

PRESSURES FOR REFORM
IN THE AREA OF FINANCIAL INSTITUTION REGULATION
AND THE BRITISH COLUMBIA RESPONSE: 1982 - 1986

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ABSTRACT

This thesis examines the response of the government of British Columbia to pressures for reform in the area of financial institution regulation from 1982 to 1986. By 1982, most governments in Canada were receiving messages from their regulators and policy advisors and from the financial sector that regulatory reform was long overdue.

Until December 1986, most initiatives toward regulatory reform were limited to government or government sponsored studies and reports, green papers and white papers. In order to illustrate the primary lines of policy development in Canada and their rationale, the 1985 federal Green Paper is discussed in some detail along with its predecessors, the 1964 Porter Commission Report, the 1969 Parizeau Report and the 1976 Economic Council of Canada Report. The thesis also examines the major reports published after the Green Paper up to the publication of the December 1986 federal White Paper. These reports demonstrate the complexity of this regulatory area and the difficulties raised by the federal-provincial division of powers.

All government policy responses were conditioned by the constitutional division of powers and the thesis outlines the relevant provisions of the Constitution Act, 1867 and their judicial interpretation. The responses were also conditioned by the existing regulatory framework in each jurisdiction and the British Columbia and federal systems are outlined.

The British Columbia response up to November 1986 was minimal compared to that of the provinces of Ontario and Quebec and the federal

government. The difference is explained in terms of the theories of Trebilcock and others concerning the vote maximizing behaviour of the politicians. The writer finds that the British Columbia Cabinet saw no need to take any significant action toward regulatory reform for several reasons including the lower pressures for change (compared to those in Ontario, Quebec and Ottawa), lack of expertise in Cabinet and the bureaucracy, Cabinet orientation toward laissez-faire government and less regulation, the Cabinet priority of economic development, the de facto regulatory power of Ontario and Ottawa and the existence of a system of policy formulation which was not conducive to complex decision making. This system of policy making is described in terms of the elite accommodation model of Presthus.

The examination of the British Columbia response was also conducted in the light of the theories of Schultz and Alexandroff, Thorburn and others which hold that decision making about regulatory policy will be made much more difficult when governments adopt regulatory goals which do more than "police" the regulated area and also act to more directly interfere in the economy by "promoting" the regulated sector or by using the regulated sector to achieve exogenous "planning" goals. These broader goals make it harder to aggregate interest group demands and complicate federal-provincial (and interprovincial) relations. Patterns of interest group representation and the "politics of regulation" may change. Schultz and Alexandroff have applied these hypotheses to securities regulation in Ontario and the hypotheses assist in an explanation of policy initiatives in that and other provinces and at the federal level. The writer concludes, however, that the theories were of

less assistance in British Columbia where Cabinet had not adopted expanded regulatory goals. The politics of regulation had changed to some degree in British Columbia, but this had more to do with the blurring of functions among the "four pillars" and the expanded interest group representations that this produced as discrete regulatory areas became increasingly interdependent.

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CHAPTER I

SCOPE, METHODOLOGY AND THEORY

Scope

The purpose of this thesis is to examine and analyse the formulation of policy for the regulation of financial institutions and, in particular, the nature of the response of the government of British Columbia to the same pressures for regulatory reform which culminated in the 1985 federal government green paper entitled The Regulation of Canadian Financial Institutions: Proposals for Discussion.¹ This Green Paper responded to a variety of events which had produced the commonly held perception that the regulatory framework applicable to financial institutions at the federal and provincial levels in Canada was now inadequate to meet the needs of regulators, the financial institutions, consumers and the Canadian economy. The Green Paper itself stimulated a renewed effort by many provincial governments to address the inadequacies in their own regulatory regimes.

The field of financial institution regulation is a large and complex one. There are many types of financial institution in Canada, some extensively regulated by either or both of the federal and provincial levels of government, others hardly regulated at all. For the purposes of this thesis, I have limited my discussion largely to those institutions commonly described as the "four pillars", namely, securities firms, insurance companies, trust and loan companies and banks. I will also refer to credit unions and caisses populaires (the "fifth pillar") since these institutions play a very significant financial role in many provinces including British Columbia. I will at most refer only in passing to a myriad of other types of institution

including mutual funds, pension funds, sales and finance companies, public (governmental) financial institutions and cooperative associations.

This thesis will not provide a detailed description of the existing regulatory regimes or the various proposals for regulatory reform. Nor will it be a prescription for regulatory reform in British Columbia. It is an overview of the federal and British Columbia regulatory regimes applicable to the "five pillars" and of the events which have prompted discussions of regulatory reform at both levels of government. The provincial policy formulation process is explored in the light of hypotheses concerning economic regulation, federal-provincial relations, interest group behaviour and regulatory reform. Chapters describing the constitutional division of powers relevant to the regulation of financial institutions and the regulatory framework at the federal level and in British Columbia are followed by an examination of financial system and other developments which have provided some of the impetus for the publication of the Green Paper and then by a review of the Green Paper itself. After consideration of the significant Canadian reports which followed the Green Paper, the British Columbia response to date is examined and analysed.

Since the British Columbia response is (at the date of writing of this thesis) still developing, this paper views events at a point in time of a process which is still evolving. It is, in a sense, an "interim" report. This has obvious disadvantages, including the inability to rely on hindsight. It cannot yet be clear, for example, to what degree interest group demands will actually affect the final

government response. In addition, since the process is not complete, it remains to some degree confidential. Certain interest group representatives were also unwilling to openly discuss their position regarding regulatory reform or their relationship with the British Columbia and federal governments. The immediacy of the situation, however, has advantages. For one, the activity in this regulatory arena is now high and there are benefits to be gained from viewing the process at close range. In addition, this paper may provide a useful vantage point for later reference.

Methodology

In preparing this paper, I reviewed a selection of studies by economists, lawyers and political scientists in the areas of regulatory reform, policy formulation, interest groups, constitutional law and federal-provincial relations. In addition, I read many works specifically dealing with financial institutions in Canada and elsewhere, including the major reports concerning financial institution regulation which were produced or sponsored by Canadian federal and provincial governments since 1964. These materials are listed in the Bibliography.

Evidence of the response of the government of British Columbia to pressures for regulatory reform was garnered from informal interviews with public servants, financial institution representatives and politicians, media reports, government press releases and legislation (enacted or in draft form). Interest group positions were ascertained from interviews, media reports and position papers. A list of persons interviewed is contained in Appendix B to the thesis and the position

papers are listed in the Bibliography. I also reviewed the Debates of the Legislative Assembly in British Columbia from 1983 to 1985 inclusive and the most recent Annual Reports of the Ministry of Consumer and Corporate Affairs (which regulated financial institutions until November 1986) and the Superintendent of Insurance in the Ministry.

Theory

Policy formulation may be viewed as a multi-dimensional process of conflict or alternatives resolution. The outcome is ultimately settled by the politicians (Cabinet) who must decide how and when new policies will be implemented. Demands or pressures for regulatory change in the financial sector in British Columbia are now coming from interest groups (mainly the financial institutions), other governments in Canada (federal and provincial) and the bureaucracy (the policy advisors and the regulators). All these entities obviously exert pressures on each other as well as on the politicians, but for ease of analysis I have concentrated on the demands and pressures as they are directed toward the politicians. Since the jurisdiction for the regulation of financial institutions is divided in Canada between the federal and provincial levels of government, since regulatory harmony is seen to be important by all participants in the system, and since Ottawa and Ontario are the primary financial sector regulators in Canada, the British Columbia ("Provincial") government also plays the role of interest group in the policy formulation process of federal and other provincial governments.

There has been a demand for reregulation, deregulation or regulatory reform (incorporating elements of deregulation and reregulation) for some time in Canada, but only a very limited response

from the British Columbia jurisdiction relative to reform activities elsewhere. This thesis seeks to explain the pre-1987 failure of the British Columbia Cabinet to respond to demands and other stimuli for regulatory reform. As Chapter VI describes, there was some response, but it was negligible compared to that of the federal, Ontario and Quebec governments.

The existing regulatory framework in Canada and the possibilities for regulatory reform are very much tied to the constitutional division of powers relevant to financial institution regulation. Chapter II discusses the division of powers, as judicially interpreted, and shows how the provincial and federal jurisdictions are theoretically, if not practically, constrained by the Constitution. The federal jurisdiction has the exclusive power to regulate banking. Generally speaking, the provinces have the exclusive power to regulate the business of other types of financial institution, but their powers are (again, generally speaking) limited to the institutions acting within their borders. Regulatory control over financial institutions is therefore fragmented.

This fragmented control has been alleviated in part by a limited de facto delegation of regulatory power by the provinces to the federal government and this is reflected in the regulatory framework in British Columbia which is described in Chapter III. It has also been alleviated by the attempts of the provinces to harmonize their regulatory systems, attempts which have met with more success in some areas than others. Whatever the degree of harmonization, the regulatory framework itself conditions any proposals for its reform or modernization. It is highly unlikely that any changes would incorporate a total restructuring of the

system, particularly in view of the effect that this would have on the existing constitutional division of powers.

Nevertheless, the present fragmentation of regulatory control over financial institutions has produced a wide variety of control mechanisms in the various Canadian jurisdictions (albeit within a limited range). Responses to pressures for reform have reflected the differing financial sector environments in some jurisdictions as well as the different concerns and regulatory goals of those making proposals for regulatory reform. Some of these proposals (including the Green Paper proposals) are described in Chapters IV and V. These Chapters illustrate the complexity of the regulatory systems in Canada and some of the difficulties inherent in the reform of regulatory systems in a manner which is harmonious with reform in other jurisdictions and in other regulatory areas, yet still meets the goals of the politicians who must support the reform initiatives.

All of these Chapters make it clear that reform will be difficult, but they do not explain why Cabinet in British Columbia did not take any significant regulatory reform initiatives before October/November 1986. The reasons for this must be found in factors which are peculiar to the policy formulation process in British Columbia. This Chapter outlines certain hypotheses which may help to explain the British Columbia response. Of primary importance here are the hypotheses concerning markets for regulation and the vote maximizing behaviour of politicians discussed by Trebilcock and others.² In addition, the hypotheses of Schultz and Alexandroff³ (which have been applied to securities regulation in Ontario) are reviewed but are found to be less helpful in

the British Columbia context.

Government regulation of financial institutions is largely 'economic' regulation. 'Economic regulation' has been defined in a multitude of ways, many of which are described by Schultz and Alexandroff, who finally do not define the term but characterize it as involving: (a) a government role in restricting or restraining economic behaviour or choices, and (b) all governmental instruments from moral suasion to subsidies to taxes to public ownership, emphasizing the coercive powers of the state, rather than incentives to performance. As Chapter III describes, financial institution regulation in Canada incorporates all these instruments, but it still relies most heavily on direct regulation, or commands or prohibitions imposed directly by statute or subordinate legislation.

Many commentators have remarked on the growing tendency of governments to use economic regulation for more than just the "policing" of an industry. In many sectors of the economy, governments also use regulation to "promote" or protect an industry or to "plan" in an even broader sense by dictating corporate goals for the achievement of a variety of government objectives "exogenous" to the regulation of the industry itself.⁴ An example of the "planning" function is found in the Canadian content requirements of broadcasting regulation which presumably have the goal of supporting the Canadian music industry and a "Canadian identity". Another similar example is found in financial institution ownership restrictions which (in some jurisdictions) limit ownership by non-Canadians and thus promote the goal of Canadian ownership and control of the industry. The "policing" function may be

described as having a 'negative' and 'proscriptive' character, while the "promoting" and "planning" functions are said to have a 'positive' and 'prescriptive' character. These three functions are not mutually exclusive and it is this very multifunctional capacity of economic regulation which (among other factors) makes it an attractive tool for governments which "seek to influence, direct and control economic ... behaviour".⁵

Except for Quebec, governments have not been terribly concerned in recent years with promotional or planning goals in the area of financial institution regulation. The federal government has acted to protect the well-being of the banks and has amended banking legislation fairly regularly, both to assist the banks and, in some cases, to assist the economy generally (eg., by allowing residential mortgage lending by the banks). The government has also used banking legislation as an instrument of its monetary policy. Many provincial governments have promoted their local credit unions or caisses populaires with the goal of supporting the local economy. The securities industry has also been used as an instrument of economic development. Trust and insurance regulation, however, has been almost entirely restricted to a policing function in all jurisdictions and the main regulatory emphasis has been on policing the financial sector.

As Chapters IV and V reveal, governments are becoming more concerned with broader promotional and planning goals. Governments are now more aware, for example, that certain regulatory changes may give financial institutions operating locally a competitive advantage over those in a neighbouring jurisdiction. Schultz and Alexandroff argue

that "changes in the function of economic regulation cause changes in the politics of regulation", particularly in the "pattern of interest representation" and that as regulation evolves from a "policing" to a "promoting" or a "planning" function, intergovernmental and interest group conflict will either ensue or increase as wider governmental goals clash and interests are less easily aggregated.⁴ In the planning mode, conflict may assume an increasingly 'zero-sum' character; "that is, the gains of one interest are at the expense of another".⁷ This study will show that changes in the regulatory goals of governments in the area of financial institution regulation do indeed affect the "politics of regulation".

Interest groups and politicians interact in a framework which includes (in this case) regulatory history, the constitutional division of powers and changes in the economic and financial environment. Interest groups act to maximize their personal welfare.⁸ Interest or pressure groups may be rather narrowly defined as:

organizations whose members act together to influence public policy in order to promote their common interest.⁹

Governments (Cabinet and the bureaucracy) value interest group representations both for the information that they may provide and the "legitimacy" that interest group support may give to their policies. The status of an interest group in government eyes will be influenced by factors such as, in Thorburn's words:

the size of the membership, the control of financial resources, the monopoly of technical knowledge, the prestige of the group's leaders and the willingness of the group to cooperate and avoid outright confrontation.¹⁰

Schultz and Alexandroff argue that the growth of government and the

increasingly promotional or planning function of economic regulation cause regulated businesses to lose more decision making autonomy. In turn, it becomes even more important for business interests to seek to influence government decision making.¹¹ Furthermore, a shift from the policing to the planning function increases the "political salience" of regulatory issues as it also broadens the pattern of interest representation. More interests may be affected by government's broader role and interest groups already involved in the process may no longer be able to aggregate the interests of all their members, which may then divide into smaller units.

In addition, the regulator may no longer be able to keep the decision making role to itself as its power broadens. This effect is demonstrated in Chapters IV and V which describe numerous regulatory reform proposals from non-regulatory bodies like the Ontario Task Force and the federal Department of Finance (Secretary of State). Those governments decided that regulatory reform could not be entrusted to the regulators alone. As Schultz and Alexandroff point out:

[other] units of government may seek direct representation in order to protect policy objectives or bureaucratic and clientele interests which they now perceive to be threatened by regulatory action.¹²

Regulatory autonomy may be reduced and "regulators [may find] themselves involved in much more complex interdependent relationships".¹³ This increases the likelihood of "bureaucratic competition" between bureaucratic agencies with overlapping mandates. Economic development and other broader concerns of Cabinet have also led to the increasing involvement in regulatory issues of departments of economic development, finance, justice and intergovernmental affairs. Departments which were

once content to let the regulatory department formulate policy now perceive that they have a stake in that policy and want some input into its formulation. This is certainly true with regard to the regulation of the "five pillars", in part for reasons unrelated to regulatory goals. As described in Chapters IV and V, changes in the functions of the financial institutions themselves mean that the regulators of one type of institution can no longer operate in isolation from the others as functions begin to blur among the institutions. Financial institutions of one type may be threatened by regulatory changes in another sector and so increasingly lobby for or against changes to regulations which do not directly govern them. The chartered banks, for example, are now significant lobbyists in the areas of insurance, trust, securities and credit union regulation. All of these factors further complicate the decision making process.

The constitutional division of powers makes interest group relations and policy formulation even more complex, particularly as all government jurisdictions become more involved in promoting economic development. Greater governmental involvement in the economy leads to more directly competing policy initiatives between jurisdictions. At the same time, as provinces are perceived to be more interested in "province-building", more interest groups have seen a greater need to intervene more often before more governments.¹⁴ The effect of this is multiplied when the regulatory jurisdiction is divided between two levels of government as it is in the case of financial institution regulation.

In Thorburn's view, the dynamics of interest group consultation and

federalism are different and the two dynamics are likely to impede each other.¹⁵ The first relationship is "biased in favour of reaching mutually acceptable policy compromises" and in favour of business interests. The second is biased toward collaboration through "programs that are favoured by governments and, therefore, may or may not be acceptable to business and other interests". The division of powers (and maintaining power) is a major consideration in the federal-provincial process, as are considerations of equity among provinces and regions, and these may take priority over considerations of efficiency and economic viability. Governments tend to stand on "principles" and will not "sell out". Negotiations may involve posturing and have more of a 'zero-sum' aspect. Interest groups are a less important part of the process.¹⁶

Thorburn notes how "province-building" goals may conflict with the goals of other governments and may result in an increasing use of unilateral action without consultation with the other order of government. In the case of the federal government, this may mark an effort by the federal government to combat decentralist forces and re-establish "national standards".¹⁷ Thorburn speculates that poor federal-provincial relations (due to conflicting goals) may increase serious interest group consultation since "[one] government may view certain interest groups as allies in its battle with another", particularly if decisions are made unilaterally.¹⁸ Interest groups may also try to "take advantage of jurisdictional confusion" to "convince governments to act on their behalf".¹⁹

Interest group affiliations with one level of government or another

affect the balance of regulatory power. Thorburn notes that:

the degree to which interests are defined either regionally or functionally will influence the balance of power between the federal government and the provinces²⁰

and:

governments now actively ... cultivate the political advantage to be gained through acquiring interest group support ...²¹

Several authors support the view that during a period of crisis, interest groups will find their influence waning, particularly when there is intense federal-provincial bargaining (the "frozen-out theory").²² Richard Schultz, however, believes that this theory neglects the support function that interest groups can provide.²³

Paradoxically, interest groups have more incentive to lobby governments since more is at stake, but the fact that more is at stake also makes it more difficult to influence policy formulation.²⁴ The federal-provincial policy process is "biased in favour of the prerogatives of governments, rather than ... interest group demands".²⁵ Once, incremental change to achieve short-term goals could be achieved largely by accommodation between federal and provincial bureaucrats. Now, bureaucrats cannot easily "insulate themselves from cabinet, treasury and partisan interference" and this militates against the clientele relationships between government bureaucratic agencies and their "constituent" interest groups. Thorburn writes:

When the politicians became aware that federal-provincial relations were central to achieving their broader policy objectives, they were no longer willing to leave the setting of policy details to their program technicians to work out.²⁶

Broader policy objectives and decreasing reliance on bureaucrats leaves a "power vacuum" and requires interest groups to change their

tactics if they wish to gain or retain influence.²⁷ Thorburn has documented the increased mobilization of interest groups in Canada, primarily by examining the submissions to the Macdonald Commission. He quotes what he says is the "most commonly expressed viewpoint of the briefs made to the Commission":

We need more consultation with everyone, at every level, on everything and at all times.²⁸

Thorburn is not optimistic about the implications of these changes for Canadian society stating that:

the immobilism of interest group accommodation encounters federal-provincial disagreement, producing near-paralysis.

...

The result is government policies, which may succeed in maintaining through compromise some degree of community consensus but fall far short of dealing effectively with issues, or satisfying the interest groups.

In short, the Canadian political system appears to be confronted by a double problem: one of the performance of institutions of decision making at both levels, and one of intergovernmental relations. Clearly, there is a declining capacity to manage the economy.²⁹

Schultz and Alexandroff have described the impact on intergovernmental relations of "the function of regulation" and note the different roles of government as interest representative (to other governments), owner of regulated firms and policy maker.³⁰ In their policy making role relative to the federal government, provincial governments "have always sought to establish their own priorities and to control economic and social developments within their jurisdictions".³¹ Regulation of the economic infrastructure (eg., telecommunications, transportation and the financial sector) is generally perceived by governments to be particularly important to economic well-being. Schultz and Alexandroff write:

While provincial governments may or may not be prepared to rely on market forces or on firm-led economic decision making, it is reasonable to expect that they will challenge the idea of federal-led economic decision making by means of regulatory instruments. They want to be able to control as much as possible the mobilization and direction of resources within their territories. ... Although provinces are generally not sympathetic to federally imposed designs for economic development, this is an even more pronounced concern in the infrastructure industries where, because of complex interdependencies that exist, ... provinces fear that federal imposition of exogenous objectives can have major repercussions for provincial priorities and policies well beyond the immediately regulated firm or economic sector.³²

In addition to opposition "in principle" to federal-led economic decision making, they give two reasons for provincial concerns: federal discrimination in favour of some some regions and industries, at the expense of others; and doubts about the federal economic decision making capacity.³³

In the opinion of Schultz and Alexandroff, the "central reality of policy making and implementation in the federal system in Canada today" is "the fact that ... attainment of one government's goals [is] heavily dependent on other governments" and governments may partially or completely undermine each other's goals.³⁴ Their case studies of the telecommunications and securities industries reinforce this opinion and demonstrate (in my view) that one solution may be some degree of deregulation, not so much because it may be economically more efficient, but because it ameliorates intergovernmental conflicts which interfere with industrial and economic development.

