controversial element" of the new regulatory approach adopted following the 2007–2009 crisis in Kleftouri, above note 45 at 178. She outlines the many potential disadvantages, including the fact that it could lead to more litigation and a slower resolution of the troubled institution.

67 Above note 34.

those arising from the increasingly digitally interconnected world of banking. Computerization of banking had started decades before. The Royal Bank, for example, had launched its Montreal Data Centre in 1963, four years before CDIC had been formed.[68] Six years later, they had created an automated customer services group. In 1972, they had installed "bankettes" in fourteen Toronto branches where customers with an identity card could withdraw cash from a machine. By 1977, Royal Bank had its first automated cash machines independent of a Royal Bank branch, and in 1981, Canada's jazz legend, Oscar Peterson, and his composition "My Personal Touch" helped Royal Bank introduce Personal Touch Banking Machines that let its customers deposit and transfer funds as well as withdraw cash.[69] Royal Bank, of course, was not alone. Following 1984 and the creation of Interac, the Royal Bank's machines were networked with the other major banks in a co-operative debit card system. The 1990s brought online banking. All of Canada's deposit-taking institutions were heavily into digital banking by the twenty-first century, but not all did so in the same way and to the same extent. This raised an important question: if a financial institution got into trouble and CDIC had to step in, would it be able to assume these digital operations and facilitate a prompt payout or a resolution? On 12 July 2010, the *CDIC Act* was amended to permit CDIC to pass bylaws with respect to the information systems and the information technology capabilities of its member institutions. By December, the CDIC board adopted a data and system requirements bylaw that created a set of technical requirements for CDIC members. One of the goals of the bylaw was to ensure timely reimbursement of deposits in the event of failure. One software vendor that helped CDIC members comply described the process this way:

> The CDIC stunned Canadian banks and insured financial institutions when it unveiled its plans for Fast Insurance Determination . . . A few banks actually laughed (we were on the conference call). But it

68 Duncan McDowall, *Quick to the Frontier: Canada's Royal Bank* (Toronto, ON: McClelland & Stewart, 1993) at 373

69 *Ibid* at 386.

> was no joke. The CDIC was absolutely serious. Every . . . customer that wanted to collect the financial incentive that CDIC offered did so. There was plenty of drama, as the CDIC specifications changed, but we worked closely with our customers and the CDIC to cross the finish line on time. It may be painful, but we're proud that Canada took the lead with an innovative and fast approach to potential institution failures. Canada may have escaped the 2008 financial crisis but it seems our regulators didn't want to relax. We agree.[70]

For Michèle Bourque, fast action is a necessity in today's world.[71] Not only would it be almost impossible to keep problems under wraps long enough to resolve a potential problem and avoid a run (given Twitter and other means of instant communication), but Canadians have come to expect fast access to their funds. Too many live from pay deposit to pay deposit. This means that CDIC must not only be well-prepared in advance, but it must be able to assume control of an institution's operations without delay.

Looking back on CDIC's first fifty years, it is safe to say that the value of deposit insurance has not always been accepted. But that value has come to be widely acknowledged in the decade since the 2007–2009 crisis. As a recent study has found, the "adoption and design of Deposit Insurance is an important policy for bank regulation and financial stability."[72] Deposit insurance generally, especially when that insurance has risk-based premiums and *ex ante* funding (as CDIC has), "help(s) banks retain deposit funding, alleviate the decline of corporate loans, and limit the increase of risk."[73] It has a positive effect in that "borrowers (both banks and non-banks) experience a smaller increase of loan spreads when the country has explicit deposit insurance" with such features, and "[f]inally, foreign banks' flight home effect is mitigated when the host countries

70 Deposit Insurance Guardian, "CDIC FID. Teamwork" online: http://www.stratinfotech.com/banking_software/Deposit_Insurance_Guardian.htm.

71 Interview with Michèle Bourque (6 August 2015) in offices of CDIC.

72 Dr. Iftekhar Hasan, "Deposit Insurance and Design: Effects During the 2008 Global Financial Crisis" (Paper delivered at the IADI 16th Annual Meeting, Seoul, Korea, October 2016).

73 *Ibid.*

have explicit deposit insurance and good design features. Overall, [deposit insurance] plays a stabilization role in the crisis."[74]

CDIC's experience in its fifty years has helped validate these statements. Nevertheless, CDIC cannot rest on its laurels; it remains an organization that must adapt to the constantly changing world of financial services. Its evolution is not over.[75] As CDIC approached its fiftieth year, the federal government issued a consultation paper seeking comments on CDIC and the range of financial products that it insures. This need for adaptation of financial regulation to current realities was recognized as early as 1870 when Canada's first Bank Act called for a review of bank regulation every ten years (which was later shortened to five years, given the increased pace of change). But the need for periodic review and adaptation has and will always be a necessary and important part of CDIC's world.[76]

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74 *Ibid.*

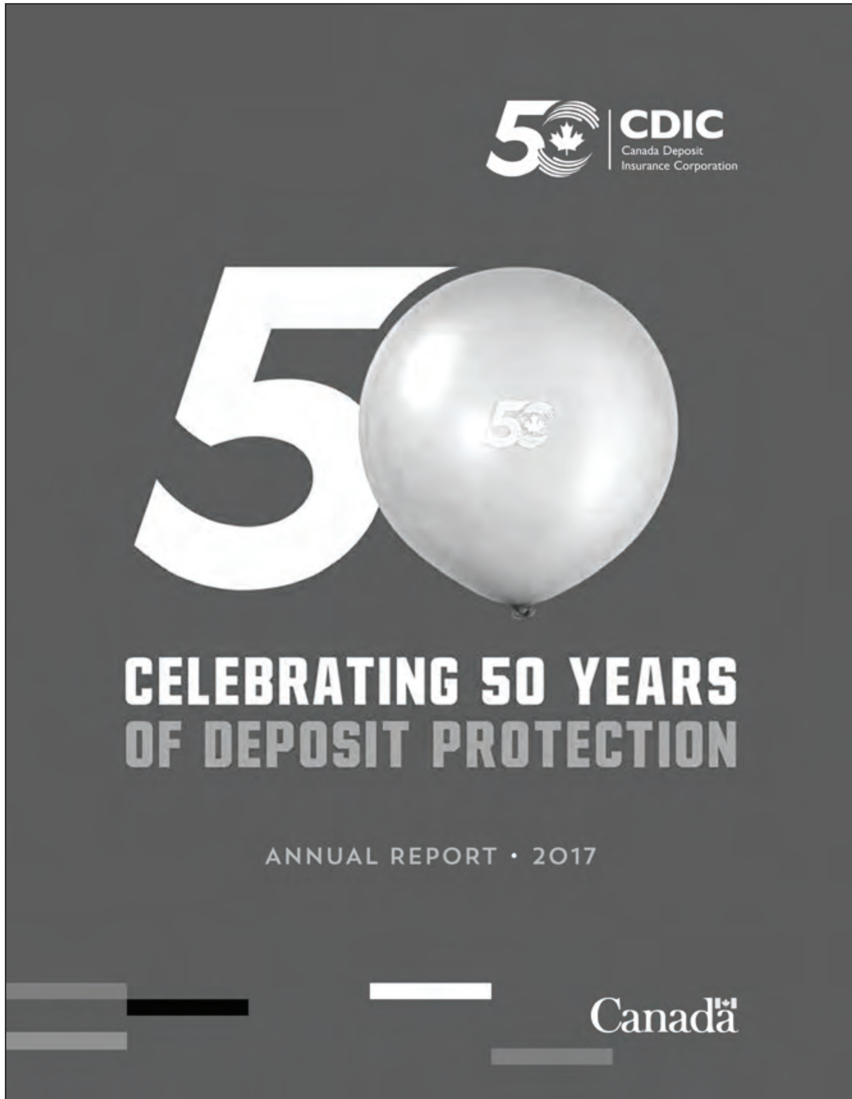
75 As CDIC was nearing its fiftieth anniversary, it was given its ninth chairperson, Robert Sanderson, who had been a member of the advisory panel on resolution. Sanderson was appointed by the new Liberal government of Justin Trudeau. That government had pledged to overhaul the system of government appointments, so Sanderson's appointment was for only one year, and it has since been extended for another six months.

76 About the same time as CDIC was implementing its new IT requirements, its mandate was augmented. In 2010, the Government of Canada extended CDIC's deposit insurance to provincial credit unions and caisses populaires, if those institutions converted into federal credit unions and became members of CDIC.

Ron Robertson, the lawyer turned CDIC chair who would see CDIC into the twenty-first century (c 2000–2002).

Michèle Bourque represents CDIC at a meeting of the International Association of Deposit Insurers (IADI) in 2016.

CDIC President Michèle Bourque, and FDIC Chairman Martin Gruenberg, sign a memorandum of understanding (MOU) (June 2013).



CDIC's fiftieth anniversary is commemorated on the cover of its 2017 Annual Report.