Patterns of interest group representation in many Canadian jurisdictions have undergone a qualitative and quantitative change over the past decade or so. As Thorburn argues:

Prior to 1975, [academics generally accepted] the elite accomodation model as an accurate and complete description of

pressure group behaviour. Essentially, this model posits a system of mutual accommodation between government and interest groups, in which social and economic elites alone determine the interest of society in informal, secretive, face-to-face contact between the upper echelons of government (ministers and their bureaucracies) and interest groups.³⁵

According to Presthus, the significant features of elite accommodation are:

1. a built-in disposition toward support of the status quo because it restricts meaningful participation to established groups with a direct substantive interest in the process;
2. the tendency to define problems as essentially technical with the implication that political considerations are illegitimate and certainly divisive; and
3. the crystallization of existing patterns of resource allocation, 'which makes the introduction of new scientific, technical and economic directions difficult as they strike against established influence structures, based largely on long-standing, functionally determined, agency-clientele relationships'.³⁶

Elite accommodation may have been facilitated by a shared belief of government and business about how economic goals could be achieved. The result was issue-by-issue decision making (in response to pressures for change) and an uncoordinated incremental expansion of governmental involvement in the economy.³⁷ Policy making structures were uncomplicated and informal and:

individual ministers operated in a highly independent manner. Any coordination that had to be undertaken was handled by deputy ministers in a very informal fashion and in those days of less complex government, the system worked effectively.³⁸

As Chapter VI describes, the elite accommodation model seems to best represent the policy formulation process in British Columbia before December 1986. Individual Cabinet ministers and their deputies did tend to operate in an independent manner and formal inter-ministerial policy groups were rare. Cabinet committees operated in a loosely structured fashion without sophisticated research staff. Policies were usually

developed by individual ministries and brought to a Cabinet committee in the form of a submission. Interest groups directed most of their attention toward the regulating minister and ministry (although there was the occasional end run to the Premier). Legislative committees were practically speaking non-existent. The opposition party in British Columbia was weak. Assuming that Thorburn's hypothesis is correct, the elite accommodation model of policy formulation in British Columbia may not have served government well in its necessary and inevitable need to adjust to changes in the financial sector and to regulatory reform elsewhere.

Broadened representation makes the process of accommodation and the resolution of conflicts more difficult.³⁹ As Thorburn has noted, in the attempt to accommodate more interests and deal with increasingly complex decision making, governments have, to one degree or another, changed the policy making structures to centralize authority at the Cabinet level, coordinate bureaucratic initiatives and integrate policy decisions into the government priorities framework. Techniques of elite accommodation are often counter-productive to the formulation of complex and broadly based policy decisions. Integrated decision making may, however, result in the reduction of the ability of individual ministers to respond to interest groups and an increase in 'zero-sum' trade-offs.⁴⁰ Mechanisms to assist more complex decision making such as task forces and white and green papers are now more frequently used and they may make interest group representations more visible, but they may also be used by governments to build support for decisions that have already been made.⁴¹ In Thorburn's view:

Overall, a consequence of the recent changes in the policy-making environment of pressure groups seems to be an opening up of the process to greater public debate ... There is reason to believe that this increased group activity masks the greater autonomy of the state to decide the course of government action.⁴²

Until November 1986, however, the elite accommodation model still best fit the policy formulation structure in British Columbia. It helps to explain why decision making never really got off the ground before that date.

As we shall see in Chapters IV to VI, the theories of Schultz and Alexandroff and Thorburn have had less relevance in British Columbia than in Ontario and Quebec and at the federal level. There one can see directly competing policy initiatives, unilateral actions, and policy initiatives that have less to do with interest group requests and more to do with retaining and acquiring regulatory power and/or competitive advantage. The success or failure of lobbying to date has been very much tied to jurisdictional concerns. As I describe in Chapters IV and V, regulatory proposals there have been conditioned by regulatory goals. Events in Ontario, Quebec and Ottawa also demonstrate, however, that interest group demands will be met to the degree that they coincide with the goals of the politicians. Financial institutions in Quebec, for example, have succeeded in obtaining broader powers because Quebec politicians saw the broadening of powers as a mechanism to make local financial institutions and the local economy more competitive. In Ontario, broader powers were seen as a threat to institutional solvency and so have not received the same degree of governmental support.

In a situation where everyone (including government) perceives a 'problem' which must be 'solved' by government, a government's choice of

'solution' will be guided primarily by the criterion of maximizing votes for the government in the next election, not by the criterion of economic efficiency. As Trebilcock and others have written:

both the determination of policy 'objectives', in the conventional sense, and the determination of the means by which those objectives are to be pursued will be weighed against the calculus of how they serve the end of enhancing the prospects of the election or re-election by the political decision makers. Technical efficiency, per se, will not be a relevant criterion of interest choice; only if in some way it advances this end for the politicians will it enter the calculus of decision.⁴³

This view is not that of the cynic, but that of the political realist who recognizes that regulatory goals (or policy instruments) may rationally be chosen (and are chosen) for reasons other than technical efficiency. Trebilcock et al. call this a "market analysis" of regulation⁴⁴ and the hypothesis of politically rational instrument choice (as opposed to the technical efficiency thesis).⁴⁵

In this scenario, the key element is the perception of costs and benefits rather than actual or real costs and benefits. "From a politicians perspective, a benefit unperceived, no matter how real, is no benefit at all."⁴⁶ This is one reason why direct regulation⁴⁷ of an industry is so often chosen first over other mechanisms such as self-regulation, public ownership or taxation. The up-front costs to government are low (most costs are widely dispersed on to the industry and consumers and so are practically speaking invisible) and the benefits are concentrated and visible.⁴⁸ Direct regulation also allows close monitoring and direction by the politicians and may be the most responsive to the ongoing need for marginal adjustments in regulation.⁴⁹

A market analysis of regulatory response or policy formulation views the "regulatory market" in terms of the demand for and supply of

regulation and the maximization of self-interest. As Trebilcock et al. write:

we can view the political world as a 'market' where individuals bid votes or other forms of influence for their political party in order to receive 'benefits'. Politicians then attempt to earn this political support in return for a supply of promises. The political market is very different from a private market in many respects³⁰ but similar in two essential ways. First, it is useful to examine the demands on politicians and what politicians are able to supply. Second, just as we consider the suppliers of goods and services in private markets as maximizing their self interest: profits, similarly, we can consider politicians as maximizing their self interest: tenure in office, power or monetary gain.³¹

Politicians will respond to demands for intervention in the private marketplace to the degree that intervention is perceived to maximize the self-interest of the politicians. As in the private marketplace, imperfections in the political market may inhibit the ability of the politicians to make the correct decision. Such imperfections include limited information and free rider problems or (as Trebilcock et al. describe):

the ability of small, cohesive groups to exert pressure to enact legislation which benefits their specific lot at the expense of the majority.³²

Politicians are neither "neutral mediators" of interests nor "proponents of any independent conception of the public interest". Politicians seek to maximize political support and political decision making:

is designed ... to establish some acceptable state of social equilibrium among competing interests, out of which an effective coalition of political support can be forged.³³

Whatever the policy formulation process, Trebilcock believes that decision making will reflect a perception that the decisions made (or not made) will maximize political support. This theory is particularly helpful in explaining the almost total lack of response by Cabinet in

British Columbia to the steadily growing stream of policy responses and initiatives from central Canada and other pressures for change. The only logical explanation of the lack of response is that until October or November 1986 Cabinet saw no political gain to be made from regulatory reform in the financial sector. Some of the reasons for this are described in Chapter VI.

As Trebilcock has shown, once regulatory goals have been chosen, the "market analysis" approach applies equally to the choice of policy instruments to achieve the goals. There are many reasons why the technically most efficient instrument of policy may not be chosen including:

1. it is prohibited (eg., by GATT or the Constitution);
2. it may impose less costs in total, but impose them on a group of voters crucial to the election of the decision maker; and
3. since both voters and decision makers operate in a world of imperfect information (about each other's objectives and their costs), an instrument which hides costs or disperses them widely may be preferred, or an instrument which concentrates benefits and thus enhances their visibility to voters may be chosen (in other words, instrument choice may take into account imperfect voter information about costs or regulatory objectives).

As described in Chapter VI, the public response of the government of British Columbia to the need for regulatory reform in the financial sector was (until November 1986) to issue a short discussion paper and to announce private consultations with the industry and other interested parties. As Trebilcock points out, such mechanisms may play a role as policy instruments as well as assisting in policy formulation:

Since commonly the subject under study is one to which there is no 'solution' in a technocratic sense and to which no final answers will be given or found, the process of the public inquiry must be viewed in large part as a form of response to the policy problem and not merely as a means to search for a response to the policy problem.⁵⁴

While the British Columbia response has been a closed rather than open, public inquiry (apparently the submissions will not be made in public or published as a matter of course), I believe that this response may still be viewed as an instrument of policy and that this particular form of inquiry was likely chosen for politically "rational" reasons.

Trebilcock et al. have described some of the reasons why an inquiry might be used by governments:

1. it demonstrates concern by government and that government is 'doing something' and "creates the illusion that progress is being made towards a final solution ...";⁵⁵
2. major advances in learning about the problem and about public opinion can be made and the process may also be used to educate and explain a proposed policy in order to create public support for it;
3. the cost is much less than other instruments (eg., direct regulation); and
4. the need for expenditures or the imposition of significant costs is delayed.

There are also reasons why a more informal, private inquiry may be chosen over the task force, legislative committee or royal commission mechanisms:

1. it is less costly and shorter in duration;
2. there are no legal requirements to publish a final report (or research reports) which a politician might feel bound to follow; and
3. the inquiry does not provide an easily accessible forum for opposition party views (or for other views which the government does not wish to hear).

In short, the market theory of regulation postulates that the Cabinet in British Columbia made the politically rational choice (as perceived by Cabinet) to do nothing for the time being (set no policy goals), yet to still show its concern by issuing a discussion paper and initiating a consultation process. These choices may not have been (and probably were not) the most economically effective and efficient methods

of resolving the problem since, for example, they prolonged business uncertainty and the risk of institutional insolvency (to the degree that this risk is caused by inadequate regulation or supervision).

Whatever the choice of policy goal and instrument, it (or they) will be chosen in light of interest group demands and political constraints (including jurisdictional constraints and the constraints created by the existing regulatory framework) and on the basis of the information available to the decision maker. In a situation involving competing interest groups, a very complex subject matter, a quickly changing financial sector environment, constitutional and other legal restrictions on behaviour, changing and competing government rationales for regulation, economic restraint and other limiting factors, the achievement of either the politically or economically rational choice of policy objectives and instruments to achieve those objectives will be difficult. The formulation of a comprehensive plan of reform applicable to the financial sector as a whole in the short term in British Columbia will require a significant amount of political will. Without political will, change is likely to occur in a piecemeal and incremental fashion over a long period of time (whatever the political rhetoric to the contrary). Even radical changes in other jurisdictions would not necessitate broadly based reform in British Columbia. Legislation and regulatory supervision in the Province is not strict and reregulation elsewhere will generally not directly affect minimal British Columbia requirements. B.C. institutions would be forced to comply with stricter requirements elsewhere on their own initiative only if they wished to do business in those other jurisdictions. Radical deregulation elsewhere

can be relatively easily (and incrementally) accommodated as the need arises.

Even with the political desire to act, decision making will be difficult, as the following Chapters disclose. The first constraint on broadly based regulatory reform is the constitutional division of powers between the federal and provincial governments.

FOOTNOTES

1. Canada, Department of Finance, Minister of Supply and Services Canada, Ottawa, April 1985.
2. Hypotheses concerning markets for regulation are found in M.J. Trebilcock, R.S. Prichard, D.G. Hartle and D.N. Dewees, The Choice of Governing Instruments, Economic Council of Canada, Minister of Supply and Services Canada, Ottawa, 1982 and Michael J. Trebilcock, Leonard Waverman and J. Robert S. Prichard, "Markets for Regulation: Implications for Performance Standards and Institutional Design", in Ontario Economic Council, Government Regulation: Issues and Alternatives - 1978, Toronto.
3. Richard Schultz and Alan Alexandroff, Economic Regulation and the Federal System (Study No. 42, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1985, p. 4.
4. Ibid., pp. 6-7.
5. Ibid., p. 6.
6. Ibid., p. 2.
7. Ibid., p. xiii.
8. W.T. Stanbury, Business-Government Relations in Canada: Grappling with Leviathan, Methuen Publications (A division of The Carswell Company Limited), Toronto, 1986, pp. 125-144.
9. Hugh G. Thorburn, Interest Groups in the Federal System (Study No. 69, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1985, p. 5, quoting A. Paul Pross, "Pressure Groups: Adaptive Instruments of Political Communication" in A. Paul Pross (ed.), Pressure Group

Behaviour in Canadian Politics, McGraw-Hill Ryerson, Toronto, 1975, p. 2.

10. Ibid., p. 6.
11. Schultz and Alexandroff, op. cit., note 3, pp.15-16.
12. Ibid., p. 17.
13. Ibid., p. 23.
14. Thorburn, op. cit., note 9, pp. 15-17.
15. Ibid., p. 18.
16. Ibid., p. 19. An excellent example of this may be found in the present conflict between Alberta and Ottawa over energy issues such as the export of natural gas. A recent newspaper article entitled "Natural gas blow-up: Revival of political war traps many energy firms" contains the sentence:
 Western Canada's natural gas producers have become pawns
 in a showdown between federal Energy Minister Marcel Masse
 and Neil Webber, his Alberta counterpart.
 (Frances Phillips, in The Financial Post, Western Edition, October 25, 1986, p. 1.)
17. Ibid., p. 43.
18. Ibid., p. 51.
19. Ibid., p. 64, citing Alan Cairns, "The Governments and Societies of Canadian Federalism", Canadian Journal of Political Science, December 1977.
20. Ibid., p. 66.
21. Ibid., p. 68, quoting David Kwavnick, "Interest Group Demands and the Federal Political System: Two Canadian Case Studies", in A. Paul Pross (ed.), Pressure Group Behaviour in Canadian Politics, McGraw-Hill Ryerson, Toronto, 1975, p. 84.
22. Ibid., p. 70.
23. Ibid., citing Richard Schultz, "Interest Groups and Intergovernmental Negotiation: Caught in the Vise of Federalism", in Peter Meekison (ed.), Canadian Federalism: Myth or Reality (3rd ed.), Methuen, Toronto, 1977, p. 377.
24. Ibid., p. 66.
25. Ibid., pp. 71-72.

26. Ibid., p. 73.
27. Ibid.
28. Ibid., p. 130.
29. Ibid., pp. 122-123.
30. Schultz and Alexandroff, op. cit., note 3, p. 25. The authors refer only to provincial government roles, but their comments should apply equally to the federal government.
31. Ibid., p. 28.
32. Ibid., pp. 28-29.
33. These doubts were strongly supported by the Rowell-Sirois Commission. See Donald V. Smiley, The Rowell-Sirois Report: An abridgement of Book 1 of the Royal Commission Report on Dominion-Provincial Relations, McClelland and Stewart Limited, Toronto, 1963. A third reason relates to the frequent use by the federal government of independent regulatory agencies and is not directly relevant to the subject matter of this thesis since financial institutions are largely regulated by line departments of government.
34. Schultz and Alexandroff, op. cit., note 3, p. 33.
35. Thornburn, op. cit., note 9, pp. 8-9.
36. Ibid., p. 9, quoting Robert Presthus, Elite Accomodation in Canadian Politics, Macmillan, Toronto, 1975, p. 351.
37. Ibid., p. 10, citing James Gillies, Where Business Fails: Business-Government Relations at the Federal Level in Canada, Institute for Research on Public Policy, Montreal, 1981, p. 48.
38. Ibid., pp. 10-11, quoting James Gillies and Jean Piggott, "Participation in the Legislative Process", Canadian Public Administration, Vol. 25, Summer 1982, p. 261.
39. Schultz and Alexandroff, op. cit., note 3, p. 19.
40. Thornburn, op. cit., note 9, p. 11, citing Hugh J. Faulkner, "Pressuring the Executive", Canadian Public Administration, Vol. 25, Summer 1982, p. 243.
41. Ibid., pp. 14-15.
42. Ibid., p. 15.
43. Trebilcock et al., The Choice of Governing Instruments, op. cit.,

- note 2, p. 25.
44. Trebilcock et al., "Markets for Regulation", op. cit., note 2.
 45. Trebilcock et al., The Choice of Governing Instruments, op. cit., note 2.
 46. Ibid., p. 34.
 47. Direct regulation means direct control by government of institutional or business behaviour by means of statutes and subordinate legislation as distinguished from other mechanisms of direct or indirect control such as public ownership, taxation or subsidies.
 48. Economic Council of Canada, Responsible Regulation: An Interim Report, Minister of Supply and Services Canada, Ottawa, November 1979, pp. 43-44.
 49. Trebilcock et al., The Choice of Governing Instruments, op. cit., note 2, p. 89.
 50. See George J. Stigler, "The theory of economic regulation", (Spring 1971) Bell Journal of Economics and Management Science, Vol. 2, No. 1 for a discussion of the differences between political and private markets.
 51. Trebilcock et al., "Markets for Regulation", op. cit., note 3, p. 12.
 52. Ibid., pp. 12-13.
 53. Ibid., pp. 33-34.
 54. Ibid., p. 37.
 55. Ibid., p. 43.

CHAPTER II

THE CONSTITUTIONAL DIVISION OF POWERS*

The Canadian Constitution divides the legislative powers of government in Canada between the federal and provincial Parliaments or Legislatures. The constitutional division of powers relevant to financial intermediaries (as judicially interpreted) is one of the basic parameters of governmental decision making and policy formulation. Few (if any) governments in Canada would act to regulate financial intermediation unless they were reasonably confident that they were acting within the terms of the Constitution. The fact that these parameters are not clearly defined either in the Constitution or by the courts has affected both the development of the present regulatory framework in Canada (to be discussed in the next Chapter) and the attempts of Canadian governments to come to grips with the deficiencies of the regulatory system.

The constitutional division of powers with regard to the regulation of financial institutions is set forth in the Constitution Act, 1867,¹ sections 91 and 92. The most relevant powers granted to the federal level of government under section 91 are:

1. the power to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by the Act assigned exclusively to the Legislatures of the Provinces;
2. Currency and Coinage (ss. 91(14));
3. Banking, Incorporation of Banks, and the Issue of Paper Money (ss. 91(15));
4. Savings Banks (ss. 91(16));
5. Bills of Exchange and Promissory Notes (ss. 91(18));
6. Interest (ss. 91(19));
7. Bankruptcy and Insolvency (ss. 91(21)); and
8. The Regulation of Trade and Commerce (ss. 91(2)).

The most relevant powers granted to the provincial governments under section 92 are:

1. The Incorporation of Companies with Provincial Objects (ss. 92(11));
2. Property and Civil Rights in the Province (ss. 92(13)); and
3. Generally all Matters of a merely local or private Nature in the Province (ss. 92(16)).

As a review of these provisions discloses, the Constitution Act, 1867 does not clearly delineate the division of powers with regard to the regulation of the securities and insurance industries or with regard to the business of trust, loan or mortgage companies or other near-banks² such as credit unions. Banks and savings banks are the only types of financial institution which are named in the Constitution, and the terms 'bank', 'banking' and 'savings bank'³ are not defined.

Securities, Insurance and Trust Business

Over the years, the courts have interpreted these constitutional provisions to find that the provincial governments have exclusive jurisdiction over the business of securities,⁴ insurance⁵ and the administration of trusts.⁶ The federal government, as expressly stated in the Constitution Act, 1867, has exclusive jurisdiction over banks and savings banks.

It has been argued that it was the intention of the Fathers of Confederation to place the primary responsibility for the regulation of financial institutions (and the national economy in general) in the hands of the federal government. It has also been argued that there is "internal" evidence of this intention contained in the wording of sections 91 and 92.⁷ The courts, it is said, have undermined or reduced federal powers, giving the provinces a "residuary" authority, "with the

various heads of federal authority operating ... as exceptions to, or subtractions from, that provincial authority".⁸ Whether or not that view is accepted (presumably the various judicial decision makers would not have agreed that they were incorrectly interpreting the Constitution), we now have a judicially defined division of powers (albeit incompletely defined) which may change with a changing financial environment and changing judicial attitudes.

It is the provincial head of power described as 'property and civil rights' which the courts have found gives the provinces primary authority over business in general in each province, including the business of securities, insurance and trusts. Essentially, the authority to regulate business in the province is an extension of the power to regulate contracts under the 'property and civil rights' power.⁹ This power is subject to areas of exclusive federal jurisdiction such as 'banking', 'interest' and 'bankruptcy and insolvency'.

The federal government has attempted from time to time to regulate the business of insurance under various federal statutes.¹⁰ Unless the federal government has been able to justify its power to regulate under a specific federal head of power, such as 'bankruptcy and insolvency' or 'trade and commerce', its attempts to regulate have always been struck down by the courts.¹¹ Some examples of federal legislation which has been struck down by the courts are found in the cases of A.G. for Canada v. A.G. of Alberta and A.G. of British Columbia (The Insurance Case) and Re Reciprocal Insurance Legislation.¹² In the former case, the Privy Council found that sections 4 and 70 of the Insurance Act (Canada) which

prohibited any person from engaging in the insurance business without a federal licence were ultra vires the federal Parliament since they encroached on provincial legislative powers in a manner not authorized by the federal 'peace, order and good government' power or the 'trade and commerce' power. The federal Parliament could require a foreign insurance company to take out a federal licence, however, even if the company intended to do business in only one province. In the case Re Reciprocal Insurance Legislation, the Privy Council again prohibited the federal Parliament from achieving essentially the same result by placing provisions similar to the old sections 4 and 70 in the Criminal Code. The federal government attempted (unsuccessfully) to justify the provisions under the 'criminal' power. The Court found that in "pith and substance" the enactment was regulation of the business of insurance and ultra vires the Dominion.

Federal legislation in the securities field has been upheld somewhat more frequently when it was found to be in "pith and substance" within a federal head of power such as 'criminal law' or the federal incorporation power.¹³ When provincial legislation is in "pith and substance" legitimately enacted under a provincial head of power such as 'property and civil rights', and federal legislation covering the same area is also legitimately enacted under a federal head of power such as the federal incorporation power, the two enactments will be allowed to stand as long as they do not conflict and as long as both the federal and provincial "features" are of roughly equivalent importance. Under this "double aspect" rule of interpretation, insider trading provisions under the Canada Business Corporations Act and the Ontario Securities

Act may coexist,¹⁴ as may prohibitions against false prospectuses in the Criminal Code and the Ontario Securities Act.¹⁵

When the enactments conflict (and, presumably, the federal and provincial features are of roughly equal importance), the provincial enactment will be rendered inoperative. This is referred to by the courts as the doctrine of paramountcy.¹⁴ Alternatively, the courts may "read down" an enactment so that it does not extend to matters within federal jurisdiction (eg., banking), but continues to apply to matters within provincial jurisdiction (eg., contracts).