Epilogue

When parliament created the Canada Deposit Insurance Corporation, deposit insurance was still a somewhat novel idea. Canada was one of a handful of countries in the world to have an explicit deposit insurance regime. The Federal Deposit Insurance Corporation (FDIC) had led the way in 1933, but it had been almost three decades before nine other countries, including Canada, followed suit in the 1960s.[1] By 1974, there were still only twelve. The economic troubles of the 1980s had spurred several countries to create deposit insurers, increasing that number to twenty-two. Nevertheless, when the International Association of Deposit Insurers (IADI) was formed and began to collect data in 2002, it had only twenty-six members. The creation of the international association, however, encouraged detailed analysis of deposit insurance. Those studies revealed that a number of countries that did not

1 Asli Demirgüç-Kunt, Baybars Karacaovali, & Luc Laeven, "Deposit Insurance Around the World: A Comprehensive Database" (2005) World Bank Policy Research Working Paper No 3628, online: http://siteresources.worldbank.org/INTRES/Resources/DepositInsuranceDatabasePaper_DKL.pdf.

expressly insure deposits did so implicitly. In these countries, when hard times brought bank failures, the pressure on governments to protect deposits was so intense that they did so even in the absence of any express deposit insurance provisions, much as Canada had done following the bank failure of the 1920s. Thus, when a database of deposit insurers was created in 2005, it showed eighty-four explicit, and many more implicit, deposit insurers.[2] Following the financial crisis of 2007–2009, there were more than 110 explicit deposit insurers.[3]

It is worthy of note that many countries, when deciding to implement deposit insurance, looked to CDIC as an exemplar. The FDIC was the world's first deposit insurer but it is difficult to emulate — its broad mandate and very large staff would be a challenge for almost any other country to duplicate. But CDIC's more limited mandate and modest staff are more easily reproduced in most countries. Moreover, its fifty years of experience with more than forty failures have helped CDIC and the Canadian government refine and improve its approach and its techniques and the tools at its disposal. Through IADI, which CDIC helped create, that experience has been made available to the world.

When one talks to the people at CDIC, the analogy that often is invoked to help people understand CDIC's role is that of the fire department. Like firefighters, the people at CDIC spend their time training and preparing for a threatening event; also like those firefighters, they develop techniques and procedures to lessen the risk of any such event.

In the absence of a "fire," it is easy to take these "firefighters" for granted. It is therefore always gratifying when they get the public recognition that they deserve. As this book was being prepared for the press, Rob Carrick of the *Globe and Mail* provided his readers with "six personal finance reasons to be thankful" on Canada's

2 *Ibid* at 3.

3 Nikoletta Kleftouri, Deposit Protection and Bank Resolution (Oxford, UK: Oxford University Press, 2015) at xxix. See also IADI, "Deposit Insurance Systems Worldwide," online: http://www.iadi.org/en/deposit-insurance-systems/dis-worldwide.

150th birthday. Number three on his list was CDIC. He noted that "CDIC is a well-funded, pro-active organization that understands its mission is basically to sustain confidence in our banking system."[4] A fitting tribute to an organization celebrating its fiftieth anniversary.

4 Rob Carrick, "Six Personal Finance Reasons to be Thankful on Canada 150" *Globe and Mail* (29 June 2017), online: https://www.theglobeandmail.com/globe-investor/personal-finance/household-finances/six-personal-finance-reasons-to-be-thankful-on-canada-150/article35503896.

Appendix A[1]

CDIC Corporate Directors

From 2001 to 2016, the board consisted of:

- Chair of the Board
- 5 *ex officio* Directors
  - Governor of the Bank of Canada (with alternate)
  - Deputy Minister of Finance (with alternate)
  - Superintendent of Financial Institutions (with alternate)
  - Deputy Superintendent of Financial Institutions
  - Commissioner of the Financial Consumer Agency
- 5 Private Sector Directors

From 1988 to 2000, the board consisted of:

- Chair of the Board
- 4 *ex officio* Directors
  - Governor of the Bank of Canada
  - Deputy Minister of Finance
  - Superintendent of Financial Institutions
  - Deputy Superintendent of Financial Institutions
- 4 Private Sector Directors

---

1 Please note that the asterisk (*) symbolizes a date range as no exact date was found; italicized text indicates currently in the role; and "unknown" indicates that the precise date or date range is unknown.

In 1987, the board consisted of 5 directors in total:

1) Chair
2) Governor of the Bank of Canada
3) Deputy Minister of Finance
4) Superintendent of Financial Institutions
5) Deputy Superintendent of Financial Institutions

From 1967 to 1986, the board consisted of 5 directors in total:

1) Chair
2) Governor of the Bank of Canada
3) Deputy Minister of Finance
4) Superintendent of Insurance
5) Inspector General of Banks

1986 — addition of no more than 4 private sector directors passed by Bill C-86

Fiscal year ending 31 December was from 1967–1992; changed to 31 March in 1993–1994

CHAIR OF THE BOARD

Name	Date Appointed	Date Ceased
Robert Sanderson	*1 June 2016 (for 1-yr term)*	
Bryan P Davies	19 June 2011 (reappointed for 5-yr term) 19 June 2006 (5-yr term)	31 May 2016
Ron Robertson	11 April 2006 (90-day term) 11 January 2006 (90-day term) 14 October 2005 (90-day term) 15 September 2004 (term ending 13 October 2005) 15 September 1999	18 June 2006
Gordon G Thiessen	8 July 1999 (acting role)	14 September 1999
Grant L Reuber	9 December 1997 (reappointed until 8 July 1999) 8 January 1993 (for 5-yr term)	7 July 1999
Ron McKinlay	30 September 1985	29 December 1992
WA Kennett	June 1985 (acting role)	29 September 1985
Robert De Coster	February 1983	June 1985

Name	Date Appointed	Date Ceased
John F Close	August 1977	December 1982
Gerard Gingras	12 May 1972	August 1977
Antonio Rainville	17 April 1967	11 May 1972

EX OFFICIO DIRECTORS

Governor of the Bank of Canada

Name	Date Appointed	Date Ceased
Stephen Poloz	*3 June 2013 (for 7-yr term)*	
Mark Carney	1 February 2008 (for 7-yr term)	June 2013
David Dodge	1 February 2001	31 January 2008
Gordon G Thiessen	1 February 1994	31 January 2001
John Crow	1 February 1987	31 January 1994
GK Bouey	February–June 1973*	31 January 1987
L Rasminsky	17 April 1967	February–June 1973*

Bank of Canada (Alternate)

Name	Date Appointed	Date Ceased
Sylvain Leduc	*2 May 2016*	
Lawrence Schembri	12 April 2013	1 May 2016
Agathe Côté	1 August 2010	11 April 2013
Pierre Duguay	1 September 2005	29 July 2010
David Longworth	24 June 2003	31 August 2005
Charles Freedman	7 May 2001	23 June 2003
Serge Vachon	August 1980	31 March 2001
R Wilson	Unknown	Unknown
R Johnstone	Unknown	Unknown
JR Beattie	1967	Unknown

Deputy Minister of Finance

Name	Date Appointed	Date Ceased
Paul Rochon	*21 April 2014*	
Michael Horgan	8 September 2009	19 April 2014
Rob Wright	12 June 2006	8 July 2009
Ian Bennett	15 November 2004	11 June 2006

Name	Date Appointed	Date Ceased
Kevin Lynch	20 March 2000	31 October 2004
Scott Clark	14 July 1997	19 March 2000
David A Dodge	1 August 1992	13 July 1997
Frederick W Gorbet	July–October 1988*	31 July 1992
Stanley Hartt	May–November 1985*	July–October 1988*
MA Cohen	October–December 1982*	May–November 1985*
IA Stewart	February–May 1980*	October–December 1982*
GL Reuber	End of 1979	February–May 1980*
TK Shoyama	February–May 1975*	April 1979
SS Reisman	March–April 1970*	February–May 1975*
RB Bryce	17 April 1967	March–April 1970*

Assistant Deputy Minister of Finance (Alternate)

Name	Date Appointed	Date Ceased
Leah Anderson	*5 December 2016*	
Rob Stewart	28 July 2014	4 December 2016
Jeremy Rudin	7 October 2008	June 2014
Serge Dupont	31 July 2006	16 June 2008
Frank Swedlove	30 October 2003	21 April 2006
Robert Hamilton	26 May 2003	29 October 2003
Mike Horgan	1 October 2001	25 May 2003
Ian Bennett	20 October 1997	1 September 2001
Bob Hamilton	November 1996 (acting role) 11 December 1995	19 October 1997
Doug Smee	17 January 1995	10 December 1995
Nicholas Le Pan	26/27 May 1993	Unknown
Michel Caron	Unknown	Unknown
Gordon King	Unknown	Unknown
J Sargent	Unknown	Unknown
WA Kennett	Unknown	Unknown
C Wostenholme	Unknown	Unknown
CL Read	Unknown	Unknown

Office of the Superintendent of Financial Institutions (OSFI) #1

Name	Date Appointed	Date Ceased
Jeremy Rudin	*29 June 2014 (for 7-yr term)*	
Julie Dickson	29 June 2007 (for 7-yr term) 14 April 2007 (for 6-mth term) 14 October 2006 (for 6-mth term)	28 June 2014
Nicholas Le Pan	1 September 2001	13 October 2006
John Palmer	1 September 1994	July–August 2001*
Michael Mackenzie	2 July 1987 (for 7-yr term)	July 1994

Office of the Superintendent of Financial Institutions (Deputy of OSFI) #2

Name	Date Appointed	Date Ceased
Jamey Hubbs	*27 April 2015*	
Andrew Kriegler	24 June 2013	31 October 2014
Ted Price	1 January 2007	June 2013
Carl Hiralal	11 September 2006	31 December 2006
John Doran	22 February 2002	5 June 2006
Nick Le Pan	1 September 1997	1 September 2001
John Thompson	25 July 1996	1 September 1997
Vacant	1 April 1995	24 July 1996
Suzanne Labarge	September 1992	31 March 1995
Robert Hammond	1987	15 May 1992