The Incorporation Power

Since the provinces may incorporate companies with 'provincial objects' (ss. 92(11)), the courts have found that the federal government has a sort of residual or overarching power of incorporation under the federal power to legislate "for the Peace, Order and good Government of Canada in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces". The federal incorporation power may be exercised with regard to companies which have more than 'provincial objects'. The federal government may incorporate insurance, securities and trust companies under the federal incorporation power, and it does so, but it may not generally regulate securities, insurance or trust "business". A provincial statute may not impair the "status and essential capacities" of a federally incorporated company "in a substantial degree",¹⁷ although federal companies must otherwise comply with valid provincial laws of general application.¹⁸ This is so even when corporate transactions are restricted to clients outside Canada, or when

transactions cross provincial boundaries, as long as the business is carried on in the province.¹⁹ Federal companies must comply with provincial laws of general application even when those laws severely restrict (or prohibit) the company from carrying on certain kinds of business or acquiring property in the province.²⁰

If a financial institution is provincially incorporated, then provincial powers relative to the business of financial institutions are enhanced by the provincial incorporation power which "authorizes all laws of a company law character, for example, the laws pertaining to corporate powers, organization, internal management and financing".²¹ The same is true of federal powers, such as banking, which are enhanced by the federal incorporation power (ss. 91(15)). A federally incorporated company, the business of which is provincially regulated, is obviously a candidate for overlapping regulation and duplicate supervision and enforcement by both jurisdictions. Solvency concerns, for example, may legitimately inspire regulation of the same company by both jurisdictions. The resolution of this potential dilemma is generally worked out with varying degrees of success in the political arena, and some examples of this are described in the next Chapter.

While a federally incorporated financial institution may have some immunity from provincial laws governing or affecting the corporate status of financial institutions, it is unclear whether or not provincially incorporated companies may similarly claim some immunity from the laws of another province in which it wishes to operate.²² Other provinces may restrict or prohibit a federal or provincial company from doing business within their borders by laws of general application

to all companies.²³ A province such as Ontario may decide to allow a British Columbia incorporated trust company (for example) to operate in Ontario only upon the satisfaction of conditions as to the manner in which it will conduct its business within Ontario. Whether the setting of conditions may extend to requirements regarding the corporate constitution of an out-of-province or federal corporation is an issue which remains to be decided by the courts. There is a distinction between the power to incorporate (which includes the power to regulate internal management) and the power to regulate corporate business activities, although the two powers may overlap.

A good argument can be made that only the incorporating jurisdiction can regulate corporate structure.²⁴ The proposed Ontario Loan and Trust Corporations Act (Bill 116), for example, makes it a condition of registration in Ontario of federal or provincial extra-provincially incorporated trust or loan companies that the company comply with restrictions on the ownership of shares in the company by non-Canadians, on the number, type and residency of directors and on the internal management structure of the corporation (section 39). Some or all of these powers may be ultra vires the province of Ontario either on the ground that the restrictions do not fall under (or are not necessarily incidental to) a valid provincial power such as the power to regulate the business of loan and trust companies or the power to incorporate companies with provincial objects or (and this is the flip side of the same argument) the legislation is an attempt to do indirectly what the province cannot do directly.²⁵

Prof. Hogg does not agree.²⁶ He raises the Bonanza Creek case as

an answer to the issue.²⁷ In my respectful opinion, the Bonanza Creek case decides that provincially incorporated companies may acquire the right to carry on business in another province only from the authorities in that province. It does not say that, in granting that right, other provinces may impose requirements regarding the corporate structure of the extra-provincial company, as distinguished from requirements regarding its business activities. In my view, the province of extra-provincial registration may be able to prohibit a provincial corporation from carrying on business there, but it cannot control the corporate capacity of an extra-provincial corporation. Such a corporation may voluntarily submit to requirements regarding corporate capacity in order to be allowed to carry on business, but these requirements can be imposed only by the jurisdiction of incorporation.²⁸

These restrictions in the proposed Ontario statute are understandable and illustrate one of the dilemmas caused by provincial jurisdiction over non-banks or near-banks. If Ontario implements the stricter legislation which the government has decided is necessary, trust and loan companies already incorporated in Ontario or planning to incorporate there may decide to continue their incorporation into or to incorporate in a regulatory jurisdiction which imposes less onerous requirements. Unless all other jurisdictions enact similar legislation, the only alternative of the province is to prohibit the operation in the province of all those companies which do not meet its solvency requirements or which operate in a jurisdiction which allows them more freedom and therefore (potentially) a competitive advantage over Ontario-incorporated companies.

Deposit-Taking Institutions

The major types of deposit-taking institution in Canada are the chartered banks, trust companies, loan companies and credit unions or caisses populaires. Many trust companies are both loan and trust companies. The federal government clearly has exclusive jurisdiction over banks and 'banking', but the term 'banking' is not defined in the Constitution and has been defined only in a very limited way by the courts. It is clear that the functions normally carried on by chartered banks in Canada such as deposit-taking, discounting notes, chequing services and commercial lending are 'banking' and that these functions may be regulated only by the federal government. It is also clear that the provinces may regulate certain functions such as deposit-taking and chequing services as long as they are not carried on by chartered banks and as long as the federal government does not legislate to regulate such functions under its 'banking' or other head of power (assuming that it may validly do so). The extent of the federal government's power to regulate 'banking' functions which are not carried on by institutions called 'banks' is not clear and has long been a subject of debate by academic and legal writers.²⁹ There are no higher court cases which finally decide the issue. The dividing line between what may be described as 'banking' functions carried on by chartered banks and what may be described as non-banking functions, also carried on by chartered banks but perhaps not within exclusive federal jurisdiction, is also far from clear.³⁰

Prof. Hogg calls the 'banking' power a "special case" in constitutional law.³¹ Moull, Waitzer and Ziegel call the 'banking'

power "this subtraction" from the provincial power to regulate financial institutions.³² The courts have found it relatively easy to define the business of securities, insurance and trusts; they have found it impossible to define 'banking' in a way that permits them to delineate an area of exclusive jurisdiction under the Constitution in general terms.

In 1893 in the Tennant case, in deciding whether or not a warehouse receipt held by a bank was valid security for a loan (it was valid under the Bank Act, but invalid under provincial law), Lord Watson for the Privy Council decided that the loan "was a proper banking transaction" and, as such, legislation regarding the validity of the security fell within the term 'banking' which term was "wide enough to embrace every transaction coming within the legitimate business of a banker".³³ Although the Bank Act gave the bank rights not recognized under provincial law, and "trenched" on matters otherwise within provincial jurisdiction, the legislation was intra vires the federal Parliament.

In the Bank Deposits case,³⁴ Lord Porter found that a provincial law which concerned the repayment of deposits to depositors or their successors was in "pith and substance" directed at the banks and was therefore ultra vires the province. As in the Tennant case, 'banking' was widely defined, perhaps, in part, because the banks at that time did most of the deposit-taking business in Canada. Because the banks no longer handle such a large portion of the financial intermediary business in Canada,³⁵ it may be that this case would be decided differently today. If legislation concerning the ownership of deposits was not viewed as applying almost entirely to banks, then it might be

viewed as valid provincial legislation (under the property and civil rights power) which can co-exist with federal banking legislation unless the terms of the statutes conflict, in which case the provincial statute might be read down to apply only to deposits under provincial jurisdiction as in the Tennant case.

In 1947, Viscount Simon for the Privy Council held that the term 'banking' was not limited to those transactions conducted by banks in 1867, but expanded or changed to reflect the business of banking as it expanded or changed over time.³⁴ This has been described as the "progressive interpretation doctrine". The Reference re Alberta Bill of Rights Act case³⁷ also found a provincial statute to be ultra vires as an infringement of the federal 'banking' power. The Alberta Bill of Rights Act, 1946 was held to be in "pith and substance" banking legislation. As the case headnote describes, Part II of the Act:

established a Board of Credit Commissioners as a licensing authority in respect of all credit institutions operating in the Province which were required to obtain licences on pain of pecuniary penalties and of having the Board take over their control and management but without interfering with functions authorized by the Dominion Bank Act and without interfering with deposits. "Credit Institutions" while not in terms defined to include banks clearly covered chartered banks under the Bank Act although the Bank of Canada was expressly excluded. The Alberta Act proposed to regulate the expansion of credit by credit institutions over and above the amount of their cash reserves or currency.³⁸

As Viscount Simon pointed out, the Act purported to "restrain any bank from creating an expansion of credit by loans exceeding its reserve of currency".³⁹ It was the object and effect of the Act "to interfere with and control the business carried on by a chartered bank in the Province" and, in particular, with the granting of credit by banks and this was a matter solely within the federal jurisdiction.

As these cases illustrate, statutes which are found to have as their object the interference with chartered bank functions central to the operation of the bank such as deposit taking and the granting of credit will be found to be ultra vires the province.⁴⁰ Statutes which do not have this object but which incidentally affect a banking function and conflict with the Bank Act will simply be "read down" and found not to apply to banks. No cases restrict the right of the provinces to legislate with regard to the same functions when they are carried on by financial institutions which are not chartered banks and when the legislation does not affect the chartered banks. What remains to be decided is the limit of provincial jurisdiction to empower and regulate financial institutions with functions similar to (or the same as) the chartered banks, and the limit of the federal jurisdiction to regulate 'banking' functions carried on by institutions which are not chartered banks.

In 1980, the Supreme Court of Canada decided that the Fathers of Confederation had not intended that the federal government have exclusive jurisdiction over "the borrowing of money or the lending of money, with or without security".⁴¹ In the Canadian Pioneer Management case (a labour relations case), in deciding whether a trust company was carrying on the business of banking and therefore governed by the Canada Labour Code, the Court rejected a 'functional' definition of the term 'banking' since it found that none of the functions of banks chartered under the Bank Act were exclusive of banks (the one exception perhaps being the power to issue paper money which had been assumed by the Bank of Canada in the 1930's) and the performance of one or more of those

functions (such as deposit-taking, chequing services or commercial lending) did not necessarily make the performing institution a bank.⁴²

As Chief Justice Laskin wrote:

One of the difficulties in this case stems from outworn conceptions of the business of banking reflected in a line of cases in the last century, and some in the present century which borrowed from the former, and which were grounded on English practices untouched by federalism and by the rise of new types of credit institutions which exercise powers similar to those long exercised by banks. Although a bank may be a dealer in credit, not every dealer in credit is a bank. So too, it is no longer correct to say, as was said by Lord Porter in A.G. Can. v. A.G. Que.; Bank of Montreal v. A.G. Que. et al., [1947] 1 D.L.R. 81 at pp. 86-7 ... that "the receipt of deposits and the repayment of the sums deposited to the depositors or their successors as defined above is an essential part of the business of banking", if by that he means that any institution which has this relation of debtor and creditor must necessarily be regarded as engaged in "banking" within s. 91(15) of the British North America Act, 1867.⁴³

The federally incorporated trust company which was the subject of dispute in this case carried on a business that was for the most part identical to that of a chartered bank. The trust company accepted deposits from the public, opened chequing accounts, made a wide variety of loans including overdrafts and commercial loans, and offered other services similar to those offered by the chartered banks. The only services performed by the company that were not also performed by the chartered banks were estate administration and the issue of income averaging certificates, but these services constituted only one percent of the company's business. The business of the trust company was almost identical to the business carried on by the chartered banks, the company was inspected by the federal Superintendent of Insurance, and it was subject to minimal provincial regulation.⁴⁴

Beetz, J. (giving the majority judgment of the Court) recognized that not only do the chartered banks share most of their functions with

other types of financial institution, but financial intermediation functions have also changed significantly since 1867. Many new functions have evolved, often developed by the provincially regulated 'near-banks' such as credit unions or caisses populaires and trust companies and later adopted by the chartered banks. Because it felt that a functional definition of banking was impossible for the purpose of this case, the Supreme Court of Canada adopted an 'institutional' definition of 'banking', to mean the business of the institutions which are authorized under the Bank Act to hold themselves out as banks (i.e., the chartered banks).⁴⁵

Beetz, J. pointed out that the federal Parliament had expressly recognized the importance of the "holding out" test by enacting subsection 157(1) of the Bank Act and sections 20(3) and 28 of the Interpretation Act⁴⁶ which state:

157(1) Every person who, in any language, uses the word "bank", "banker" or "banking", either alone or in combination with other words, or any word or words of import equivalent thereto, to indicate or describe his business in Canada ... without being authorized so to do by this or any other Act, is guilty of an offence against this Act.

20(3) No corporation shall be deemed to be authorized to carry on the business of banking unless such power is expressly conferred upon it by the enactment establishing the corporation.

28. In every enactment ... "bank or chartered bank" means a bank to which the Bank Act applies.

Beetz, J. found that:

"Banking" involves a set of interrelated financial activities carried out by an institution that operates under the nomenclature and terms of incorporation which clearly identify it as having the distinctive institutional character of a bank.⁴⁷

In the view of the Court, the institutional test is particularly appropriate when the issue is the character of an institution rather

than the nature of an enactment (i.e., whether or not the enactment is in "pith and substance" legislation in relation to banks and banking).⁴⁸ Beetz, J. noted that an 'institutional' definition gave the federal government the power to expand its own power over 'banking' by expanding or extending bank powers under the Bank Act or other legislation, but did not comment further on the extent of this power.

Conclusion

The Bank Act does not define 'banking' or the 'business of banking'. How far the federal government could go in expanding its jurisdiction under the Bank Act or in legislation governing financial holding companies (as proposed in the Green Paper) or in any other financial legislation still remains to be seen. Provincial legislation which in "pith and substance" comes within a provincial head of power will be upheld, even if it has an incidental effect on banking unless the law: (1) is substantially to do with banking; (2) has the effect of impairing the corporate status or essential powers of a bank or federally incorporated financial institution; or (3) is inconsistent with the Bank Act or other valid federal law.⁴⁹

Federal legislation will be upheld if it is in "pith and substance" related to banks or banking or another federal head of power (whether or not it conflicts with a valid provincial law). But the courts are very aware that limits must be placed on the federal power since it could never have been intended:

that the borrowing of money or the lending of money ... would, in every respect, fall under the exclusive legislative competence of Parliament.⁵⁰

Federal legislation must certainly have as its object more than the

centralized control of a large number of local entities⁵¹ or the "mere desire for uniformity of legislation throughout Canada".⁵²

In my view, there are many avenues open to the federal government to expand its jurisdiction through such statutes as the Bills of Exchange Act⁵³ and the Bank of Canada Act.⁵⁴ But the courts will look very carefully at massive incursions into provincial jurisdiction through mechanisms such as the mandatory holding company proposed in the Green Paper (described in Chapter IV) or federal securities legislation. Several writers have recommended an expanded federal presence in the regulation of deposit-taking institutions and the securities industry. The federal government has never followed those recommendations. Whether or not the Constitution would allow such federal regulation, it is clear that several provinces and interest groups would strenuously object to such an assumption of power. Since the federal government has already significantly expanded its powers by the use of the federal incorporation power and by such voluntary mechanisms as the CDIC, the Canadian Payments Association, the Canadian Co-operative Credit Society and the new insurance compensation fund and by assuming delegated supervisory powers from some provincial authorities, one might wonder why the federal government still sees a significant need to expand its jurisdiction. As long as political (and perhaps legal) considerations keep the federal government at bay, we may never know the extent of, or the limits to, federal government powers under the Constitution.

FOOTNOTES

- * I am particularly grateful to Professor Vick Farley and Howard Eddy, Barrister and Solicitor, for their thoughtful review of this Chapter. Of course, final responsibility for its contents rests entirely with myself.
1. 30-31 Vict., c. 3 (U.K.); formerly known as the British North America Act, 1867.
 2. Near-banks may be defined as those financial intermediaries which perform functions which the chartered banks also perform or which perform some functions in common with the chartered banks. Trust companies which perform deposit-taking functions and provide chequing services are near-banks. Securities brokers which provide a chequing service which is ancillary to the main business of securities brokerage and which is only a small part of the brokerage business are not near-banks. It may be reasonably argued that life insurance companies are near-banks due to the large savings component of their business. All financial intermediaries which are not chartered banks (including near-banks) may be defined as non-banks.
 3. The term 'savings bank' has not, to my knowledge, been judicially defined or defined by statute. Presumably it refers to a 'bank' which deals largely in consumer deposits and consumer loans or investments of individual savings.
 4. Lymburn et al. v. Mayland et al., [1932] 2 D.L.R. 6 (P.C.); Multiple Access Ltd. v. McCutcheon et al. (1982), 138 D.L.R.(3d) 1 (S.C.C.); Smith v. The Queen (1960), 25 D.L.R.(2d) 225 (S.C.C.); Regina v. W. McKenzie Securities Ltd. et al. (1966), 56 D.L.R.(2d) 56 (Man. C.A.).
 5. Citizens Insurance Company of Canada v. Parsons (1881), 7 App. Cas. 96 (P.C.); A.G. for Canada v. A.G. of Alberta and A.G. of British Columbia (1916), 26 D.L.R. 288 (P.C.); Re Reciprocal Insurance Legislation, [1924] 1 D.L.R. 789 (P.C.); Re Insurance Act and Special War Revenue Act, [1932] 1 D.L.R. 97 (P.C.); Reference re Section 16 of the Special War Revenue Act, [1942] 4 D.L.R. 145 (S.C.C.); A.G. for Ontario v. Policy-Holders of Wentworth Insurance Co. et al. (1969), 6 D.L.R.(3d) 545 (S.C.C.); Canadian Indemnity Co. et al. v. A.G. of British Columbia (1976), 73 D.L.R.(3d) 111 (S.C.C.); Canadian Pioneer Management Ltd. et al. v. Labour Relations Board of Saskatchewan et al. (1980), 107 D.L.R.(3d) 1 (S.C.C.).
 6. Canadian Pioneer Management, ibid.; Provincial Treasurer of Manitoba v. Minister of Finance for Canada, [1943] 3 D.L.R. 673 (S.C.C.).
 7. See Jacob S. Ziegel, "Harmonization of Provincial Laws, with

Particular Reference to the Commercial, Consumer and Corporate Law", in Ronald C.C. Cuming (ed.), Harmonization of Business Law in Canada (Study No. 56, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1986, p.1 and William D. Moull, Edward J. Waitzer and Jacob S. Ziegel, "The Changing Regulatory Environment for Canadian Financial Institutions - Constitutional Aspects and Federal-Provincial Relations" (Draft), in Ontario Economic Council et al., Conference on the Changing Regulatory Environment for Canadian Financial Institutions, Toronto, May 1985, p. 3, citing B. Laskin, Canadian Constitutional Law (Revised Third Edition), 1967, p. 603.

8. Ziegel, ibid. and Moull, Waitzer and Ziegel, ibid., citing Peter W. Hogg, Constitutional Law of Canada, 1977, chaps. 14 and 15.
9. Citizens Insurance, op. cit., note 5.
10. For a history of the insurance cases see Peter W. Hogg, Constitutional Law of Canada (2nd ed.), The Carswell Company Limited, Toronto, 1985, pp. 457-460.
11. For example, A.G. for Ontario v. Policy-Holders of Wentworth Insurance Co., op. cit., note 5 in which the Supreme Court of Canada upheld (by only a 5-4 majority) the application of the federal Winding-Up Act to an insolvent insurance company. See also: A.G. for Canada v. A.G. of Alberta, op. cit., note 5.
12. Op. cit., note 5.
13. Smith, op. cit., note 4; Multiple Access, op. cit., note 4; Lukey and A.G. for Saskatchewan v. Ruthenian Farmers Elevator Co., [1924] 1 D.L.R. 706 (S.C.C.); A.G. Man. v. A.G. Can., [1929] 1 D.L.R. 369 (P.C.).
14. Multiple Access, op. cit., note 4.
15. Smith, op. cit., note 4.
16. For example, A.G. for Ontario v. Policy-Holders, op. cit., note 5.
17. A.G. Man., op. cit., note 13, at p. 374.
18. Leading cases regarding the federal incorporation power include: John Deere Plow Co. v. Wharton (1914), 18 D.L.R. 353 (P.C.); Great West Saddlery Co. Ltd. v. The King (1921), 58 D.L.R. 1 (P.C.); Canadian Pioneer Management, op. cit., note 5; Bonanza Creek Gold Mining Co. v. The King (1916), 26 D.L.R. 273 (P.C.); Lukey, op. cit., note 13.
19. Gregory & Co. Inc. v. Quebec Securities Commission et al. (1961),

- 28 D.L.R.(2d) 721 (S.C.C.); Regina v. W. Mckenzie Securities Ltd. op. cit., note 4.
20. Canadian Indemnity, op. cit., note 5; Great West Saddlery, op. cit., note 18.
21. Hogg (2nd ed.), op. cit., note 10, p. 517.
22. Bonanza Creek Gold Mining, op. cit., note 18.
23. Canadian Indemnity Co., op. cit., note 5; Lymburn, op. cit., note 4; Churchill Falls (Labrador) Corporation Ltd. et al. v. A.G. of Newfoundland et al. (1984), 8 D.L.R.(4th) 1 (S.C.C.).
24. To some degree, it is the devil's advocate in me which raises this view and I make no comment as to the likelihood of success or failure should this argument be raised in court proceedings.
25. For an example of the application of this argument in another context see Churchill Falls, op. cit., note 23.
26. Hogg (2nd ed.), op. cit., note 10, pp. 525-528.
27. Op. cit., note 18.
28. The ability to restrict or prohibit provincially incorporated companies from carrying on business may also be affected by subsection 6(2) of the Canadian Charter of Rights and Freedoms (Constitution Act, 1982) which states:
 every person who has the status of a permanent resident of Canada has the right (a) ... (b) to pursue the gaining of a livelihood in any province.
 The Supreme Court of Canada has not yet had the opportunity to decide whether or not the word "person" in section 6 includes a corporation.
29. Moull, Waitzer and Ziegel, op. cit., note 7; Hogg (2nd ed.), op. cit., note 10; Patrick N. McDonald, "The B.N.A. Act and the Near Banks: A Case Study in Federalism", (1972) 10 Alberta Law Review 155; C.C. Johnston, "Judicial Comment on the Concept of 'Banking Business'", (1962) 2 Osgoode Hall Law Journal 347.
30. Cases concerning the degree to which functions carried on by or in relation to the chartered banks will come within the phrase the "business of banking" include: Tennant, supra, note 33; Central Computer Services Ltd. et al. v. Toronto Dominion Bank, [1980] 1 W.W.R. 206 (Man. C.A.); A.T.M. Automatic Teller Machine Services, Ltd. v. Teamsters Local Union No. 213 et al. (1985), 22 D.L.R. (4th) 282 (B.C.C.A.); Re Canadian Deposit Insurance Corp. and Canadian Commercial Bank (1986), 27 D.L.R.(4th) 229 (Alta. Q.B.).
31. Hogg (2nd ed.), op. cit., note 10, pp. 528-532.