Office of the Superintendent of Financial Institutions (OSFI) (Alternate)

(Records show Alternate was permitted from unknown date until October 2006)

Name	Date Appointed	Date Ceased
Julie Dickson	26 February 2002	13 October 2006
John Doran	16 June 2000	22 February 2002
Carol Shevlin	12 April 1999	15 June 2000
Jack Heyes	9 January 1996	31 March 1999
Keith Bell	11 December 1992	Unknown
Suzanne Labarge	Unknown	September 1992
DM MacKenzie	Unknown	Unknown

Superintendent of Insurance *(from 1967–1987)*

Name	Date Appointed	Date Ceased
Robert Hammond	April 1982	1987
Richard Humphrys	17 April 1967	April 1982

Inspector General of Banks *(from 1967–1987)*

Name	Date Appointed	Date Ceased
DA Macpherson	April 1986 (acting)	July 1987
WA Kennett	May–July 1977*	March 1986
CL Read	January–February 1973*	May–July 1977*
WE Scott	17 April 1967	January–February 1973*

Financial Consumer Agency of Canada (FCAC) — *No member prior to 2001*

Name	Date Appointed	Date Ceased
Lucie Tedesco	*3 September 2013 (for 5-yr term)* *3 June 2013 (acting for 90 days)*	
Ursula Menke	3 December 2012 (reappointed for 6-mth term or till replaced) 3 December 2007 (for 5-yr term)	2 June 2013
Jim Callon	9 February 2007 1 November 2006 (acting)	2 December 2007
Bill Knight	1 November 2001	31 October 2006

PRIVATE SECTOR DIRECTORS *(No private sector directors prior to 1988)*

Private Sector Director #1

Name	Date Appointed	Date Ceased
George Burger	*13 June 2014 (reappointed for 3-yr term)* *25 November 2010 (for 3-yr term)*	
Nancy Lockhart	14 December 2007 (for 3-yr term)	31 August 2010
Vacant	4 July 2006	13 December 2007
Garfield Emerson	20 December 2000 (reappointed for 3-yr term) 20 December 1997 (reappointed 3-yr term) 20 December 1994 (for 3-yr term)	3 July 2006

Name	Date Appointed	Date Ceased
Ronald N. Robertson	4 April 1991 (reappointed for 3-yr term) 1 April 1988 (for 3-yr term)	19 December 1994

Private Sector Director #2

Name	Date Appointed	Date Ceased
Angela Tu Weissenberger	*8 June 2015 (reappointed for 3-yr term)* *8 June 2012 (for 3-yr term)*	
Les Cannam	22 January 2009 (for 3-yr term)	7 June 2012
Tracey Bakkeli	24 March 2005 (reappointed for 3-yr term) 1 March 2001 (for 3-yr term)	21 January 2009
Shawn Murphy	9 February 1999	11 December 2000
Bernard Ghert	9 June 1993 (for 3-yr term)	8 February 1999
Paul G Morton	February 1988	June 1993

Private Sector Director #3

Name	Date Appointed	Date Ceased
Eric Pronovost	*5 February 2015 (reappointed for 2-yr term)* *29 September 2011 (reappointed for 3-yr term)* *4 September 2008 (for 3-yr term)*	
Barry Moore	3 December 2007 (for 3-yr term)	3 September 2008
Claude Huot	28 October 2003	2 December 2007
Viateur Bergeron	3 April 2000 (reappointed for 3-yr term) 7 August 1996	27 October 2003
Marcel Caron	2 June 1993 (reappointed for 3-yr term) 4 February 1990 (for 3-yr term) February 1988	6 August 1996

Private Sector Director #4

Name	Date Appointed	Date Ceased
Shelley M Tratch	*7 February 2013 (reappointed for 3-year term)* *18 December 2009 (reappointed for 3-yr term)* *18 December 2006 (for 3-yr term)*	
Darryl Raymaker	7 August 2002	December 2006
Colin MacDonald	20 December 1997 (reappointed for 3-yr term) 20 December 1994 (for 3-yr term)	12 April 2002
Susan Evans	23 May 1991 (for 3-yr term) February 1988	19 December 1994

Private Sector Director #5 *(wasn't added until 2002)*

Name	Date Appointed	Date Ceased
Susan Hicks	*26 February 2015 (for 3-yr term)*	
John S McFarlane	29 September 2011 (reappointed for 3-yr term) 4 September 2008 (for 3-yr term)	25 February 2015
Vacant	7 February 2008	3 September 2008
Grant Morash	26 November 2002	6 February 2008

Appendix B[1]

CDIC Corporate Officers

As of 2015–2017, the corporate officers consist of the following:

- President and CEO
- Senior Vice-President, Insurance and Risk Assessment
- Senior Vice-President, Complex Resolution Division
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel
- Chief, Office of the President, and Corporate Secretary

From 2012 to 2014, the corporate officers consisted of the following:

- President and CEO
- Senior Vice-President, Insurance and Risk Assessment
- Senior Vice-President, Complex Resolution Division
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel and Corporate Secretary

1 Please note that the asterisk (*) symbolizes a date range as no exact date was found; italicized text indicates currently in the role; and "unknown" indicates that the precise date or date range is unknown.