32. Moull, Waitzer and Ziegel, op. cit., note 7, p. 9.
33. Tennant v. Union Bank of Canada, [1894] A.C. 31 (P.C.) at p. 46.
34. A.G. of Canada v. A.G. of Quebec, [1947] 1 D.L.R. 81 (P.C.).
35. E.P. Neufeld writes that from 1930 to 1968 the chartered banks' share of total Canadian assets held by the major financial intermediaries declined from 46% to 29% (although the ratio increased from about 1933 to 1943). (The Financial System of Canada: Its Growth and Development, Macmillan of Canada, Toronto, 1972, p. 53.)
36. Reference re Alberta Bill of Rights Act, [1947] 4 D.L.R. 1 (P.C.) at p. 9.
37. Ibid.
38. Ibid., p. 1.
39. Ibid., p. 7.
40. See also the Alberta Bank Taxation case - Reference re Alberta Bills, [1938] 4 D.L.R. 433 (P.C.). The Privy Council found that provincial tax legislation was really designed to regulate and control banks and was therefore ultra vires.
41. Canadian Pioneer Management, op. cit., note 5, per Beetz, J. at p. 26.
42. Ibid., pp. 16-21.
43. Ibid., p. 5. Beetz, J. also cited (at p. 21) In Re Dominion Trust Company, [1918] 3 W.W.R. 1023 (B.C.S.C. Chambers) and La Caisse Populaire Notre Dame Limitee v. Moyen (1967), 61 D.L.R. (2d) 118 (Sask. Q.B.). Those Courts decided that a provincially incorporated trust company (in the first case) and a provincial credit union (in the second case) could validly provide chequing services to their depositors.
44. Ibid., p. 9.
45. Ibid., pp. 21-27, citing Re Bergethaler Waisenamt, [1949] 1 D.L.R. 769 (Man. C.A.) at p. 22.
46. R.S.C. 1970, c. 1-23.
47. Canadian Pioneer Management, op. cit., note 5, at p. 24.
48. Ibid., p. 25.
49. Hogg (2nd ed.), op. cit., note 10, pp. 531-532.

50. Canadian Pioneer Management, op. cit., note 5, at p. 26.
51. A.G. of Canada v. Canadian National Transportation, Ltd. et al. (1983), 3 D.L.R.(4th) 16 (S.C.C.).
52. Reference re Anti-Inflation Act (1976), 68 D.L.R.(3d) 452 (S.C.C.). See also MacDonald et al. v. Vapour Canada Ltd. et al. (1976), 66 D.L.R.(3d) 1 (S.C.C.).
53. R.S.C. 1970, c. B-5.
54. R.S.C. 1970, c. B-2.

CHAPTER III

THE REGULATORY FRAMEWORK

It is the role of the financial system (consisting of individuals and institutions) to "intermediate" between borrowers and lenders or 'to collect surplus spending units and make them available to deficit spending units'.¹ In this system, a distinction may be made between direct and indirect (or market and financial) intermediation. Direct or market intermediation is the direct transfer of funds (in the nature of capital or a loan) from the lender to the borrower. Market intermediation services are provided largely by the issue of shares and bonds by the dealers and underwriters of the securities industry on behalf of their corporate clients and by the issue of commercial paper and other short-term money market instruments. Indirect or financial intermediation involves a middle man who borrows funds from one then lends them out again to another. The benefits of financial intermediation, as described by E.P. Neufeld, may be summarized as follows:

it increases economic efficiency within the financial system by reducing administrative costs of transferring funds from those in surplus to those in deficit ...; it increases the satisfaction that lenders receive from a given stock of wealth, by making an increased variety of financial claims available to them; and it increases economic efficiency outside the financial system by improving the way the nation's capital is allocated ...²

Financial intermediation services are provided by the banks and the near-banks (such as trust companies, credit unions and insurance companies).

In this Chapter, I will provide a summary of rationales and types of regulation and the evolution of the major types of financial

institution in Canada followed by a synopsis of the regulatory system, with particular reference to the federal level of government and the Province of British Columbia. I use the term "financial institution" to refer to both market and financial intermediaries.

Rationales for Regulation

E.P. Neufeld, whose 1972 book is still the definitive work on financial institutions in Canada, felt that there were four broad and interrelated reasons for government intervention in the financial sector:

first, as the economy experiences instability in its price, employment and economic growth behaviour, governments have used their control over financial variables such as money supply to reduce such instability; second, the capital market in reality is not perfectly efficient and government intervention may have as its objective the removal of market rigidities that have led to inefficiency in resource allocation, or the neutralization of the undesirable effects of such rigidities by, for example, providing incentives for funds to flow in certain directions; third, quite apart from the beneficial effects its actions may have on resource allocation, the government may feel that it must provide a certain degree of protection to savers and borrowers, to buyers and sellers of securities; fourth, the government may wish to achieve a host of non-economic objectives other than those automatically achieved by either a perfectly efficient or a less than perfectly efficient capital market.³

Disclosure requirements, for example by means of a prospectus, act to reduce market inefficiencies caused by lack of information and also act to protect consumers. Historically, the primary purpose of financial institution regulation and supervision was to reduce the risk inherent in the operations of the institutions and to protect consumers.⁴

Non-economic objectives (apart from consumer protection) include foreign ownership limitations and the direction of funds toward certain sectors where funds would not otherwise go in an efficient capital

market. Non-economic objectives may interfere with the efficiency of the economy, the financial sector or individual institutions. Any government objective (whether "economic" or not) may interfere with the achievement of another. In addition, certain techniques may more efficiently and effectively achieve some objectives than others. Whatever the benefits or disbenefits of various regulatory goals or techniques, it is not difficult to see that financial sector regulation can be a very significant tool for economic development.

Types of Regulation

Financial sector regulation may be divided into the categories of "self-regulation" and "government regulation". Self-regulation is provided by corporate mechanisms such as the board of directors and the corporate auditors and by non-governmental or quasi-governmental organizations with varying degrees of control over their members such as the stock exchanges, the Investment Dealers' Association of Canada and the Canadian Bankers' Association. Government may impose regulatory requirements which are administered by self-regulatory organizations or self-regulatory organizations may impose their own requirements or both.

Government imposed and government administered regulation has been classified by approach by Neufeld as follows:

(a) disclosure - at least an element of which is found in almost every federal and provincial statute concerned with the capital market, particularly important examples of which are prospectus requirements; (b) stipulating prohibited activity for purposes of providing protection and generally establishing standards of conduct - as found in the Criminal Code and in provincial securities and anti-fraud regulations; (c) stipulating required procedures and permitted or approved activity, and objective operational requirements - as for example outlined in legislation relating to selling securities, to the borrowing and lending activities of financial intermediaries, and to the various

financial intermediaries' reserve requirements; (d) direct government influence on the flow of funds - as in the case of many government-guaranteed loan schemes, and industrial development agencies including the operation of government-owned financial intermediaries.⁵

Regulatory control mechanisms include reports to governmental authorities, governmental supervision, prospectus or other disclosure requirements, grants, guaranteed loans, favourable tax treatment and the establishment of government controlled financial intermediaries.⁴

History

The regulatory systems in Canada reflect the ways in which the financial system developed.⁷ Usually, "financial companies were formed with specific activities in mind" or new financial products were developed and legislation followed after the fact.⁸ Statutes regulating financial institutions have most often been reactive. They were enacted to deal with situations which already existed and which politicians then decided should be regulated by statute. Banking, trust, insurance and securities statutes were all first enacted to regulate existing businesses which were perceived to require some specific government intervention.⁹ Another very important factor in the evolution of the financial and corresponding regulatory systems is the constitutional division of powers (discussed in Chapter II), as well as the influence of the British system on which many institutional and regulatory structures were based.

Banks, life insurers, property and casualty insurers, mortgage loan companies and investment dealers were established in Canada before Confederation in 1867. The main function of the banks in the early 1800s was issuing notes (paper currency) and making short-term loans.

When the Bank of Canada was created in 1934, it received the exclusive right to issue bank notes and chartered bank notes were gradually phased out. After World War II, the banks received mortgage lending powers which led the banks into direct competition with trust, mortgage loan and life insurance companies and credit unions; and enhanced consumer lending powers provided direct competition to the sales finance industry.

Life insurance companies initially operated under individual Acts of Parliament. When a general statute covering life insurance companies was introduced in the early 1900s, it restricted life insurance companies essentially to providing life insurance. However, life insurers now compete directly with deposit-taking institutions with group pension deposit administration contracts, the sale of life insurance with a savings component and the sale of deferred annuities, the contractual terms of which may correspond closely to those of term deposits.

Trust companies, when they appeared in the late 1800s, were largely restricted to the provision of executor, administrator and trustee services and the making of mortgage loans. Legislators sought to keep trust company activities distinct from those of the banks, largely by attempting to prohibit them from issuing debentures and taking deposits. However, trust company fiduciary powers permitted them to take in funds through investment certificates and other forms of "trust" accounts and legislators eventually gave up trying to keep them from taking what were essentially deposits. They were subsequently allowed to make unsecured loans, with limitations. Savings and loan companies (including mortgage

loan companies), which are now often combined with the operations of a trust company or attached to a chartered bank as a subsidiary, were established before Confederation on the model of the building societies in Britain (small savings were pooled to allow members to buy land and build houses).

The first corporate underwriters of securities were not the investment dealers, but the banks. As described below, the banks were later prohibited from underwriting corporate securities but they continue to be heavily involved in the underwriting of government securities. In the early 1900s, the more specialized investment dealers became a significant force in the issuance of government and corporate securities.¹⁰

The banks, trust and loan companies, insurance companies and investment dealers started out with a fairly restricted range of functions. The regulatory framework developed accordingly. This regulatory framework is almost universally described in Canada as the "four pillars" approach because these four major institutional participants in the financial sector in Canada historically restricted themselves largely to one core function such as banking or insurance. This "segregated system" was enshrined in the regulatory framework and the major participants came to be known as the "four pillars". Over the years, the "four pillars" sought change and were able to expand their range of activities, partly because they received wider powers from governments and partly through innovation within their existing range of powers (in some cases by exploitation of regulatory loopholes or lack of enforcement by the regulators). Despite the broadening of functions,

however, most financial institutions still do most of their business in their "core" function, carrying on other permitted functions directly or through subsidiary or affiliated corporations.

Regulation Today

The key role of the banks in the economic and financial sector was recognized by the Fathers of Confederation when they awarded exclusive jurisdiction over 'banks, the incorporation of banks and the issue of paper money' to the federal government. Bank powers under the Bank Act¹¹ have gradually been expanded, although the power to issue bank notes was taken away in 1934 and bank powers to underwrite or otherwise deal in securities were severely limited in the 1980 Bank Act. Bank powers with regard to corporate securities are now limited to the purchase and sale of securities on behalf of their clients through outside brokers (eg., the Toronto-Dominion Green Line) and participation in selling groups engaged in primary distribution. Banks may take deposits, issue all types of loans and underwrite and distribute government bonds. They are generally prohibited from offering fiduciary or trust, insurance brokerage, portfolio management and investment counselling services. The federal bank regulator is called the Inspector General of Banks. Bank deposits are insured by the federal Canada Deposit Insurance Corporation (CDIC) to a maximum of \$60,000 per institution. There are approximately 40 banks carrying on business in British Columbia (10 Schedule A banks and 30 Schedule B). They have about \$35.5 billion in assets in the Province (about 16.6% of total Canadian assets of \$213.9 billion on December 31, 1984).¹²

Regulation of savings and loan (including mortgage) companies was

initially provincial, although the federal government subsequently enacted its own incorporating and regulatory legislation (Loan Companies Act).¹³ The extent of the federal regulatory power in this area is still unclear. There is no case law on point (to the best of my knowledge), but federal jurisdiction is probably limited to those powers which can be reasonably connected to the federal incorporation power or some other federal head of power such as bankruptcy. The division of powers should be the same as that applicable in the securities, trust and insurance areas where the provinces have exclusive jurisdiction.¹⁴ In 1981, there were 33 federally incorporated loan companies with assets of \$20 billion and 16 provincial companies with assets of \$5 billion.¹⁵

Provincial savings and loan companies are regulated under trust company legislation in British Columbia and, accordingly, are viewed as trust companies without trust or fiduciary functions. British Columbia has a Savings and Loan Associations Act,¹⁶ but it is not as "modern" (or fitted to present-day institutional needs) as the Trust Company Act¹⁷ and only one institution is incorporated under it (and is now in liquidation).

Trust companies are the only type of institution in Canada which may provide full discretionary trust and fiduciary services, as well as taking deposits and issuing loans secured by mortgages (the savings and loan component). Fiduciary or trust services still form the greater part of the business activities of most trust companies, although deposit-taking and other activities have become increasingly important. Trust company powers to lend funds are restricted and they may not directly underwrite securities or insurance. The business of trust

companies is within the regulatory jurisdiction of the provinces but this jurisdiction has been substantially given up by the provinces which have allowed the federal government to fully regulate and inspect federally incorporated trust companies. (This has also occurred in the case of federally incorporated loan companies.) Since the law of trusts is within provincial jurisdiction, to the degree that business requirements in the federal statute conflict with provincial law, the provincial law would apply. I am not aware of a situation where this has occurred or come before the courts. Arguably, the federal legislation cannot impose any business (as opposed to corporate) requirements on federal trust companies unless the requirements have a corporate aspect, but I am not aware of any case law on that point. In British Columbia, federal inspectors from the Department of Insurance are responsible for federal companies and Provincial regulators (under the Superintendent of Trust Companies) concern themselves largely (although not entirely) with provincially incorporated companies operating in the Province. Since federal legislation is stricter than Provincial legislation, this procedure does not reduce Provincial legislative controls. Some other provinces have gone further and delegated their supervisory authority over provincially incorporated institutions to the federal authorities as well.

In the last ten years, more trust companies have incorporated in or continued into the federal jurisdiction and the majority of trust company business in Canada is now regulated under the federal Trust Companies Act.¹⁰ Federal incorporation generally makes it easier to conduct business in more than one province in part because companies

need to comply with only one set of statutory requirements (instead of the various and varied provincial statutes). There is not much incentive for provincial incorporation, even if provincial requirements are less strict (as is the case in British Columbia), when a company intends to do business in more than one or two provinces. Federally incorporated trust companies now hold about two-thirds of all trust company assets in Canada.¹⁹ There are about 46 trust companies doing business in British Columbia (21 of them do not take deposits). On December 31, 1984, these companies administered about \$10.9 billion in assets in the Province including estate, trust and agency funds, demand deposits and term deposits.²⁰ Seven companies are incorporated under the B.C. Trust Company Act.²¹

Insurance companies are regulated under the federal Canadian and British Insurance Companies Act²² and Foreign Insurance Companies Act²³ and the Insurance Act in British Columbia.²⁴ The federal statutes provide for the registration of foreign companies or companies incorporated by an Act of Parliament. The B.C. Insurance Act provides for the licensing and regulation of insurers, underwriters, agents and adjusters and states in section 2:

This act, except as provided, applies to every insurer that carries on any business of insurance in the Province and to every contract of insurance made or deemed made in the Province.

The B.C. statute does not provide for the incorporation of insurance companies and no Provincial statute is really concerned with corporate solvency. As of December 31, 1983,²⁵ 381 companies, fraternal associations, societies and reciprocal exchanges were licensed under the Act. Twelve of those were incorporated in B.C. including seven

incorporated by private Act of the Legislature, two incorporated under the Mutual Fire Insurance Companies Act²⁶ and three under the Society Act.²⁷ As Moull, Waitzer and Ziegel have described:

The thrust of the [federal] legislation is toward ensuring solvency through provisions dealing with the quality of investments and annual examinations of individual companies by the Superintendent of Insurance. Provincial governments are similarly responsible for provincially incorporated insurance companies, and have directed their attention principally toward the contents of insurance policies and the licensing of agents, brokers and adjusters.²⁸

Life insurance companies are generally confined to underwriting insurance and selling annuities. They cannot take deposits, although they may issue deferred annuities that are very similar to term deposits. They are not authorized to deal in securities or offer discretionary fiduciary services, although they may manage funds, including pension funds, on behalf of clients. Their powers of investment are restricted in much the same manner as trust and loan companies. Property and casualty insurance companies are confined to underwriting property, liability and other forms of non-life insurance. Their powers of investment are similarly restricted. The B.C. Superintendent of Insurance administers the Insurance Act. The federal Superintendent of Insurance administers the federal insurance, trust, savings and loan and investment company and co-operative association statutes.

Until recently, the regulation of insurance was relatively harmonious in Canada. The federal government was unable to establish paramount jurisdiction in the regulation of the insurance industry²⁹ and, as Moull, Waitzer and Ziegel write:

the two levels of government, aided by a very willing industry and the Association of Superintendents of Insurance, have adopted a

generally harmonious working relationship ... [under which] the provinces have continued to apply their ... rules and supervisory regimes to the actual business written by the insurance companies.³⁰

As in the case of trust and loan company regulation, the federal government has assumed substantial regulatory authority over the corporate and business activities of insurance companies. In British Columbia, the supervision of federally incorporated or foreign insurance companies which do business in the Province is entrusted to the federal authorities. There is some self-regulation of the insurance industry in British Columbia by the Insurance Council, the Insurance Bureau of Canada (an association of insurers) and the Insurance Agents' Association of British Columbia.

Securities dealers are provincially regulated under the Securities Act³¹ which is administered by the Superintendent of Brokers. There is also a significant degree of self-regulation of the industry by the Vancouver Stock Exchange and the Investment Dealers' Association of Canada. There is no federal securities legislation (with the exception of certain provisions of the Criminal Code and federal incorporation statutes). The federal involvement in the securities industry in Canada is well summarized by Moull, Waitzer and Ziegel:

the federal government has never seriously sought to participate in the regulation of the Canadian securities industry. The federal government only first indicated serious interest in the 1960's in exploring the desirability of a federal securities law, and subsequently sponsored the monumental intellectual effort, Proposals for a Market Securities Law for Canada.³² However, nothing has materialized since then. An earlier Ontario sponsored proposal for a Canadian Securities Commission (CANSEC) to facilitate the uniform administration of provincial securities laws evoked little support from either the federal or the provincial governments other than Ontario.³³

Securities dealers are generally confined to brokerage and underwriting

services. Underwriting is considered to be the core function of the securities industry. Customer accounts for trading in securities are treated as deposit accounts, interest is paid on the cash balance and some dealers offer cheque writing privileges. Dealers may not directly underwrite insurance or offer trust services.

Credit unions are regulated in British Columbia by the Superintendent of Credit Unions and, while they are owned co-operatively by their members, they offer a wide range of services similar to those offered by the chartered banks although their commercial lending powers are limited. They engage in consumer and mortgage lending and provide business loans on a more limited basis than the banks. They may not directly underwrite securities or insurance but, in British Columbia, may offer limited fiduciary services. The credit unions (or caisses populaires in some other provinces) have grown rapidly since World War II and are now a major financial force in Canada. They tend to have "strong local roots". The federal government at first declined to provide for the federal incorporation or charter of credit unions as the first of these institutions requested. In 1953, however, the federal government enacted the Co-operative Credit Associations Act.³⁴ The Act established an umbrella Canadian Co-operative Credit Society supervised by the federal Superintendent of Insurance to which most provincial credit union centrals now belong. The Act also provides for the incorporation of "co-operative associations" as well as voluntary registration (and thus regulation) of provincially incorporated or chartered credit union centrals (in B.C., the B.C. Central Credit Union).

British Columbia credit unions (which number approximately 130 and had assets of \$6.3 billion on December 31, 1985)³⁵ are regulated under the Credit Union Act.³⁶ Credit unions may not carry on business outside the Province. Money invested in non-equity shares of, and deposits with, a credit union are 100% guaranteed under the Act and claims may be made against the Deposit Insurance Fund administered by the Credit Union Deposit Insurance Corporation of British Columbia (CUDIC). Some self-regulation is imposed by the B.C. Central Credit Union which also acts as a wholesale "banker" to the credit union movement. Both the Superintendent and CUDIC inspect credit unions.

As of November 1986, all provincial financial institution statutes were administered by the Corporate Relations Division of the B.C. Ministry of Finance and Corporate Relations. The Securities Commission later took over the administration of the Securities Act. An outline of the regulatory framework is contained in Appendix D. The Ministry previously responsible for financial institution regulation (and policy formulation) was dissolved by the newly elected government of Premier Vander Zalm.

Although the constitutional or jurisdictional balance of regulatory control in all areas except banking might at first glance seem to rest on the provincial side, the federal government, as described above, has assumed very significant de facto regulatory powers. It has also enacted deposit insurance legislation which has allowed it considerable control over provincially incorporated trust companies (and some other deposit-taking institutions) which have voluntarily or by provincial requirement (as in B.C.) participated in the insurance scheme. The

provinces cannot be required by the federal government to submit to the supervision and controls under the Canada Deposit Insurance Corporation Act³⁷ but all, with the exception of Quebec which has its own scheme, have done so. In addition, the federal government has enacted the Canadian Payments Association Act³⁸ to create an association to establish and operate a national clearing and settlement system. Many provincially incorporated institutions have voluntarily joined this organization as well.

This summary does not mention pension or mutual funds, finance companies, leasing companies, venture capital firms or government financing agencies. It is beyond the scope of this thesis to describe the regulatory framework applicable to all financial services, products and institutions. The reader may refer to various texts on the subject for more information.³⁹ Other statutes of some significance in the financial sector include the federal Investment Companies Act,⁴⁰ and the B.C. Mortgage Brokers Act,⁴¹ the Investment Contract Act,⁴² the Securities (Forged Transfer) Act⁴³ and the Vancouver Stock Exchange Act.⁴⁴ Other statutes applicable to businesses generally are also important, such as the federal Criminal Code, Bankruptcy Act and Canada Business Corporations Act and the B.C. Company Act, Trustee Act and Insurance (Marine) Act.

Conclusion

While both federally and provincially incorporated institutions are largely regulated as institutions (eg., banks) rather than by function (eg., deposit-taking) and certain types of institution are still not permitted to conduct certain functions (eg., banks may not conduct trust

activities such as the administration of estates), the international and national trend is clearly toward a broadening of functions within each type of institution (eg., banks may now arrange brokerage services for their clients, trust companies may accept deposits and securities brokers may provide daily chequing services for their clients).

Examples of the trend toward a broadening of functions are found in ongoing amendments to the federal Bank Act and in various provincial jurisdictions where a broadening of functions has tended to be accomodated by ad hoc subordinate legislation and policy changes rather than by legislative changes. A broadening of functions may also be achieved (where permitted) by establishing a subsidiary corporation. For example, credit unions in British Columbia may now sell insurance through a subsidiary. Quebec has proceeded the farthest in acknowledging this trend and accomodating it in its legislation. For example, as Moull, Waitzer and Ziegel describe:

Quebec has recently amended its insurance legislation to broaden the powers of Quebec insurance companies and enable them to engage in non-insurance related financial activities.⁴³ Insurance companies incorporated in Quebec may now provide for the financing of insurance premiums and annuity contributions, offer for sale the services of other financial institutions, engage in leasing operations, manage immovables, and carry on any other activity authorized by the Quebec Minister of Finance. Where the non-insurance activities of an insurance company constitute more than two per cent of its gross revenues, the Minister may require the establishment of a subsidiary to carry on such activities. The legislation also abolishes the traditional qualitative investment standards as they apply to insurance companies incorporated in Quebec in favour of a 'prudent and reasonable person' standard.⁴⁴

The "four pillars" or institutional method of regulation under the existing constitutional division of powers is a complicated one. It is not difficult to see that a trend toward a blurring of the functions of the various institutions will make regulation even more difficult and

the regulatory framework even more complex. At the same time, the blurring of functions and other changes described in the next Chapter have created a situation where the regulatory framework does not fit the regulated as well as it once did. With very few exceptions, those involved in or commenting upon financial sector regulation in Ontario or British Columbia or at the federal level agree that the existing regulatory framework is inadequate and out-of-date to such a degree that investors and depositors are at risk and the ability of financial institutions to respond competitively to financial sector changes is significantly reduced. The only statutes which do not require a major overhaul are the Bank Act and the British Columbia Securities Act, but even these statutes must be updated to accommodate the rapidly changing financial sector environment, including the blurring of functions among the different types of institution and the realities of international competition in an increasingly international marketplace.

In the next two Chapters, I will summarize the federal Green Paper and highlight the concerns raised and recommendations made by the Green Paper and other government sponsored reports. All reports advocate substantial regulatory change.

FOOTNOTES

1. Thomas J. Courchene, "Regulating the Canadian Financial System: Paradigms, Principles and Politics", in Ontario Economic Council et al., Conference on the Changing Regulatory Environment for Canadian Financial Institutions, Toronto, May 22-23, 1985, p. 3, citing Ron Shearer, John Chant and David Bond, The Economics of the Canadian Financial System (2nd ed.), Prentice-Hall, Scarborough, 1984, p. 7.

2. E.P. Neufeld, The Financial System of Canada: Its Growth and Development, Macmillan of Canada, Toronto, 1972, p. 17.
3. Ibid., pp. 27-28.
4. Ibid., p. 30.
5. Ibid., p. 32.
6. Ibid., pp. 32-33.
7. For a more detailed description of the evolution of the financial system in Canada and comparisons with other "Western" systems, see: Courchene, op. cit., note 1, and Canada, Department of Finance, The Regulation of Canadian Financial Institutions: Proposals for Discussion (the Green Paper), Minister of Supply and Services Canada, Ottawa, 1985.
8. Green Paper, ibid., p. 51.
9. In British Columbia, losses caused by unregulated traders in the futures market and moves to regulate futures trading in other jurisdictions finally resulted in the enactment of the Commodity Contract Act, R.S.B.C. 1979, c. 56. Financial planners (largely unregulated) will likely come under direct regulatory control in British Columbia for the same reasons.
10. Green Paper, op. cit., note 7, pp. 52-53.
11. In the Banks and Banking Law Revision Act, 1980, S.C. 1980, c. 40.
12. British Columbia, Ministry of Consumer and Corporate Affairs, Perspectives for Growth in British Columbia's Financial Sector, Queen's Printer for British Columbia, Victoria, October 1986, p.23.
13. R.S.C. 1970, c. L-12.
14. See Chapter II.
15. Canada, Department of Insurance Canada, Discussion Paper on Revision of the Trust Companies Act and the Loan Companies Act (the Canadian White Paper), Ottawa, July 1982, p. 1.
16. R.S.B.C. 1960, c. 346. There is an interesting provision in section 81 of the Act:

No society, association, or corporation formed or incorporated outside the Province to carry on a business which in the opinion of the Minister is of a character similar to that authorized by this Act shall carry on business in the Province.
17. R.S.B.C. 1979, c. 412.

18. R.S.C. 1970, c. T-16.
19. Green Paper, op. cit., note 7, p. 58.
20. British Columbia, op. cit., note 12, p. 23.
21. Technically, there are seven, but one is in receivership (Columbia Trust), two are not yet in operation (All Nations Trust and Western Canada Depository Trust) and one is a non-operational shell (Western Pacific Trust). That leaves Yorkshire Trust, Aetna Trust and Seaboard Trust.
22. R.S.C. 1970, c. I-15.
23. R.S.C. 1970, c. I-16.
24. R.S.B.C. 1979, c. 200.
25. The data in this paragraph was obtained from British Columbia, Seventy-Third Annual Report of the Superintendent of Insurance 1984 (Business Transacted in 1983), Queen's Printer, Victoria, 1986 and interviews with Ministry of Consumer and Corporate Affairs staff. More recent data (which has been accurately and meaningfully compiled) was publicly unavailable in 1986 although the 1985 Annual Report of the Ministry of Consumer and Corporate Affairs states that on March 31, 1985 there were 134 life companies and 218 other-than-life companies licensed in British Columbia, ten of those being incorporated in the Province. This is a significant decline in just under two years from a total of 381 to a total of 352.
26. R.S.B.C. 1960, c. 262.
27. R.S.B.C. 1979, c. 390.
28. William D. Moull, Edward J. Waitzer and Jacob S. Ziegel, "The Changing Regulatory Environment for Canadian Financial Institutions - Constitutional Aspects and Federal-Provincial Relations", in Ontario Economic Council et al., op. cit., note 1, p. 39, citing Neufeld, op. cit., note 2, p. 233.
29. See Chapter II.
30. Op. cit., note 28, p. 21.
31. Royal assent was given to a new Securities Act more in line with recent Ontario legislation on December 2, 1985 as S.B.C. 1985, c. 83. The new Act took effect on February 1, 1987.
32. Canada, Consumer and Corporate Affairs Canada, Proposals for a Securities Market Law for Canada, Vol.3: Background Papers, P. Anisman (ed.), Minister of Supply and Services Canada, Ottawa, 1979.

33. Op. cit., note 28, p. 21.
34. R.S.C. 1970, c. C-29.
35. British Columbia, op. cit., note 12, p. 23.
36. R.S.B.C. 1979, c. 79.
37. R.S.C. 1970, c. C-3, enacted in 1967.
38. In the Banks and Banking Law Revision Act, 1980, S.C. 1980, c. 40.
39. My primary source on this subject was E.P. Neufeld, op. cit., note 2.
40. S.C. 1971, c. 33. This Act is designed to deal with "investment companies" which do not fall under the other federal statutes mentioned in this chapter (eg., the Bank Act, the Loan Companies Act and the Trust Companies Act and the insurance statutes).
41. R.S.B.C. 1979, c. 283.
42. R.S.B.C. 1979, c. 207.
43. R.S.B.C. 1979, c. 381.
44. R.S.B.C. 1907, c. 62.
45. S.Q. 1984, c. 22.
46. Op. cit., note 28, p. 40.

CHAPTER IV

THE GREEN PAPER AND ITS PREDECESSORS

This Chapter contains a review of the 1985 federal Green Paper¹ and its significant predecessors, namely, the Porter Commission Report of 1964, the Parizeau Report of 1969, the Economic Council of Canada Report of 1976 and the Canadian White Paper on Trust and Loan Companies of 1982. Chapter V looks at some important studies which followed the Green Paper in 1985 and 1986. As these reports demonstrate, the goals and general orientation of the authors very much affected their final recommendations. When concerns about solvency were predominant, the recommendations tended to lean toward stricter and more detailed controls and a limited expansion of powers (reregulation). Writers who emphasized the goals of enhancing competition and efficiency recommended a broader expansion of powers and fewer regulatory restrictions (deregulation). Those who felt that the federal government should take over a greater measure of regulatory control from the provinces implicitly or explicitly adopted the requisite interpretation of the division of powers in the Constitution and tailored their recommendations accordingly.

The Porter Commission was deregulatory in its approach and supported greater federal regulatory powers. The Parizeau Report was also deregulatory, but wanted the Quebec provincial government to involve itself more in the regulation of its financial institutions to help it achieve broader economic goals. The Economic Council of Canada was deregulatory, but was more respectful than the Porter Commission of the provincial jurisdiction. The Canadian White Paper tended to be

reregulatory in emphasis and, while it did not go as far as the Porter Commission Report in asserting perceived federal powers, it did set the stage for the federal government to assume greater control. Despite initial appearances and some rhetoric to the contrary, the Green Paper was also reregulatory and oriented toward an augmentation of federal powers.

The Porter Commission

In the early 1960's, the Porter Royal Commission on Banking and Finance² conducted an extensive examination of financial institutions and regulation in Canada which resulted in the most complex and lengthy (572 pages) of the reports which preceded the 1985 Green Paper. This 1964 study was the first significant inquiry into the Canadian financial system since the report of the Macmillan Commission in 1933.³ The Porter Commission noted the huge growth in the size of the Canadian economy and the assets of financial institutions since the Depression of the 1930's,⁴ and commented that the wider variety of Canadian economic activity had increased the need for diversified financial services and new methods of financing.⁵ In setting the scene for its recommendations, the Commission cautioned that, while appropriate regulatory policies might overcome some of the economic obstacles facing Canadians, it would be no "panacea".⁶ The Commission was very aware of the importance of the financial sector to the economy and wrote that:

the financial institutions and markets play a vital role in the economic process; ... they ... have a significant influence over the allocation of resources and the efficiency with which they are used ... and contribute to the achievement of an appropriate level and pattern of economic activity. However, they cannot by themselves assure us of growing markets and production, satisfactory employment and increasing efficiency ... If as a

nation our costs are too high, or we lack initiative, are short of trained personnel, or are unwilling to save enough to ensure our economic progress, a sound banking system and a highly developed network of other financial intermediaries will not solve our difficulties.⁷

That having been said, the Commission left no doubt of its opinion that a competitive and efficient financial sector is essential to an efficient, modern economy.⁸ Imperfections in the financial system, wrote the Commission, would deter productive activity, reduce employment, increase the costs and risks of saving and lending, and "absorb real resources which could be more profitably used elsewhere in the economy".

In general, the more varied, skilled and creative are the institutions, the more likely are they to meet the needs of final borrowers and lenders, to encourage saving and investment, and to stimulate the real progress of the economy.⁹

In its statement of its "underlying philosophy", the Commission expressed the view that regulatory interference should be kept to a minimum and that regulatory gaps were best closed by expanding existing controls rather than creating new private or governmental institutions or making changes on a "wholesale scale".¹⁰ The emphasis of the Report was on the competitiveness and efficiency of financial institutions, rather than solvency and consumer protection, perhaps in part reflecting the fact that institutional failure had not been a major problem in Canada since the 1920's.

The Commission was particularly concerned about inadequate levels of supervision and enforcement. In its discussion of credit unions and caisses populaires, the Commission found that Quebec had the most modern and efficient inspection services, stating that:

The calibre of the personnel has ensured a high standard of

supervision by people thoroughly familiar with the business ... In other provinces ..., the supervisory staff is not always equal to the task expected of it.¹¹

Although, in principle, the Commission felt that credit unions and caisses populaires should continue to be provincially regulated due to their "local character and adaptability to differing circumstances across the country", this view was "conditional on the provincial authorities accepting full responsibility for supervision".

In our view, it is essential that provincial staffs be adequate for the job and that when a province chooses to delegate part of the work to leagues or centrals its ultimate responsibility for inspection of local societies remain clear.¹²

The same concern was raised by the Commission in its examination of the securities industry in Canada.

Our studies of the securities administrations across Canada revealed that they are inadequately staffed both in quantity and quality.¹³

This concern, combined with what the Commission felt was the very serious problem caused by a lack of regulatory and policy harmony among the provinces, resulted in the recommendation that a national agency be established under federal legislation to handle registration of issues distributed interprovincially or internationally and to encourage uniform legislation and policy treatment in the provinces.

Consistent with its emphasis on competition and efficiency, the Commission felt that banking legislation should include three basic safeguards:

adequate disclosure, competent supervision, and legal powers giving the authorities the right to force the correction of unsound or careless practices and to prosecute those engaged in fraudulent or criminal activities.¹⁴

The Commission identified two approaches to banking legislation, one

which defines the markets in which an institution can operate and one which "permits each institution to do the sort of financial business it finds most profitable [and] does not stand in the way of the system's competitive evolution".¹⁵ As the choice of words suggests, the Commission favoured the second approach which it felt encouraged competition and efficiency. The Commission noted that:

the Bank Act - the most effective of our regulatory laws - is relatively free of such restrictions [including restrictions on assets and liabilities] ... We are ... convinced that excessive use of asset ratios and investment rules adds little to the protection of the public and can have serious effects on the adaptability and competitiveness of the financial system ... [This] wider approach does not mean that the public is less well-protected. It does mean that much depends on the sound judgment of management and the government supervisors, particularly in meeting new developments in financial markets, but if properly conceived and administered it can provide sounder and more effective safeguards than a more detailed and less flexible framework.¹⁶

The Commission went on to recommend that chartered bank legislation be extended to all institutions doing banking business, whether federally or provincially incorporated or regulated. Banking was defined to include "demand liabilities, transferable and short-term deposits, and other short-term banking claims (subject to limited exceptions ...)".¹⁷

The Commission did not find the distinction between commercial and consumer lending to be relevant to its definition of 'banking'.

Again, (prophetically, as it happened) the Commission stressed the need for adequate supervision.

The essential feature of banking regulation must be good and thorough supervision and inspection such as that which now takes place within the framework of the Bank Act and contributes so much to the soundness of our chartered and savings banks. We have found considerable variety in the quality of supervision of other institutions across the country, and think it essential to act before there is a repetition of the unfortunate experiences of many chartered banks prior to the establishment of good supervision in the 1920's.¹⁸

The Commission stated that the primary role of the regulator should not be to impose detailed rules, but to encourage adequate internal or self-regulation and audit procedures.¹⁹

Several of the Commission's recommendations were implemented in the years following the publication of the Report. The banks, for example, were allowed to issue conventional mortgages and the 6% interest rate ceiling on bank loans was removed. Among the recommendations which were not implemented were those which would have imposed greater federal controls over provincially regulated institutions (such as the federal securities agency and more broadly applicable banking legislation).²⁰

Parizeau Report

In 1966, the Quebec government appointed the Committee on Financial Institutions to study the operations of non-bank financial institutions under provincial jurisdiction. Its mandate was to make recommendations respecting measures which should be taken to govern the activities of financial institutions to protect the public interest and promote the province's economic and industrial expansion.²¹ The Committee was chaired by Jacques Parizeau, an economist who had prepared a study for the Porter Commission on debt management and who later became the Minister of Finance in the Parti Quebecois government elected in 1976. The Committee's report (the Parizeau Report) was published in 1969.

The study was undertaken as a result of several institutional failures or near-failures and the perception that existing financial sector legislation no longer met provincial needs since institutional expansion "in multiple lines of endeavour" was inhibited by regulatory controls while at the same time new categories of institution and

products (eg., mutual funds and sales finance companies) were unregulated.²² Expressing a philosophy similar to that of the Porter Commission, the Committee wrote:

To keep pace with these developments, public control of the conduct of economic and financial affairs should have become progressively more immediate, continuous and direct, yet at the same time more flexible and constructive, more pliable, readier to adapt to changing conditions and practices, and if necessary, even to promote changes.²³

The Committee identified three ways in which the regulatory authorities in general had reacted to changes in the financial system:

1. a "hands off" approach pursuant to which new types of financial institution went unregulated except by the terms of their incorporating instrument and the legislation applicable to their incorporation;²⁴
2. old rules and practices are extended to new types of institution and product (eg., regulations applicable to portfolio investments by trust companies have been extended to funds obtained by trust companies through the issue of deposit certificates); and
3. relaxation of the rules allowing an institution to broaden its functions (eg., the gradual relaxation of restrictions in the Bank Act).²⁵

This unsatisfactory regulatory "state of affairs" said the Committee:

has the twin disadvantage of not always affording savers sufficient protection, while at the same time erecting artificial barriers to the development of certain institutions [and] ... is certainly not unrelated to the financial difficulties experienced by some companies.²⁶

The Parizeau Committee accepted the position of the Porter Commission that legislative standards should be based solely on the goals of consumer protection and financial system efficiency and that, apart from these controls, institutions should be permitted to expand their financial activities in the manner felt most appropriate by the institution. While the Committee stated that it did not "necessarily share the Commission's views on how control should be carried out", the

Committee made no specific mention of its response (if any) to the Commission's proposal that all 'banking' activities be regulated under federal banking legislation.²⁷

As the statement of its philosophy suggests, the Parizeau Committee went further than the Porter Commission by suggesting that legislative controls be used to promote change in the conduct of economic and financial affairs both inside and outside the financial sector. This is the shift from "promotion" to "planning" described by Schultz and Alexandroff²⁸ whose hypotheses are summarized in Chapter I of this thesis. The Parti Quebecois adopted and implemented this philosophy following the election of 1976 with the goal of strengthening both the financial sector and the economy of Quebec. The Quebecois government has achieved a significant measure of success with such instruments as la Caisse de depot et placement du Quebec (created in 1965)²⁹ and the equity investment plan of the Parti Quebecois government designed to promote the purchase of equity in Quebec corporations.

The Parizeau Committee also echoed the Porter Commission's concern about the levels and quality of financial institution supervision. Like the Commission, the Parizeau Committee felt that financial sector controls could only be effective if the necessary staff and supervisory powers were also in place. In addition, the Committee viewed effective supervision as being essential to the maintenance of provincial jurisdiction over financial institutions (except banks) and wrote:

Supervision and inspection of financial institutions is an obligation which no government can avoid if it wants to protect the public and preserve the meaning of its constitutional rights. Although it is difficult to generalize, provincial authorities - in Quebec and elsewhere - do not seem to have provided themselves with all the necessary supervisory powers or always to have used them

diligently once acquired ... [Because] of the difficulties which have beset several financial institutions since Atlantic Acceptance Corporation came to grief in June 1965, as well as the growing evidence of federal government interest in such matters, the provinces have no choice except to exercise their authority in this field or abdicate it.³⁰

The Committee had already advised the Quebec government to create a central inspection service for all non-bank financial institutions in a preliminary report and the government accepted this advice by establishing the Financial Institutions, Companies and Cooperatives Department in 1968.³¹

In a chapter concerning federal-provincial relations, the Parizeau Committee concluded that the Quebec government had the constitutional power to regulate the business of all non-bank financial institutions, whether federally or provincially incorporated, even if provincial statutes or regulations conflicted with federal laws as long as:

1. Quebec requirements applied to all institutions regardless of their jurisdiction of incorporation; and
2. regulations applied to business activities and not corporate powers.³²

The Committee also concluded that there would be no significant federal-provincial problems if Quebec were to enact more liberal legislation since interprovincial companies would be obliged to structure their activities in accordance with other stricter requirements in order to maintain their operations outside Quebec in any event. If companies not incorporated under Quebec law wished to take advantage of more liberal legislation in Quebec, then they could do so by incorporating subsidiaries in Quebec. The Parizeau Report was overly optimistic in its predictions about federal-provincial problems and there has been some conflict, particularly between Ontario and Quebec. This conflict

is briefly discussed in the next Chapters.

Economic Council of Canada

As the title of this report, "Efficiency and Regulation", suggests, the Economic Council of Canada was, like the Porter Commission and the Parizeau Committee, more concerned with efficiency and competition than consumer protection and solvency.³³ The Report limited its examination to deposit institutions such as banks, trust companies and credit unions. Noting that financial markets and the financial environment had changed significantly since the Porter Commission Report was published twelve years earlier, the Economic Council felt that "the task of reappraising the financial system and its operations has become imperative" in 1976.³⁴ It was the objective of the Council "to suggest ways to increase efficiency through competition and a more flexible regulatory framework".³⁵

The Council articulated the differences between what it called the 'institutional' and 'functional' approaches to regulation and affirmed its support for the 'functional' approach as had the Porter Commission and Parizeau Committee.³⁶ In addition, however, the Council acknowledged more clearly than the Porter Commission and the Parizeau Committee that other regulatory objectives were also important. These other objectives included depositor protection and monetary control (both of "which can be viewed as inherent to efficiency") and the need to avoid undue concentration of economic power and conflicts of interest and to encourage Canadian ownership. The latter three objectives, wrote the Council, "may have to be traded for efficiency in any policy choice".³⁷ Many of the "planning" goals, such as monetary control and

Canadian ownership, were not advocated in the Parizeau Report which was more concerned with stimulating the provincial economy.