From 2010 to 2011, the corporate officers consisted of the following:

- President and CEO
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel and Corporate Secretary

From 2009 to 2010, the corporate officers consisted of the following:

- President and CEO
- Executive Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel and Corporate Secretary

From 2004 to 2008, the corporate officers consisted of the following:

- President and CEO
- Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel and Corporate Secretary

From 2003-2004, the corporate officers consisted of the following:

- President and CEO
- Vice-President and COO
- Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Vice-President, Corporate Affairs, and General Counsel and Corporate Secretary

From 2002 to 2003, the corporate officers consisted of the following:

- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Senior Vice-President, Finance and Administration, and Chief Financial Officer
- Corporate Secretary
- General Counsel

- Senior Director, Finance and Treasurer

From 2001 to 2002, the corporate officers consisted of the following:

- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Senior Vice-President, Finance and Administration, and Chief Financial Officer
- Corporate Secretary
- General Counsel
- Treasurer

From 1999 to 2001, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Corporate Secretary
- General Counsel
- Treasurer

From 1998 to 1999, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Chief Financial Officer
- Corporate Secretary
- General Counsel

From 1997 to 1998, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance and Administration, and Interim Chief Financial Officer

- Vice-President, Corporate Services
- Director, Legal Services, Corporate Secretary
- Director, Legal Services, General Counsel

From 1996 to 1997, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance
- Corporate Secretary and General Counsel
- Vice-President Corporate Services

From 1995 to 1996, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Senior Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance
- Corporate Secretary and General Counsel
- Vice-President Operations

From 1994 to 1995, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Vice-President Field Operations
- Senior Vice-President, Insurance and Risk Assessment
- Vice-President, Finance
- Corporate Secretary and General Counsel
- Vice-President Operations

Fiscal year changed in 1993; no annual report for 1993

No officers mentioned in 1990, 1991, 1992 annual reports

From 1988 to 1989, the corporate officers consisted of the following:

- Chair of the Board
- President and CEO
- Executive Vice-President and Chief Operating Officer

- Vice-President, Insurance and Risk Assessment
- Vice-President, Field Operations
- Corporate Secretary and General Counsel
- Vice-President Operations

In 1987, the corporate officers consisted of the following:

- President and CEO
- Executive Vice-President and Chief Operating Officer
- Vice-President, Insurance and Risk Assessment
- Vice-President, Field Operations
- Corporate Secretary and General Counsel
- Vice-President, Field Operations

In 1986, the corporate officers consisted of the following:

- President and CEO
- Executive Vice-President and Chief Operating Officer
- Corporate Secretary and General Counsel

In 1985, the corporate officers consisted of the following:

- Chief Executive Officer
- Chief Operating Officer
- Corporate Secretary and General Counsel

In 1984, the corporate officers consisted of the following:

- Chief Executive Officer
- Chief Operating Officer
- Legal Counsel
- Secretary-Treasurer

In 1983, the corporate officers consisted of the following:

- Chief Operating Officer
- Secretary-Treasurer

From 1973 to 1982, the corporate officers consisted of the following:

- Secretary-Treasurer

From 1967 to 1972, the corporate officers consisted of the following:

- Secretary

Chair of the Board *(officer since 1994)*

Name	Date Appointed	Date Ceased
Robert Sanderson	*1 June 2016 (for 1-yr term)*	
Bryan P Davies	19 June 2011 (reappointed for 5-yr term) 19 June 2006 (5-yr term)	31 May 2016
Ronald N Robertson	11 April 2006 (90-day term) 11 January 2006 (90-day term) 14 October 2005 (90-day term) 15 September 2004 (term ending 13 October 2005) 15 September 1999	18 June 2006
Gordon Thiessen	9 July 1999 (acting role)	14 September 1999
Grant L Reuber	9 December 1997 (reappointed until 8 July 1999) 8 January 1993 (for 5-yr term)	8 July 1999

President and CEO History

Name	Title	Start Date	End Date
Michèle Bourque	*President and CEO*	*9 May 2015 (reappointed for 5-yr term)* *9 May 2010 (for 5-yr term)*	
Guy Saint-Pierre	President and CEO	9 May 2005 (5-yr term)	8 May 2010
Jean Pierre Sabourin	President and CEO	1 June 2001 (reappointed for 5-yr term) 1 June 1996 (reappointed for 5-yr term) 17 April 1991 (for 5-yr term) 1 June 1990	8 May 2005
Charles C de Léry	President and CEO	1986	31 May 1990
Charles C de Léry	CEO	16 May 1984	1986

Operations History *(existed only until 2005)*

Name	Title	Start Date	End Date
Guy Saint-Pierre	Executive Vice-President and Chief Operating Officer	4 December 2002	8 May 2005
Wayne Acton	Senior Vice-President, Field Operations	1995/1996*	2001/2002*

Name	Title	Start Date	End Date
Wayne Acton	Vice-President, Field Operations	17 June 1993	1994/1995*
John Richards	Vice-President, Field Operations	1987*	Unknown
Bert Scheepers	Vice-President, Field Operations	May 1987	1987*
Bert Scheepers	Vice-President, Operations	2 May 1988	1995/1996*
Jean Pierre Sabourin	Executive Vice-President and Chief Operating Officer	1985	31 May 1990
Jean Pierre Sabourin	Chief Operating Officer	1 July 1984	1985

Corporate Secretary History

Name	Title	Start Date	End Date
Claudia Morrow	*Chief, Office of the President and Corporate Secretary*	*15 June 2015*	
Claudia Morrow	Vice-President, Corporate Affairs, General Counsel and Corporate Secretary	1 April 2003	14 June 2015
Claudia Morrow	Corporate Secretary	1 January 1998	31 March 2003
Lewis Lederman	Corporate Secretary & General Counsel	1 September 1988	26 November 1997
GI Ferguson	Corporate Secretary & General Counsel	1985	May/June 1988*
TJ Davis	Secretary-Treasurer	1972	July 1985
TJ Davis	Secretary	March 1967	1972

Insurance and Risk Assessment History

Name	Title	Start Date	End Date
Dean Cosman	*Senior Vice-President, Insurance and Risk Assessment*	*8 September 2015*	
Karen Badgerow	Senior Vice-President, Insurance and Risk Assessment	3 September 2013	7 September 2015
Vacant	Senior Vice-President, Insurance and Risk Assessment	21 March 2013	2 September 2013
Jeffrey A Johnson	Senior Vice-President, Insurance and Risk Assessment	22 November 2010	20 March 2013

Name	Title	Start Date	End Date
Michèle Bourque	Executive Vice-President, Insurance and Risk Assessment	3 December 2008	9 May 2010
Michèle Bourque	Vice-President, Insurance and Risk Assessment	4 December 2002	2 December 2008
Guy Saint-Pierre	Senior Vice-President, Insurance and Risk Assessment	1 January 1993	3 December 2002
Guy Saint-Pierre	Vice-President, Insurance and Risk Assessment	10 October 1988	31 December 1993
TF Fagan	Vice-President, Insurance and Risk Assessment	1987*	1988*

Finance and Administration History

Name	Title	Start Date	End Date
Anthony Carty	*Vice-President, Finance and Administration & Chief Financial Officer*	*5 October 2015*	
Dean Cosman	Vice-President, Finance and Administration & Chief Financial Officer	19 December 2011	8 September 2015
Thomas J Vice	Vice-President, Finance and Administration & Chief Financial Officer	1 April 2003	28 September 2011
Thomas J Vice	Senior Director, Finance and Treasurer	23 April 2001	31 March 2003
Thomas J Vice	Treasurer	1 November 1995	22 April 2001
Bert Scheepers	Vice-President, Finance and Administration & Chief Financial Officer	16 September 1998 22 January 1998 (acting role)	25 June 2003
Johanne Lanthier (changed to Charbonneau 1 September 1997)	Vice-President, Finance	7 November 1990	21 January 1998
TJ Davis	Secretary-Treasurer	1972	July 1985

Corporate Affairs History

Name	Title	Start Date	End Date
Chantal Richer	*Vice-President, Corporate Affairs, General Counsel*	*15 June 2015*	
Claudia Morrow	Vice-President, Corporate Affairs, General Counsel and Corporate Secretary	1 April 2003	14 June 2015
Gillian Strong	General Counsel	16 September 1998	9 May 2003
Bert Scheepers	Vice-President, Corporate Services	1996 (acting role)*	1997*
Claudia Morrow	Director, Legal Services, Corporate Secretary	2 November 1997	1 January 1998
Gillian Strong	Director, Legal Services, General Counsel	1997*	1998*
Lewis Lederman	Corporate Secretary & General Counsel	September 1988	26 November 1997
GI Ferguson	Corporate Secretary & General Counsel	1985*	May/June 1988*
HB McDonald	Legal Counsel	1977*	December 1985

Complex Resolution Division History

Name	Title	Start Date	End Date
Mike Mercer	*Senior Vice-President, Complex Resolution Division*	*8 September 2015*	
Thomas J Vice	Senior Vice-President, Complex Resolution Division	9 October 2013	7 September 2015
Thomas J Vice	Vice-President, Complex Resolution Division	28 September 2011	8 October 2013

Appendix C

Failed Member Institutions, 1967–2017

Since its creation by Parliament in 1967, CDIC has handled forty-three bank failures, affecting more than two million depositors. No one has lost a single dollar of insured deposits.