In the Council's opinion, the objectives of depositor protection, monetary policy and the separation of financial and non-financial activities were once primary, but since the 1967 revision of the Bank Act, the objectives of greater competition and efficiency and Canadian ownership had assumed greater importance.³⁹ Although the system had been working "reasonably well", the institutional approach was said to be restricting the ability of institutions to diversify and reduce risk and limiting their ability to satisfy consumer demands.³⁹ It was the "overriding philosophy" of the Report that "constraints on the activities of deposit institutions should be removed when they cannot be justified on economic grounds".⁴⁰

Deposit institutions were defined by the Council to "include all financial institutions offering liabilities of fixed money value that can be cashed on demand or on short notice, or that can be transferred to other parties by payment order". The Council did not define this function as 'banking' and did not propose that the regulation of this function be limited to the federal authorities.⁴¹ While the Council recognized that an argument for federal jurisdiction existed, it did not support the alternative of federal control since it anticipated opposition from the provinces and a period of prolonged uncertainty which would be a major obstacle to productive regulatory reform. Since the Council viewed the extension of federal control as unnecessary in terms of efficiency, it supported a higher degree of federal-provincial cooperation and coordination as the means to achieve uniformity of

regulation applicable to deposit institutions.⁴² Apart from its concern about federal-provincial jurisdictional conflict, the Council was less inclined to recommend federal control of deposit institutions due to the implementation of the federal deposit insurance scheme which gave the central authority "sufficient control over financial institutions operating under provincial jurisdiction".⁴³

There were other differences between the proposals of the Council and those of the Porter Commission. For example, the Council was uncomfortable about allowing banks to assume trust powers (as proposed by the Commission) due to the conflicts of interest which might occur. The Council also felt that foreign financial subsidiaries could be freely admitted as long as ownership rules limiting shareholdings in large deposit institutions continued to apply to safeguard the Canadian market from domination by large foreign banks.⁴⁴

Canadian White Paper on Trust and Loan Companies

The proposed revision of the federal trust and loan companies statutes published in 1982 by the Department of Insurance⁴⁵ was to be a consolidation of those two statutes to be cited as the "Canada Savings Banks and Trust Companies Act". As the Porter Commission had recommended, the new Act was "to establish a uniform pattern of regulation of savings deposit activities for these companies that would be substantially the same as that applying to banks".⁴⁶ The proposed Act did not go as far as the Porter Commission had suggested by explicitly assuming control of the deposit-taking functions of provincially incorporated institutions.

In the Department's view, legislative review and revision in this

area was "indicated" for four reasons:

1. to establish reasonable consistency in the governing legislation applicable to financial institutions, particularly where they engage in similar activities, as a basis for fair and equitable competition;
2. to review and modify corporate powers and general regulatory requirements for financial institutions to enable them to respond to changing needs and desires of the public while still retaining adequate standards of financial strength;
3. to review the provisions relating to financial standards in order to maintain an appropriate degree of protection for the public;
4. to review the provisions that deal with internal corporate governance to recognize modern approaches to corporate law.⁴⁷

The federal trust and loan company statutes originated in 1913.

Although both statutes had been amended many times, neither had been generally reviewed and revised. Two proposed changes of particular significance in this draft statute were a restriction on share ownership of 10% to parallel the legislation applicable to banks (although special considerations would apply to new and small companies)⁴⁸ and a limited power to engage in commercial lending (limited so that these types of institution could still be distinguished from banks).⁴⁹ The primary function said to distinguish banks from other financial institutions now seemed to have changed from short-term deposit-taking to commercial lending. The reason for this shift may be related to the case law which did not support the view that short-term deposits were an exclusive banking function.⁵⁰

The Department of Insurance felt that these companies (except trust companies which conduct no financial intermediation business) should be called savings banks since they "conduct themselves in essentially the same way as a savings bank that is subject to the present savings bank legislation".⁵¹ The implications of such a change for provincial

jurisdiction over these companies was not discussed. In my view, the use of the phrase "savings bank" reflected an attitude that all deposit-taking functions should be under federal jurisdiction since "savings banks" are an exclusive head of power under the Constitution. The Department of Insurance may well have contemplated using that nomenclature as a future legal argument if and when the federal government attempted to assume greater regulatory powers. If federal trust companies were "savings banks", then presumably provincial trust companies would be too.

Purpose of the Green Paper

In April 1985, the Department of Finance Canada published The Regulation of Canadian Financial Institutions: Proposals for Discussion (known as the "Green Paper").⁵² Apparently, responsibility for regulatory reform proposals had shifted from the Department of Insurance to the Department of Finance since the publication of the 1982 Canadian White Paper.⁵³ This shift was one sign that the federal Cabinet was now giving some priority to regulatory reform. The Preface to the Green Paper stated that Canadian financial institutions had entered a period of rapid change during which "traditional roles are being broken down by a variety of new developments".⁵⁴ While Canada's financial institutions had "served the market well", "earned the confidence of Canadians" and "maintained an exemplary reputation abroad", new developments, coupled with the recent failure of several trust, mortgage loan and insurance companies, necessitated a review of the regulation of financial institutions in general, and the policies concerning the solvency of institutions in particular. The Department pointed out that financial

institutions such as trust, mortgage loan and insurance companies had been pressing with increased urgency for modifications to their respective governing legislation and regulations which had not been revised in many decades. As the Department wrote:

It is generally recognized that the existing legislation was not framed with the emerging structure of the financial sector in mind and that, as a consequence, there is a need for a fundamental review of how public policy is implemented for this sector ...⁵⁵

Growing pressures on the federal government due to financial institution failures⁵⁴ and increasing concern about the concentration of power in the financial sector and control of financial institutions by non-financial enterprises,⁵⁷ and from the financial institutions themselves again stimulated the federal government to act. Through the Department of Finance, it set up a committee of persons from inside and outside government to advise it about regulatory reform in the financial sector as a whole, rather than continuing to deal with problems on a "pillar" by "pillar" basis. These consultations resulted in the publication of the Green Paper.

It seems reasonable to speculate (although I have no concrete evidence of this) that increasing regulatory reform activities in Quebec and Ontario also stimulated the federal government to act. The government must have been well aware that the jurisdiction first off the mark with concrete proposals for discussion would effectively set (or at least strongly influence) the agenda for reform. As the Department of Finance pointed out in the Green Paper, the federal government played a major role in financial institution regulation and:

the public are naturally looking to the federal government to play an important role in regulatory reform. As explained in the November 8, 1984 document A New Direction for Canada: An Agenda for

Economic Renewal,⁵⁰ the government intends to work with the provinces, the public and the financial community to ensure that legislation responds to the rapid changes taking place in the financial system ...⁵⁹

Pressures for Regulatory Change

The Green Paper summarized the developments which led to renewed pressures for legislative and administrative change. It stated that various factors had combined to change the Canadian financial system including:

inflation and interest rate volatility, shifting credit markets, legislative changes, and technological changes. The trend toward internationalization of financial services, the emergence of financial conglomerates, and the growing concentration of ownership have also been important. In addition, some of the impetus for change has come as a result of the efforts by some financial institutions to diversify into new fields ...⁶⁰

Increased levels and the volatility of inflation in the 1970's and early 1980's was reflected in increased levels and the volatility of interest rates. This in turn influenced borrowers and lenders to reduce their long-term commitments and seek new sources of short-term funds. Life insurers, for example, developed short-term deferred annuities which are close substitutes for deposits.⁶¹ Technological change reduced the cost of handling information and better equipped financial institutions to prepare financial services packages for their clients. According to the Green Paper:

This has naturally had the effect of encouraging financial institutions to diversify into different lines of business in order to provide their customers with as broad a package of services as possible.⁶²

Legislative changes (such as the amendment to the Bank Act to allow residential mortgage lending) altered some institutions' powers or affected their operating efficiency and also affected the relative

competitiveness of other institutions which (as distinctly regulated "pillars") operated under different regulatory constraints. These institutions in turn put pressure on governments to broaden their institutional powers and reduce operating constraints or to impose a "level playing field" by placing the same constraints on other similar types of institution. To the degree that this occurred, the distinction between types of financial institution became increasingly blurred.⁴³ The Green Paper made three observations about the role of legislative change in the evolution of the financial system:

First, as noted, regulatory change can foster competition that leads eventually to pressure for further regulatory change. Second, the sequence of regulatory change may be important ... Finally, ... if regulatory practice is slow to change, financial innovation can achieve more or less similar results for financial institutions.⁴⁴

Legislative changes in other countries also had an impact on the proposals contained in the Green Paper, both as model or example and for competitive reasons. Generally, the trend outside Canada has been toward diversification. The traditional institutional barriers are breaking down at the same time in Canada and elsewhere and the financial sector is becoming increasingly international in scope. As the Green Paper stated:

Canadian banks ... have substantially increased the foreign currency component of their total business during the past decade. Canadian life insurance firms are also active abroad and foreign contracts account for over one-quarter of their business. The investment houses, which are largely Canadian owned, also operate branches abroad. In short, foreign operations are important to many Canadian financial institutions. At the same time, foreign financial institutions, including banks, investment dealers and life insurers, are active in Canada.⁴⁵

These developments have led to pressures not only for a broadening of functions for competitive reasons, but also for a lessening of ownership

restrictions. Foreign-owned institutions seek "the removal of constraints that keep them at a disadvantage in Canadian financial markets".⁶⁴ The push for reciprocity is hard to ignore in a country which has expressed a general commitment to "free trade" (both federally and in British Columbia) and which has invited more foreign investment.

Legislation now restricts individual ownership of some types of institution as well as foreign or non-resident ownership. No one person or group of associated persons may hold more than 10% of the shares of a Schedule A bank.⁶⁷ Subsidiaries of foreign banks may be "closely held" (i.e., one person may hold up to 100% of the issued shares) but their corporate asset growth in Canada is limited.⁶⁸ Federal legislation does not restrict resident ownership of trust, loan or life insurance companies and they may be closely held. No major trust companies are now widely held. Federal legislation and some provincial legislation limits non-resident ownership, however, and ministerial approval of significant transfers of shares in federally incorporated financial institutions must be obtained.⁶⁹ Legislation governing non-resident ownership and share transfers is not uniform in Canada. Lack of uniformity of legislative restrictions raises issues of competitive advantage or disadvantage and the lack of restrictions in some legislation raises concerns about the potential for abuse through self-dealing or non-arm's-length transactions between the institution and a controlling shareholder.⁷⁰

Finally, the Green Paper summarized the "views of the main financial groups on regulatory change"⁷¹ and the "policy responses from governments".⁷² The Green Paper stated that almost everyone agreed that

changes are needed, "[but] there is no consensus on the extent or the direction of change that is desirable".⁷³ The "inputs" described are those which the federal government presumably found to be the most relevant in formulating its own proposals. The Green Paper has (fairly, in my view) described the presentations of the major institutional groups as:

characterized, in part, by the desire to expand into non-traditional areas while at the same time protecting their own traditional markets against further incursions by others.⁷⁴

The chartered banks have not so much asked for new powers as they have asked for "a matching allocation of added powers". They have asked for what has been described as a "level playing field" on which "institutions providing the same or similar financial services [would] be similarly regulated".⁷⁵ The banks have not argued for a change from the status quo regarding separation of function, but they have argued for the application of a 10% ownership restriction (and other restrictions) to all deposit-taking institutions, rather than asking that bank restrictions be removed to equal those applicable to trust companies, for example.

Most trust and mortgage loan companies want a general updating of their legislation and wider business lending and other powers. They wish to retain existing institutional groups (separation of function) but are against ownership restrictions, maintaining that policy concerns regarding closely held companies should be dealt with in other ways (eg., restrictions on self-dealing).⁷⁶ Life insurers are also against ownership restrictions and would like limited powers to directly own other types of financial institution, particularly trust companies.

They would also like limited trustee powers to administer certain types of funds. Most importantly, as the Green Paper described, they are (like the trust companies) seeking more flexible investment rules:

They propose that the current rigid 'quality' tests on investments be replaced by a 'prudent management' concept, supplemented by quantitative restrictions on certain types of investment. This proposal would mean that, as long as life insurers kept within specified constraints on each class of investments (equities, real estate, mortgages, etc.) as a proportion of total assets, they would be free to make investments as they saw fit.⁷⁷

Investment dealers want to be able to make more 'networking' arrangements with other types of financial institution and argue that financial intermediaries should remain functionally distinct from market intermediaries. Investment dealers also want to expand their powers to do what foreign securities firms can do, namely, to assist Canadian companies to sell their securities in foreign markets and to sell foreign securities to Canadian institutional investors. Securities firms are nervous about bank involvement in market intermediation or securities dealing, and are accordingly not pushing to get involved in financial intermediation. As the Green Paper stated:

They are particularly concerned over the prospect of banks and other financial institutions engaging in securities underwriting and private placements of securities in the unregulated 'exempt market' (placements in the exempt market are to large institutions that are recognized by the securities commissions as 'exempt purchasers'; the securities commissions do not require prospectuses to be filed for securities issued in this market). They want all firms engaged in securities dealings to be required to register with securities administrators and to comply with capital adequacy tests and ownership restrictions.

...

All investment dealers agree that ownership restrictions on the extent of foreign involvement in the Canadian securities industry are necessary to preserve Canadian control over Canadian capital markets, although there are differences of view on how low the ceiling on foreign participation should be...⁷⁸

The Green Paper pointed out that the desire for Canadian control

conflicts to some degree with the desire for further injections of capital into the industry which is seen to be necessary to make Canadian firms more competitive internationally.

The views of the insurance agents or brokers (as opposed to the insurers) were not presented in the Green Paper. Like the securities dealers, they are very concerned about the incursion of banks and other deposit-taking institutions into the insurance brokerage business. They are worried about the loss of independence of insurance brokers which might occur with the involvement of large conglomerates and the temptation to direct business to affiliated insurance companies. They are also worried about the tremendous competitive edge that banks and other financial institutions will have with their ready made clientele, large capital base, numerous retail outlets, et cetera. The solvency of insurers is also an issue which may be partially or wholly resolved when proposed compensation funds are put into place. I will not deal here with the submissions or positions of financial co-operatives (including credit unions) and pension funds.

The Green Paper dealt with recent policy developments only at the federal level and in Ontario and Quebec. This reflected the fact that little of significance had happened in the area of financial sector regulation in any other provincial jurisdiction to the date of the publication of the Green Paper in April 1985.⁷⁹ The 1980 Bank Act revision was the last time that the federal government made major legislative changes affecting the financial sector. The Green Paper referred to other initiatives such as the 1983 Ontario White Paper on trust and loan legislation (discussed in Chapter V) and the 1982 Ontario

Securities Commission (OSC) report on the ownership and diversification of securities firms which recommended that securities firms not be allowed to provide financial services other than brokerage and underwriting either directly or through associated companies and that other financial institutions not be allowed to have equity interests in securities dealers. Without further discussion, the Green Paper mentioned the report on the recent OSC hearings on foreign ownership of securities dealers in Ontario issued earlier in 1985 and the Ontario Task Force on Financial Institutions interim report published in December 1984. The Green Paper recognized the fundamentally different approach to financial sector regulation taken by the Quebec government in line with the basic philosophy of the 1969 Parizeau Report, favouring the diversification of financial institutions into non-traditional areas either directly or via wholly-owned subsidiaries and recommending regulation by function rather than by type of institution.⁸⁰

Cleavages Illustrated by the Green Paper

This overview highlights one of the two main cleavages of opinion regarding financial institution regulation. This cleavage lies between those who support regulation by institution and separation of function by institution and those who support regulation by function and the gradual blurring of distinctions among financial institutions which regulation by function implies. The first approach is taken by Ontario and the federal government, the second by Quebec. The two approaches are not mutually exclusive and are best represented as two opposite ends of a continuum. No one would argue that either extreme was appropriate. The status quo or regulation by institution and restriction to a core

function ("four pillars") is now clearly inadequate in light of national and international financial sector developments. The extreme of regulation by function is also inappropriate for several reasons including the fact that solvency must (practically speaking) be regulated by institution. In addition, a large shift of orientation to regulation by function would be disruptive and expensive for the industry and for government and would probably also cause significant federal-provincial conflict since functional jurisdiction is now often shared between jurisdictions and one or other jurisdiction would have to relinquish some power.

To some degree, the approaches of Ontario and Quebec also illustrate another (and related) cleavage, namely, whether to reregulate (or stiffen regulatory controls) to enhance the solvency of institutions (and consumer protection) or deregulate (or lessen regulatory controls) to enhance competition. The issues raised by the often conflicting objectives of solvency and competitiveness were discussed in the Interim Report of the Ontario Task Force on Financial Institutions (published in December 1984) and the 1969 Quebec Report of the Study Committee on Financial Institutions (the Parizeau Report) which were available to the federal government at the time of the writing of the Green Paper. While all regulatory reform proposals described in this thesis contain significant elements of reregulation and deregulation, the Ontario and federal approaches tend to emphasize reregulation and the Quebec approach tends to emphasize deregulation.

Rationale for Regulation

Before turning to its proposals, the Green Paper set forth what it

described as "the rationale for regulation: key policy issues".⁸¹ The Green Paper pointed out that the financial sector is more heavily supervised and regulated than other areas of the economy⁸² and stated that this is justified for two reasons:

First, the financial sector occupies a central place in the economy through its role in allocating credit and as the core of the payments system. Second, financial institutions are in a unique position of trust in handling funds belonging to the general public.⁸³

The primary concerns of regulators in Canada have been the solvency of financial institutions and the maintenance of public confidence in the financial system. These concerns are related since financial institution failure or even rumours of failure may reduce public confidence in the system and cause depositors to withdraw their funds from the system which might, in turn, "result in a breakdown of the financial system in which not only savers and depositors would lose but the entire economy would suffer".⁸⁴ As the Green Paper described, concerns about solvency have increased since 1981 with the failures of four property and casualty insurance companies and eleven trust and mortgage loan companies.⁸⁵

Solvency was a concern of the Department of Finance, "not as an end in itself, but rather as a means to achieve broader goals relating to stability of the financial system and to consumer protection".⁸⁶ Mechanisms of consumer protection in addition to disclosure about financial worth, risk of investment, and so on were said to be necessary since the majority of consumers are not "financially sophisticated" and will not be adequately protected by disclosure alone. Supervised "standards of prudence" and deposit insurance were also said to be

required,⁸⁷ although these forms of protection have their limits and can only act to reduce the impact of institutional insolvency.⁸⁸ The Green Paper raised the issue of whether "the development of links among different types of institutions [has] a bearing on the risk of insolvency" and concluded that:

given the diversity of financial-system structures currently in place around the world, there does not appear to be any clear connection between the stability of a financial system and any particular structure.⁸⁹

Other key policy issues raised by the Green Paper are self-dealing and conflicts of interest, competition and efficiency in financial intermediation, concentration of ownership, and the need for "competitive equity" or the fair regulatory treatment of competing institutional groups (the "level playing field").⁹⁰ Self-dealing (a transaction with an associated company or a non-arm's-length transaction) and conflicts of interest (transactions involving a choice between the interests of the institution and those of the client) were considered to be an important issue because of the high risks which such transactions can create for institutional solvency, client funds and consumer confidence in the financial system. The Green Paper said, however, that not all instances of self-dealing or conflicts of interest are harmful or need to be controlled by legislation. Similarly, controls utilized for one situation may not be appropriate in another. Common situations of self-dealing and conflict of interest and various types of regulatory controls are described in the Green Paper⁹¹ and need not be repeated here. I note, however, that the Green Paper recognized that ownership restrictions and a separation of functions between or among different types of institution also act to minimize abuses

involving self-dealing and conflicts of interest. Therefore, the trend toward a "blurring" of functions and increasing concentration of ownership makes the issues of conflict of interest and self-dealing even more important.⁹²

One reference to the 1964 Porter Royal Commission on Banking and Finance⁹³ is found in the Green Paper in its discussion regarding competition and concentration. There is otherwise no attempt to link the description of financial sector developments and recommendations contained in the 1964 Porter Commission Report (or any other relevant reports) to the 1985 Green Paper. The Green Paper dealt with the more than 500-page Porter Commission Report as follows:

The goal of promoting competition in the financial system gained prominence in public policy thinking following the publication in 1964 of the report of the Porter Royal Commission on Banking and Finance.

Influenced by the report, most policy initiatives since then have had, at least in part, the goal of promoting competition as a way of encouraging greater efficiency in the financial system and greater choice for savers, investors and consumers of financial services.⁹⁴

Regulatory mechanisms designed to promote competition include restrictions on mergers,⁹⁵ the broadening of functions,⁹⁶ ownership restrictions (to limit concentration and conflicts of interest) and the easing of barriers to entry into the system by domestic and foreign corporations.⁹⁷ Concentration and its effect on competition is now a major concern although, despite the economic theory that increased concentration should foster non-competitive behaviour and operating inefficiencies, there is little evidence of this result in the Canadian financial sector.⁹⁸ There is some evidence that larger financial institutions are better able to compete in the international market and

that large, diversified institutions may better withstand declines in business activity. The growing diversification of functions within the different institutions also encourages competition. However, the growth of firms by merger or otherwise does raise concerns about the impact on the system of one major failure.⁹⁹ The Green Paper concluded, nevertheless, that:

When ... the number of different institutional groups serving particular markets is taken into account, there appears to be little cause for concern about concentration in the financial sector.¹⁰⁰

Federal-Provincial Relations

The Green Paper dealt very briefly with the issue of federal-provincial harmonization.¹⁰¹ The broad view was expressed that co-operation and co-ordination among the various jurisdictions is important and that "differences in regulatory philosophy ... could lead to difficulties".¹⁰² According to the Green Paper, there are only "two practical approaches to resolving the problems of overlapping responsibilities and potentially conflicting policy approaches", namely, renegotiation of the constitutional division of powers regarding financial institutions or a harmonization of "approaches to regulatory change". The Department of Finance stated that it preferred the second alternative.¹⁰³

Principles of Regulation

The Green Paper set out certain principles or goals of financial institution regulation which it stated were settled and not open to discussion. They included:

1. improved consumer protection,

2. strict controls on self-dealing and guards against abuses of conflicts of interest,
3. promotion of competition, innovation and efficiency,
4. enhancement of options available to the consumer,
5. broadening the sources of credit,
6. ensuring the soundness of institutions and the stability of the financial system,
7. promoting international competitiveness and domestic economic growth, and
8. promoting the harmonization of federal and provincial regulatory policies.¹⁰⁴

Looking back to Neufeld's description of the four broad and interrelated reasons for government regulation of the financial sector (a wider category than that of financial institutions),¹⁰⁵ one can see the same goal of consumer protection in principles 1 and 2 and of economic stability in principle 6. There is less emphasis in the Green Paper on broader monetary and fiscal goals, in part because the goals of the Green Paper are limited to financial institution rather than financial sector regulation, and in part because the Green Paper does not directly relate financial institution regulation to broader fiscal and monetary controls. The goal (described by Neufeld) of the removal or neutralization of market rigidities is seen in the Green Paper principles 3, 4 and 5, although the market rigidities to be removed now seem to be caused by regulation itself rather than by "market" rigidities.

The Green Paper principles disclose a strong concern for consumer protection. What is new is the goal of enhancing competition between and among different types of institution as well as the belief that regulation can promote international competitiveness and domestic economic growth. If Schultz and Alexandroff's thesis is correct, then these "promotional" or "planning" goals (also seen in the Parizeau

Report) are likely to give rise to increasing conflict among jurisdictions and interest groups as governments attempt to achieve those goals.¹⁰⁶ The Green Paper has recognized in principle 8 that a lack of harmony in regulation will impede the other goals. There is no indication that the authors of the Green Paper saw any potential problems in the expansion of the goals themselves.

In the federal government's view, regulation should enhance solvency, innovation and efficiency while also protecting the public. At the same time, because the financial system is changing so rapidly, "regulatory policy should avoid as much as possible the imposition of a preconceived structure on the financial system".¹⁰⁷

Proposals for Discussion

The Green Paper outlined certain proposals which it stated would best achieve those principles in the context of the existing domestic system and federal jurisdictional limits. These proposals were open for discussion. One of the most significant was a proposal designed "to permit a greater degree of flexibility in institutional arrangements", namely, "to allow the combination of bank and non-bank institutions [e.g., trust, insurance and securities companies] under the umbrella of a financial holding company".¹⁰⁸ The Department of Finance had thus adopted an approach which favoured the retention of the traditional (in Canada) method of regulating the institution rather than the function, described as the "four pillars" approach. In other words, for example, the federal government would not allow trust companies to expand their commercial lending powers within the institution. To expand its functions, the trust company would either have to "network"¹⁰⁹ with an

unaffiliated financial institution capable of providing those services, or it would have to set up a financial holding company which could in turn set up a bank subsidiary.

In the opinion of the Department of Finance, the financial holding company arrangement (which it elaborated upon in some detail in a Technical Supplement to the Green Paper)¹¹⁰ would "enhance competition among financial institutions and result in improved services for users and the greater efficiency of financial markets".¹¹¹ The Department's proposal regarding financial holding companies was (not surprisingly) relatively complex. The elements of the policy were summarized in nine points.¹¹² Most importantly, for the purposes of this thesis, a federally incorporated holding company would be required if a federally regulated financial institution was one of a group of two or more financial institutions operating under different legislation (presumably federal or provincial legislation) that shared a common "substantial shareholder". There would be certain limited exceptions to this requirement. The Green Paper stated that: "the main reason for preferring separate entities is to facilitate supervision".¹¹³ The financial holding company would have to remain "inactive" and would be registered or incorporated under separate, new federal legislation. The legislation would apply equally to non-residents, except that non-residents could not own Schedule C, only Schedule B, banks.¹¹⁴

While permission to broaden functions under a financial holding company is to a degree "deregulatory" since it allows a broadening of functions in a sense, the proposals are also "reregulatory" since they contain "new, tougher rules to ensure"¹¹⁵ consumer protection and the

soundness of individual financial institutions and of the financial system as a whole".¹¹⁴ The Green Paper proposed a broader ban on self-dealing (with limited exceptions), stricter conflict of interest controls and enhanced supervisory powers (the offices of the Inspector General of Banks and the Superintendent of Insurance would be consolidated). While the 10% ownership rule would still apply to bank shareholdings, it would not be retroactively imposed on trust and loan companies (although share transfers would be supervised). Investment rules for insurance, trust and loan companies would be simplified.

Commentary

While the purpose of this thesis is not to analyse or comment on the federal government proposals from the point of view of their appropriateness or efficiency or effectiveness, there are three points that I think might reasonably be made about the structure and contents of the Green Paper. First, while the paper usually set forth the issues and alternatives clearly and concisely (which is no mean feat), its presentation of the issues and alternatives in the financial holding company area was so inadequate as to be misleading. There was little discussion of the rationale for requiring the regulation of inactive financial holding companies in the first place or of the rationale of requiring the incorporation of financial holding companies when two or more financial institutions (already regulated) shared common substantial shareholders. Presumably this idea (a new one in Canada) was borrowed from the United States where both the federal and state jurisdictions had been trying to resolve the issue of the regulation of financial holding companies for some time, but there was no discussion

of the history of and reasons for this regulatory concept in the U.S. and other jurisdictions.

Second, the Green Paper contained no footnotes and did not source or further explain many of its conclusions. There was no empirical data whatever to bolster some very broad statements about the efficacy of federal financial holding company legislation.¹¹⁷ This is particularly noteworthy in a situation where some very complex legislation had been proposed which would add a new regulatory layer to the system and which would undoubtedly infringe on provincial jurisdiction (de facto and de jure).

Third, the paper dealt with the federal-provincial division of powers in a very perfunctory and at times misleading way. Statements like: "some of [the] trust activities [of federally incorporated trust companies] are governed by provincial legislation despite their federal charter"¹¹⁸ create the impression that this was thought to be an odd result. The fact that the Constitution Act, 1867 appears to give the provinces overriding authority to regulate trust company activities is not mentioned. Table 1 in the Green Paper entitled "Scope of Regulation" implied that assets held by federally incorporated financial institutions represented the scope of federal regulation when in fact the business of many federally incorporated institutions is at least partially provincially regulated (or could be if the provinces chose to exercise their jurisdiction). While the Department supported the need for regulatory harmony, examples in the Green Paper of successful attempts to harmonize regulatory approaches were all situations involving the provincial adoption of legislation similar to that enacted

federally¹¹⁹ or the provincial election to enter into federal programs.¹²⁰ The Green Paper did not discuss important legislative and regulatory initiatives by the provinces or the occasionally successful attempts at harmonization orchestrated largely by the provinces.¹²¹ Nor did it discuss the possibility that lack of harmonization may also have some benefits such as the achievement of particular provincial objectives and the encouragement of innovation and competition.

The Green Paper also failed to deal in any way with the implications for the provincial regulatory power of the financial holding company concept. As I understand it, federal regulation would reach down to provincially incorporated and regulated subsidiaries, imposing such requirements as the provision of financial statements (as prescribed) and controls on their business activities. The role and duties of directors would be significantly up-graded. Such requirements may be beneficial in themselves, but they clearly have profound implications in the short and long term for the federal-provincial division of powers. In addition, the proposal that trust companies, for example, expand their commercial lending powers only through affiliated banks would have the effect of maintaining or expanding federal control over the commercial lending function. The Green Paper justified this proposal only on the ground that separation of function would "facilitate supervision". The Green Paper contained no discussion of the federal government authority under the Constitution to enact holding company legislation in the form which it described.

All of the above, in my view, makes the proposals regarding financial holding company and other requirements suspect. The omissions

detract significantly from the persuasiveness of the proposals.

The federal government introduced a draft Bill to amend the Loan Companies Act, the Trust Companies Act, the Bank Act and the Quebec Savings Banks Act¹²² on November 29, 1985 (several months after the release of the Green Paper). The Bill would allow the Minister of Finance to prohibit transfers in ownership of those institutions which the Minister felt were not in the public interest. Ministerial approval would be required for share purchases increasing shareholdings of a person and his associates to ten per cent or more of a trust or loan company. The Bill would also allow the Inspector General of Banks and the Superintendent of Insurance to take earlier action in problem situations. These officials could direct an institution under their jurisdiction to refrain from pursuing any course of conduct considered to be an unsafe or unsound business practice.¹²³

This Bill was an interim measure designed to implement changes seen to be immediately necessary. The Bill was reintroduced into the Fall 1986 Session of Parliament and has not yet been enacted. After several false starts, the federal government announced that some reform legislation would be introduced in the Spring Session of 1987, the bulk of the legislation to follow later that year.¹²⁴ A federal White Paper announcing the broad outline of this legislation was tabled in December 1986.¹²⁵ I will discuss this development in Chapter VI.

FOOTNOTES

1. Canada, Department of Finance, The Regulation of Canadian Financial Institutions: Proposals for Discussion (the Green

- Paper), Minister of Supply and Services Canada, Ottawa, April 1985 and Technical Supplement, June 1985.
2. Canada, Report of the Royal Commission on Banking and Finance (Porter Commission), Queen's Printer, Ottawa, 1964.
 3. Canada, Report of the Royal Commission on Banking and Currency in Canada (Macmillan Commission), J.O. Patenaude, King's Printer, Ottawa, 1933.
 4. Porter Commission Report, *op. cit.*, note 2, p. 2.
 5. Ibid.
 6. Ibid., p. 7.
 7. Ibid., p. 92.
 8. Ibid., p. 93.
 9. Ibid.
 10. Ibid., p. 10.
 11. Ibid., p. 168.
 12. Ibid., p. 169.
 13. Ibid., p. 345.
 14. Ibid., p. 357.
 15. Ibid., p. 358.
 16. Ibid.
 17. Ibid., p. 363.
 18. Ibid., p. 380.
 19. Ibid., pp. 380-381.
 20. The need for a federal securities agency lessened after the publication of the Porter Commission Report since several provinces moved relatively quickly to improve their securities legislation and regulatory staffing (perhaps in part due to the threat of federal intervention). Proposals to broaden banking legislation would undoubtedly have been unacceptable to most provinces.
 21. Quebec, Report of the Study Committee on Financial Institutions 1969 (Parizeau Report), Quebec Official Publisher, Quebec, 1969.

22. Ibid., p. 2.
23. Ibid.
24. This approach had been taken by British Columbia to financial institutions incorporated under the Co-operative Association Act, although the only co-operative association with a significant financial services function has recently gone into liquidation.
25. Parizeau Report, op. cit., note 21, p. 2.
26. Ibid., p. 3.
27. Ibid., pp. 3-4.
28. Richard Schultz and Alan Alexandroff, Economic Regulation and the Federal System (Study No. 42, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1985.
29. The Caisse was incorporated by the Quebec government to manage the funds of various public pension and insurance plans. Its mandate is to ensure that the funds under its administration are soundly invested and also to support the economic development of Quebec. It is a major financial institution, administering funds totalling over \$23 billion. (Caisse de depot et placement du Quebec, Twentieth Annual Report 1985, Montreal, 1986.)
30. Parizeau Report, op. cit., note 21, pp. 125-126.
31. Ibid., p. 126.
32. Ibid., p. 208.
33. Economic Council of Canada, Efficiency and Regulation: A Study of Deposit Institutions, Minister of Supply and Services Canada, Ottawa, 1976.
34. Ibid., p. 2.
35. Ibid.
36. Ibid.
37. Ibid., pp. 2-3.
38. Ibid., p. 49.
39. Ibid., pp. 57-59.
40. Ibid., p. 105.

41. Ibid., p. 60.
42. Ibid., pp. 61-62.
43. Ibid., p. 76.
44. Ibid.
45. Canada, Department of Insurance Canada, Discussion Paper on Revision of the Trust Companies Act and the Loan Companies Act (the Canadian White Paper), Ottawa, July 1982. This document is part of a group of three documents, the other two being Summary of and Guide to the Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act and Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act (the draft statute). The proposals were stated not to be policy decisions taken by the federal government (Discussion Paper, Forward).
46. Summary, ibid., p. 1.
47. Discussion Paper, op. cit., note 45, p. 1.
48. Ibid., pp. 10-13.
49. Ibid., p. 19.
50. See discussion in Chapter II of this thesis.
51. Discussion Paper, op. cit., note 45, p. 26.
52. Green Paper, op. cit., note 1.
53. Discussion Paper et al., op. cit., note 45.
54. Green Paper, op. cit., note 1, p. iii.
55. Ibid.
56. In 1983, the receiverships of Crown, Seaway and Greymac Trust Companies and Seaway and Greymac Mortgage Companies brought home vividly the need for regulatory reform. While the trust companies were incorporated and primarily regulated in Ontario, the mortgage companies were federally incorporated and regulated and CDIC paid out a total of \$709 million to the depositors in all five companies (some of which was recovered as the corporate assets were sold). The cost to both the Ontario and federal governments must have been high. The costs of the Ontario government in 1983 alone were said to be \$12 million and this figure does not include legal and accountants' fees resulting from the receiverships. (Terence Corcoran and Laura Reid, Public Money Private Greed: The Greymac, Seaway and Crown Trusts Affair, Collins Publishers, Toronto,

1984, p. 350.)

57. While there has long been concern expressed by some about the concentration of power in the hands of the big five chartered banks in Canada, more recent concerns revolve around the growth of the financial conglomerates or financial or non-financial holding companies which own or control or are affiliated with or related to many other financial and non-financial corporations. The increasing integration of the "real" and financial sectors is another related concern since it increases the opportunities for conflicts of interest and harmful non-arm's-length transactions.
58. Canada, Department of Finance, Ottawa.
59. Green Paper, op. cit., note 1, pp. iii-iv.
60. Ibid., p. 77.
61. Ibid.
62. Ibid., p. 78.
63. Ibid. There are exceptions to this trend including 1967 changes to the Bank Act requiring banks to divest themselves of holdings in trust companies and 1980 changes restricting bank powers to deal in securities (Ibid., p. 81).
64. Ibid. The Green Paper and other reports seem to use the words "legislative" and "regulatory" interchangeably.
65. Ibid., p. 82. Developments in financial sector regulation in the United States, United Kingdom, Australia, Japan and the Federal Republic of Germany are summarized in Appendix II of the Green Paper (pp. 95-100). While institutional and regulatory changes reflect different financial systems and pressures for change, all countries have acted to broaden the powers of their institutions.

The Australian Campbell Committee established in 1979 made several recommendations designed to deregulate the financial markets and many of these were adopted by the government. The Committee also recommended that the old approach of regulating institutions be scrapped and replaced by a system of regulation by financial function. The government has not implemented this recommendation (Ibid., pp. 98-99).

Reform in Japan has centered around the growing participation of banks in the securities area and the reduction of restrictions regarding international financial transactions and the access to Japanese markets of foreign institutions (Ibid., p. 99).

In Germany, there are no barriers between commercial banking and the business of securities. There are also no restrictions on the

bank ownership of non-bank firms as there are in Canada. Banks are therefore more closely involved in the affairs of other industries (Ibid., p. 99). Recent reform measures have tightened regulatory controls to enhance the solvency of banks after the near collapse of a private commercial bank (Ibid., p. 100).

66. Ibid., p. 83.
67. Ibid., p. 84. See the Bank Act, S.C. 1980, c. 40, ss. 110(3). The "big five" chartered banks (Bank of Montreal, Canadian Imperial Bank of Commerce, Toronto-Dominion Bank, Royal Bank and Bank of Nova Scotia) are Schedule A banks. Total non-resident ownership in Schedule A banks is limited to 25% of the issued shares (Bank Act, ss. 110(1)).
68. Ibid., p. 84.
69. Ibid.
70. Ibid., p. 83.
71. Ibid., pp. 84-88.
72. Ibid., pp. 88-93.
73. Ibid., p. 84.
74. Ibid., p. 85.
75. Ibid.
76. Ibid., p. 86.
77. Ibid.
78. Ibid., pp. 86-87. In the latter part of 1986, investment dealers did a flip-flop on their position regarding foreign ownership and most now support the total removal of ownership restrictions, perhaps because they decided it was inevitable and unavoidable and might even be beneficial.
79. I have not reviewed regulatory policy or policy developments in other jurisdictions except the federal, Ontario, Quebec and British Columbia jurisdictions, so I have no direct knowledge of developments in other jurisdictions. However, I have read nothing of any significant developments prior to 1986 apart from those initiated at the federal level and in Ontario and Quebec.
80. Ibid., pp. 88-89. As the Green Paper pointed out, the Quebec Securities Commission had already relaxed constraints on the registration of financial institutions as brokers and the diversification of securities firms into other financial

activities. Insurance legislation had also been amended in the same vein.

81. Ibid., pp. 11-25.
82. Ibid., p. 11. This statement that the financial sector is more heavily regulated than other economic sectors is not supported in the Green Paper. Certainly the financial sector is heavily regulated, but I think that other sectors of the economy are also heavily regulated and perhaps equally heavily regulated. I know of no studies which have attempted to calculate the comparative extent of regulation in various economic areas.
83. Ibid.
84. Ibid.
85. Ibid. These figures probably underestimate solvency problems before 1985. Since the publication of the Green Paper, two small chartered banks have collapsed or been forced to liquidate with a domino effect on other small regional banks which might have gone under as well without a significant injection of funds and related financial support from the Bank of Canada, merger or buy out. Most financial institutions suffered during the recent economic recession in Canada and the case of the failures of the Alberta-based Canadian Commercial and Northland Banks is a good illustration of how financial institution failure can cause an erosion of public confidence which leads to a withdrawal of funds from similar institutions (such as the Bank of British Columbia and the Continental Bank) which in turn threatens the solvency or liquidity of those institutions and so on. This domino effect is not seen in other industries where insolvent firms simply fail without much, if any, negative effect on their competitors.

Mr. Justice Estey of the Supreme Court of Canada who investigated and reported on the recent bank failures stated that he was "unimpressed" with arguments by the "big five" chartered banks that "no amount of beefed-up regulation would prevent the 'human failure' and 'bad management' that had struck down the Alberta banks". (Giles Gherson, "Estey firm on the need for tougher controls", The Financial Post, Western Edition, Toronto, February 1, 1986 and see The Honourable Willard Z. Estey, Commissioner, Report of the Inquiry into the Collapse of the CCB and Northland Bank, Ministry of Supply and Services Canada, Ottawa, August 1986.)

86. Green Paper, op. cit., note 1, p. 12.
87. Ibid., p. 14.
88. Ibid., p. 13.

89. Ibid., p. 15.
90. The Green Paper pointed out that in a situation where different functions are performed in different institutional contexts, different regulations may still be equitable (Ibid., p. 12).
91. Ibid., pp. 15-22.
92. Ibid., p. 21. This is particularly so in view of recent trust company failures which have often been traced to regular practices of self-dealing and conflicts of interest. (See Patricia Best and Ann Shortell, A Matter of Trust: Power and Privilege in Canada's Trust Companies, Penguin Books Canada Ltd., Markham, 1985.)
93. Porter Commission Report, op. cit., note 2.
94. Green Paper, op. cit., note 1, p. 22.
95. The Bank Act and federal insurance, trust and loan company legislation contain restrictions on mergers.
96. For example, the 1967 Bank Act revision allowed banks to create mortgage loan subsidiaries.
97. Green Paper, op. cit., note 1, p. 22.
98. Ibid., p. 23. There is evidence that smaller (often provincially incorporated) firms may be more innovative in the development of financial products and services and there is little evidence of significant economies of scale in large financial institutions.
99. Ibid., p. 25.
100. Ibid., p. 24. The Senate Report, discussed in the next Chapter, stated that this area required further study.
101. Ibid., pp. 27-28. The subject had its own chapter in the Green Paper, but the chapter was only 1 1/2 pages long.
102. Ibid., p. 27.
103. Ibid.
104. Ibid., p. 1.
105. E.P. Neufeld, The Financial System of Canada: Its Growth and Development, Macmillan of Canada, Toronto, 1972, pp. 27-28. See p. 51 of the thesis.
106. For a discussion of Schultz and Alexandroff's thesis see Chapter I.
107. Green Paper, op. cit., note 1, p. 1.

108. Ibid., p. 2.
109. The Green Paper defined "networking" as "arrangements between financial institutions under which one of the institutions provides the public with access to an investment, contract or service issued by the other" (Ibid., p. 44).
110. Published in June 1985.
111. Green Paper, op. cit., note 1, p. 2.
112. Ibid., pp. 30-34.
113. Ibid., p. 34.
114. See Ibid., pp. 34-35 for a description of the proposed Schedule C bank.
115. The word "ensure" is badly chosen and the government has pointed out elsewhere in the Green Paper that consumer protection and solvency cannot be "ensured", only "enhanced" (Ibid., p. 13).
116. Ibid., p. 2. Financial holding company requirements also add an additional regulatory layer to the system.
117. For example, the financial holding company requirement, it is said, would "enhance competition" and "result in improved services" and "the greater efficiency of financial markets" (Ibid., p. 2). Also, such a structure is said to "permit better supervision ... to ensure solvency" (Ibid., p. 34). Apart from being unsubstantiated, such comments seem to contradict comments elsewhere in the Green Paper that the "development of links among different types of institutions" does not appear to affect the risk of insolvency (Ibid., p. 15), and that "regulatory policy should avoid as much as possible the imposition of a preconceived structure on the financial system" (Ibid., p. 1).
118. Ibid., p. 59.
119. Ibid. - for example, trust company legislation.
120. Ibid. - for example, deposit insurance under the Canada Deposit Insurance Act.
121. For example, securities legislation and policy development in Ontario and credit union or caisses populaires legislation in Quebec and British Columbia. It has been said that harmonization of insurance legislation and policy among the provinces has been quite successful until recently. (See Marvin G. Baer, "Harmonization of Canadian Insurance Law", in Ronald C.C. Cuming (ed.), Harmonization of Business Law in Canada (Study No. 56, Royal Commission on the Economic Union and Development Prospects for

Canada), University of Toronto Press, Toronto, 1986.)