Member Institution	Year of Failure
Security Home Mortgage Corporation	1996
NAL Mortgage Company	1995
North American Trust Company	1995
Income Trust Company	1995
Monarch Trust Company	1994
Confederation Trust Company	1994
Prenor Trust Company of Canada	1993
Dominion Trust Company	1993
First City Mortgage Company	1992
First City Trust Company	1992
Central Guaranty Trust Company	1992
Central Guaranty Mortgage Corporation	1992
Shoppers Trust Company	1992
Standard Trust Company	1991

Member Institution	**Year of Failure**
Standard Loan Company	1991
Saskatchewan Trust Company	1991
Bank of Credit and Commerce Canada	1991
Settlers Savings and Mortgage Corporation	1990
Financial Trust Company	1988
Principal Savings & Trust Company	1987
North West Trust Company	1987
Columbia Trust Company	1986
Bank of British Columbia Mortgage Corporation	1986
Bank of British Columbia	1986
Western Capital Trust Company	1985
Pioneer Trust Company	1985
Northland Bank	1985
London Loan Limited	1985
Continental Trust Company	1985
Canadian Commercial Bank	1985
CCB Mortgage Investment Corporation	1985
Northguard Mortgage Corporation	1984
Seaway Trust Company	1983
Seaway Mortgage Corporation	1983
Greymac Trust Company	1983
Greymac Mortgage Corporation	1983
Fidelity Trust Company	1983
Crown Trust Company	1983
AMIC Mortgage Investment Corporation	1983
District Trust Company	1982
Astra Trust Company	1980
Security Trust Company Limited	1972
Commonwealth Trust Company	1970

Photo Credits

1. *Depositors line up to withdraw their funds from the branch of the Home Bank at Queen and Bathurst streets, Toronto (22 December 1923)*, p 87, with permission from City of Toronto Archives (Fonds 1266, Item 1787).
2. *Dick Humphrys played an integral role at CDIC's birth, and was a key player thereafter (c 1965–66)*, p 88, with permission from the Canadian Institute of Actuaries.
3. *Mitchell Sharp, Minister of Finance, and the consummate Parliamentarian who would oversee the creation of CDIC (1967)*, p 89, with permission from Library and Archives Canada/Canadian Corporation for the 1967 World Exhibition/e011164161.
4. *The* Globe and Mail *reports that Ottawa is to create CDIC (10 January 1967)*, p 90, with permission from *The Globe and Mail*.
5. *A run on the Montreal City and District Savings Bank grabs headlines in the* Journal de Montréal *(27 January 1967)*, p 90, with permission from Média QMI Inc.
6. *William (Bill) Player, pictured here in 1983, is the man whose imaginative scheme to acquire the Cadillac Fairview properties would indirectly reshape CDIC in the early 1980s*, p 171, with permission from Getty Images.
7. *Barbara McDougall, the minister responsible for CDIC, calls for a study of deposit insurance in 1985*, p 171, with permission from Getty Images.
8. *As the Wyman working group studies deposit insurance, CDIC participates in the Canadian Commercial Bank (CCB) bailout in April 1985*, p 173, with permission from the *Globe and Mail*.

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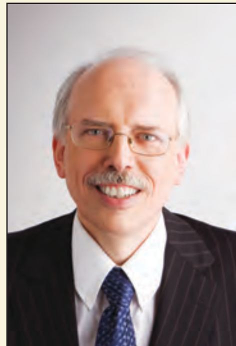
In this engaging account, lawyer, historian, and author Ian Kyer helps us understand and appreciate the key role that the Canada Deposit Insurance Corporation plays in Canada's financial system. He explains why, after 100 years of resisting calls to protect bank deposits, the Government of Canada created CDIC in 1967. And he chronicles the corporation's first 50 eventful years as it coped with the failures of 43 member institutions and the near failures of others. He notes the criticism and the praise that CDIC has attracted over those years and the federal government's efforts to reform and refine its mandate and operations. In doing so, he helps us understand why CDIC has earned the respect of the international community as one of the founders of the International Association of Deposit Insurers and as an exemplar for many other countries.



About the Author

C. Ian Kyer is an historian (with a Ph.D. in European History) and a lawyer. For many of his more than 30 years at a Bay Street law firm, he has advised CDIC. Here he draws on his legal skills, his knowledge of CDIC, and his extensive historical research to tell the story of one of the world's first deposit insurers.