122. R.S.C. 1970, c. B-4. This Act applies only to The Montreal City and District Savings Bank.
123. CCH Canadian Limited, Canada Corporations Law Reports, Part 1, No. 113, December 11, 1985, pp. 1-2. The Bill would also authorize the Superintendent of Insurance to prescribe values (based on an independent appraisal) for real estate held by federally regulated trust and mortgage loan companies and to substitute those values as he deems appropriate for the purposes of the relevant requirements of the trust and loan legislation.
124. Canada, Department of Finance, Minister of State for Finance, New Directions for the Financial Sector, Ottawa, Tabled in the House of Commons, December 18, 1986, p. iii.
125. Ibid.

CHAPTER V

GOVERNMENT RESPONSES CONCERNING
FINANCIAL INSTITUTION REGULATION AFTER THE GREEN PAPER

Certain studies were commissioned and reports written with the intent either of responding to the Green Paper or, as was the case in Ontario, of responding at the same time to similar problems in the provincial jurisdiction (with the awareness of the federal government initiatives). The most relevant reports published after the Green Paper (April 1985) are:

1. Ontario, The Loan and Trust Corporations Act: a draft for consultation,¹
2. Canada, House of Commons, Report on Canadian Financial Institutions (Blenkarn Report),²
3. Ontario Task Force on Financial Institutions, Final Report (Dupre Report),³ and
4. Canada, Senate, Towards a More Competitive Financial Environment.⁴

A brief summary of current regulatory reform issues in Great Britain and the United States where governments are trying to cope with very similar problems of financial institution failure, out-dated legislation, inadequate government supervision and an increasingly competitive marketplace is contained in Appendix E to this paper.

Ontario - Trust and Loan Corporations Proposals

Since various "events" (particularly trust and mortgage loan company failures) had indicated a need for updated loan and trust legislation in Ontario (there had been no significant revision of the Loan and Trust Corporations Act since 1912), the provincial government commissioned a White Paper entitled "Proposals for Revision of the Loan

and Trust Corporation Legislation and Administration" which was published in November 1983.⁵ There were also a number of ad hoc investigations and reports in the aftermath of various financial institution "failures".⁶ The White Paper was considered by the Ontario Standing Committee on the Administration of Justice in 1984 which released its report in May 1984 stating that while it agreed with most of the recommendations in the White Paper, it was concerned that the recommendations "provide for too much regulation and grant too much discretionary authority to the Registrar".⁷ The Standing Committee felt that more emphasis should be placed on managerial and professional responsibility and public disclosure than on "discretionary regulation".

Meanwhile, legislation containing some very broad and stringent requirements applicable to trust companies had been very quickly enacted by the Ontario government to deal with the Greymac, Seaway and Crown Trust affair. In only a few days in December 1983, legislation was pushed through the Ontario Parliament to allow the Registrar of Loan and Trust Corporations the power to seize the assets of a trust company when he perceived a state of affairs that might be prejudicial to the public interest. The legislation also required ministerial approval for changes in control, mergers and the sale of trust companies. The legislation was prepared and enacted so quickly in response to a perceived crisis. The government of the day was not in a mood to place a greater emphasis on managerial and professional responsibility.

The January 1985 interim report of the Ontario Task Force⁸ contained recommendations regarding self-dealing rules which were incorporated into a draft Loan and Trust Corporations Act published in

June 1985.⁹ The draft Act was said to implement several general principles including:

1. maintenance of public confidence (the primary goal);
2. equality of application of the legislation to federal, Ontario and other provincial companies so that all corporations have equal opportunities in the Ontario market and all Ontario depositors are equally protected (the 'equals approach');¹⁰
3. rejection of 10% ownership limits in favour of strong conflict of interest rules and managerial responsibility;¹¹ and
4. a stronger regulatory approach.

Loan and trust corporations would be able to expand their size and activities if they 'earned' the right to do so by demonstrating competence and responsibility in various specified ways.

The difference between this draft Act which emphasized solvency and the Parizeau Report which emphasized efficiency is apparent. It presumably resulted, at least in part, from the very different economic situations that each province was facing. In Ontario, general economic problems had not been nearly as severe as they had been in Quebec and so the concern with economic development was less likely to be paramount. At the same time, Ontario had borne the brunt of trust, loan and insurance company failures in Canada. In addition, the province had only recently experienced (in 1982 and 1983) the sensational receiverships of the Crown, Seaway and Greymac Trust Companies and the Seaway and Greymac Mortgage Companies. Solvency and stricter regulatory controls were of primary concern in 1983 and the memory must still have been vivid in 1985.

House of Commons Report

The Report of the House of Commons Standing Committee on Finance, Trade and Economic Affairs concerning financial institutions (the

Blenkarn Report) was published in November 1985.¹² Its orders of reference were to examine and report to the House on the proposals contained in the Green Paper, the Wyman Report¹³ and the Technical Supplement to the Green Paper. The Blenkarn Report is lengthy and detailed. The Committee received 137 submissions in total and heard testimony from 9 governmental bodies, 79 industry, business and consumer groups, 7 academics and 6 individuals.¹⁴

In its report, the Committee noted that recent institution failures (including several failures which had occurred after the publication of the Green Paper in April 1985) "reinforced the need for immediate and substantial regulatory change". As its number one regulatory objective, the Committee clearly chose solvency and stability, rather than competition and efficiency, stating:

While these insolvencies generally reflect the difficult economic conditions of the recent past and the outdated laws and regulations governing these institutions, they also serve to reinforce the number one public policy objective in respect of financial institutions, notably solvency and stability ... [Implicitly] embodied in the public policy objective of stability and solvency is the principle of consumer protection.¹⁵

The Committee acknowledged that the goal of solvency and stability should not "unduly overshadow the need for competition as a public policy objective" and stated that the Report reflected the Committee's attempt to "strike a balance between the two public policy objectives while concomitantly improving prudential safeguards (reregulation) and providing greater diversification of corporate powers to non-bank institutions (deregulation)".¹⁶

Unlike the Green Paper and the Ontario Draft Loan and Trust Corporations Act, the Blenkarn Report did not accept the status quo of

closely held non-bank deposit institutions and recommended that 10% ownership limits apply to financial institutions and holding companies with more than \$40 billion in assets. The Blenkarn Report also rejected the mandatory holding company concept in the Green Paper and recommended:

That non-bank financial institutions be allowed to diversify flexibly through upstream holding companies and affiliated institutions, downstream holding companies and subsidiaries, together with some limited expansion of in-house powers and networking arrangements.¹⁷

The Committee concluded that the financial holding company (FHC) concept would impose a heavy regulatory burden without corresponding benefits, that the structure would be rigid and inefficient and that it would discriminate against smaller financial institutions. In addition, the mandatory structure would increase the potential for federal-provincial conflict and this was also undesirable. The Committee cryptically remarked that:

The FHC approach may well be construed as a political solution to the establishment of uniform regulation and supervision and this would not generally be desirable.¹⁸

The Committee also rejected the Schedule C bank concept suggested in the Green Paper and recommended that non-bank institutions be permitted to engage in commercial lending to a limit of 15% of assets rather than the 5% proposed by the Green Paper.¹⁹ The Committee felt that Schedule A and B bank distinctions should be eliminated, allowing all banks to operate under the same rules, regardless of their ownership.²⁰ In the same vein, the Committee advocated a system which removed all restrictions on foreign ownership, allowing foreign institutions to compete in Canada on the same basis as Canadian

institutions.²¹

Taking a more liberal approach to the issue of self-dealing than the Green Paper, the Committee would permit non-arm's-length transactions "except those that are likely to have a significant impact on the institutions' solvency".²² The Committee supported the Green Paper's recommendation of Chinese walls in situations where information flows might give rise to conflicts of interest, but it did not support the idea of a Financial Conflicts of Interest Office, stating that existing civil remedies seemed adequate and that the establishment of such an office "could create undesirable conflicts between federal and provincial authorities".²³

The Committee stressed the need for a modern supervisory approach by regulators, as well as additional remedial powers, particularly in light of computer and communications technology which has "enabled financial institutions to effectively leap over traditional domestic and international supervisory boundaries".²⁴ The Committee felt that the traditional 'gentleman's agreement' style of regulatory enforcement was no longer appropriate²⁵ and supported the call of the Green Paper and the Wyman Report for increased supervisory powers but with the added observation that existing powers could also be used more effectively.²⁶ Although it did not see the need to restrict interlocking directorships, the Committee otherwise generally strongly endorsed the Green Paper proposals to strengthen corporate governance provisions to enhance institutional self-regulation.²⁷

In its chapter on federal-provincial relations, the Committee said that it had "steered away from what could be perceived as confrontation

with the provinces" and had adopted an approach to the issue of diversification of powers that was closer than that of the Green Paper to the Quebec and Ontario positions on reform. Noting that regulatory initiatives already taken in Quebec and reforms proposed in both Ontario and Quebec could end the "relatively high degree of uniformity among different jurisdictions",²⁸ the Committee (like the 1976 Economic Council of Canada Report) considered that "harmonization of these efforts [at reform] is the best means of maximizing benefits to all Canadians". The Committee ended its report on an urgent note stating:

the Committee implores the government to proceed rapidly with the implementation of the recommendations in this report. Failure to do so during this period of rapid evolution and instability would only add uncertainty to the financial services industry and consumers alike ... The decisive moment to act is now, not to do so would be to admit irresponsibility.²⁹

Ontario Task Force

The Ontario Task Force Report (the Dupre Report) was published in December 1985.³⁰ The Task Force had a broad mandate from the provincial government "to examine the organization and operation of [these] institutions in Ontario and determine what pressures on that financial system may require attention from government".³¹ The Task Force was not expressly asked to respond to the Green Paper. An Interim Report was published in December 1984 to outline what the Task Force perceived to be the "key issues" and thirty submissions were received in response to that Report.³²

Again, the Task Force found the regulatory and supervisory system to be inadequate. This view was supported by Task Force research regarding public attitudes which demonstrated that:

Canadians, far from advocating less regulation of financial institutions, support more or different regulation, designed to enhance the solvency of these institutions and therefore the security of public funds.³³

Like the House of Commons Committee and Ontario trust and loan corporation proposals, it was the fundamental premise of the Task Force in formulating its recommendations "that public confidence in the solvency of the financial system ... be regarded as paramount".³⁴ The Task Force found regulatory authorities to be inadequately equipped for the task of supervision and recommended broader powers and the development of early warning systems by and for both regulators and the regulated, as well as enhanced institutional self-regulation generally.

While the Task Force cautiously supported extending the powers of financial institutions to enhance competition, it did so on the condition that stringent entry conditions be applied to new institutions and that existing institutions not be allowed to extend their powers until the regulatory system had been adapted to cope. The Task Force wrote:

As recent events reveal all too clearly, regulators urgently require the statutory, organizational and personnel resources that will enable them to discharge their current responsibilities effectively. This is not the time to devise the regulatory grand designs that would be required if an institution were permitted to engage in all the functions carried out by [financial institutions generally].³⁵

Like all the reports described in this and the previous Chapter, the Task Force recommended that the regulatory and policy-making functions of the government be centralized in an "Office of Financial Institutions", and that institutions be required to pay for a significant part of the costs of their regulation by government.³⁶ In addition (like many other reports), the Task Force recommended a

permanent federal-provincial consultative mechanism, a "Council of Ministers".

The Task Force supported widely held ownership of trust and insurance companies and felt that prohibitions against self-dealing were a "second-best solution".³⁷ The Task Force also supported the financial holding company concept of the Green Paper and recommended that Ontario enact similar legislation applicable to provincially incorporated institutions.³⁸

Following the earlier Ontario trust and loan corporations proposals, the Task Force advocated the "equals approach" but on a broader scale, stating:

It should be a condition of licensing that every financial institution carrying on business in Ontario must conform to Ontario law in the conduct of its business in Ontario. Every financial institution incorporated in a jurisdiction which permits it to carry out functions denied to Ontario chartered institutions should be required to incorporate an Ontario subsidiary in order to carry on business in Ontario.³⁹

The "equals approach" is not surprising in view of the fact that Ontario seemed poised to be the first province to enact significantly stricter legislation. This stricter equals approach may have been a result of concerns about Quebec's willingness to more freely allow its institutions to broaden their powers. Ontario officials are saying that such institutions are more likely to run into financial difficulties and those institutions doing business in Ontario may put Ontario deposits at risk. As the Task Force wrote:

The passage of Bill 75 in the Province of Quebec gives Quebec chartered insurers, a number of whom are also licensed to conduct business in Ontario, the power to engage in a number of non-insurance activities ... While the full impact of these legislative changes is as yet undetermined, clearly the enlarged sphere of permitted activities and greater latitude in investment

powers granted to these companies have the potential to expose the Government of Ontario to certain economic and political costs. If some Quebec based insurers become insolvent, for example, residents of Ontario may well expect compensation from their own government.⁴⁰

While the equals approach arose from a real concern about the impact of less stringently regulated institutions carrying on business in Ontario, it must also have been devised as a competitive legislative response to Quebec which had been quite open about its intention to attract more business through more open regulation. There are other mechanisms besides the equals approach to control extra-provincial institutions which may present solvency problems.

With regard to the federal-provincial division of regulatory and supervisory powers in Ontario, the Task Force supported the status quo and wrote:

A formal federal-provincial agreement should be developed pursuant to which the federal regulatory authorities would be primarily responsible for regulating and supervising federally chartered financial institutions, the provincial regulatory authorities would be primarily responsible for regulating and supervising provincially chartered institutions, and both sets of regulatory authorities would have similar obligations to disclose and exchange information, including information as to any inordinate risks being assumed by such institutions between themselves and with Canada Deposit Insurance Corporation (CDIC).⁴¹

Turning to the role of the CDIC, the Task Force rejected the recommendation of the Wyman Report that the CDIC become more involved in the regulation and supervision of financial institutions for two reasons. First, the Task Force perceived that this would intrude on provincial jurisdiction stating that:

this expanded role for CDIC overlooks the continuing responsibility of provincial governments for regulating the deposit-taking institutions under their jurisdiction.⁴²

Second, the Task Force wished to avoid unnecessary duplication of

regulation. Instead, the Task Force supported the existing system in Ontario in which primary regulation and supervision is conducted by the regulators of the jurisdiction of incorporation, although it recommended that the primary regulators and the CDIC work more closely together to set standards and resolve institutional problems.⁴³

While networking would be permitted by the Task Force (as in other reports), the recommended controls on this practice are particularly comprehensive including regulatory approval of networking arrangements and disclosure of the arrangements and the available options to customers (i.e., alternative sources for similar products and services).⁴⁴ The Task Force supported the ban on self-dealing proposed in the draft Trust and Loan Corporations Act and, although the Task Force did not support the legislated requirement of Chinese walls as such, it did support a prohibition against the use of confidential information for any purpose except the one for which it was provided.⁴⁵ The Task Force did not support a Conflicts of Interest Office.⁴⁶

In its discussion of the role of financial institutions, the Task Force emphasized the substantial opportunities for the growth of the financial sector in Ontario and its importance as a source of employment with 198,000 out of the 454,000 Canadians employed in the financial sector located in Ontario.⁴⁷ The Task Force cited the benefits of continuing to enforce the separation of the securities market and banking functions as well as the separation of 'real' (or commercial and industrial) operations from those of the financial sector. It did not go on to connect regulatory reform in the financial sector to economic development generally.

The Dupre Report urged the Ontario Government to take quick action to enact the Draft Loan and Trust Corporations Act with certain changes recommended by the Task Force "to meet more effectively the twin objectives of solvency and efficiency". The Task Force noted that:

more than fifteen years ago, Mr. Justice Samuel H.S. Hughes chaired a Royal Commission inquiring into the collapse of Atlantic Acceptance Corporation and the related fall of the British Mortgage and Trust Company and affiliates ... and made detailed recommendations for revisions to the Loan and Trust Corporations Act. Despite that substantive study in which the issues of self-dealing, conflict of interest, and liquidity of deposit-taking institutions were dealt with at length, the loan and trust industry has continued to suffer from problems in these areas, on an ever-increasing scale. The Atlantic Acceptance failure and the findings of the Royal Commission should have been adequate warning that a too easy reliance on existing structures of regulation was likely to produce the very results which we have now had. It is of great concern to this Task Force that failures of financial institutions have continued to escalate and we urge the Government of Ontario to enact legislation which will limit the risks of insolvency to the greatest extent possible ...⁴⁸

The Task Force agreed that directors, auditors and other professional advisors should assume greater responsibility, but felt that this could not substitute for government regulation in many circumstances.⁴⁹

In its discussion of the insurance industry, the Task Force was most concerned with issues of competitive equity and solvency in light of the trend toward an expansion of powers. The Task Force noted that Ontario incorporated companies formed a relatively small part of the Ontario insurance industry. Of 478 licensed insurance companies, 79 were Ontario incorporated, 14 were incorporated in another province, 149 were federal companies and 236 were foreign insurers registered and regulated by the federal government. It was important to the Task Force that:

the Ontario companies have powers which permit them to compete with other companies carrying on business here.⁵⁰

The Task Force had no final view or recommendations regarding the approach that should be taken by the Ontario Government toward extra-provincial insurance companies which had been granted a wider range of powers than those incorporated in Ontario, although it did suggest industry compensation funds might be one solution.⁵¹ It did recommend that insurers' powers in Ontario not be expanded until satisfactory industry compensation funds were in place.⁵² The Task Force also recommended that the Insurance Act of Ontario "which has not been updated in many years" be modernized in accordance with the relevant recommendations contained elsewhere in the Report.⁵³

The chapter on credit unions in the Dupre Report reviewed the solvency problems in the industry in Ontario.⁵⁴ The Task Force opposed any expansion of credit union powers without membership in a satisfactory stabilization fund, improved internal management procedures and a prudent investment standard. The discussion of the securities industry dealt largely with foreign entry and non-resident and non-industry ownership and the regulation of the exempt market.

Senate Report

As the title of the Senate Report, "Towards a More Competitive Financial Environment", indicates, its primary emphasis was on competition and efficiency, rather than solvency.⁵⁵ The Senate Standing Committee on Banking, Trade and Commerce had been instructed to report on the Green Paper and the Wyman Report and in December 1985 had published an interim report on the Wyman Report and deposit insurance generally, followed by its final report in May 1986.

The Committee endorsed the principles of regulation contained in

the Green Paper but reorganized them into three broad categories:

1. consumer protection and financial stability (including controls on self-dealing and conflicts of interest);
2. enhancing competition, efficiency and innovation, broadening sources of credit and enhancing domestic economic growth; and
3. promoting federal-provincial regulatory harmony.⁵⁴

The Senate Report also endorsed the principle of flexibility of regulation mentioned in the Green Paper and stated:

whereas the emphasis in these previous reports was directed primarily towards enhancing the protection and regulatory aspects of financial sector policy, the thrust of the present report is directed more toward enhancing competition and toward providing flexibility for Canada's financial institutions to adjust to the rapid spread of technology and the increasing internationalization of the markets for credit and capital.⁵⁷

The Committee acknowledged solvency concerns but felt that they should not overshadow the goals of enhancing competition and efficiency. I can only speculate about the reasons for the shift in emphasis of the Senate Report. Perhaps the Committee was more removed than the House of Commons Committee and other study groups from the direct pressures of those advocating stricter regulatory controls and the status quo of the "four pillars". Perhaps the Committee was more directly influenced by the major institutional groups and the financial conglomerates who were the major participants in the Senate hearings. Not surprisingly, the Committee then proceeded to reject many of the recommendations of the Green Paper and the Blenkarn Report, taking some support from the views expressed to them in submissions and stating:

In contrast to the overwhelming support for the principles underlying the Green Paper, very few, if any, of the submissions to the Committee expressed support for the restructuring of the financial sector that the authors of the Green Paper derived from these principles.⁵⁸

The Committee first dealt with consumer protection in its report,

recommending that regulation should continue to be by institution since someone had to be responsible for monitoring the whole institution due to solvency concerns.³⁹ However, the Committee did not support the degree of centralization of regulation and supervision suggested by the Blenkarn Report since it saw advantages to having several regulators in the field and saw no reason to disturb existing regulatory arrangements.

The Committee wrote:

we believe that reform of the financial system should generally take place within the existing institutional and federal-provincial framework. Moreover, we believe that the appropriate approach to ensuring consumer protection and institution stability is to introduce enhanced monitoring and discipline across a broad range of fronts rather than loading enormous responsibility on any one component of the overall regulatory process.⁴⁰

By use of the phrase a "broad range of fronts", the Committee was referring to regulation or supervision by the Canada Deposit Insurance Corporation (CDIC), the primary regulators (eg., Superintendent of Insurance), corporate auditors (inside and outside) and self-regulation by institutional groups or inside corporate governance procedures. The Committee felt that the Green Paper had placed an excessive reliance on one or two approaches such as a ban on self-dealing and the mandatory financial holding company and that this approach would not deal adequately with "the inherent fungibility of money and technology and ... [would] be less conducive to innovation and competition".⁴¹ While acknowledging that the financial holding company concept in the Green Paper had the advantage of simplicity in forcing institutions to stick to their core functions, the Committee rejected the concept as too restrictive and too threatening to good federal-provincial relations.⁴²

Taking quite a different tack from that expressed in the Green

Paper, the Committee wrote that it preferred to see cross-pillar activity as part of a solution, rather than a problem, in the attempt to maintain the world-class status of Canadian financial institutions.⁴³ The Committee found that there was no need to remedy the inadequacies of the system by a "wholesale revamping of the institutional framework".⁴⁴ In addition, the Committee felt that incremental changes could be more easily reversed if they were wrong. The Committee supported all four approaches to institutional diversification: within-institution expansion of powers, subsidiaries, upstream and downstream holding companies and networking.⁴⁵ The CDIC, said the Committee, should keep its role as insurer and not become a regulator as recommended by the Blenkarn and Wyman Reports unless there was a solvency problem.⁴⁶ This same approach was advocated in the Dupre Report.

In common with all other reports, the Committee recommended that primary regulators be given adequate technological and human resources to effectively monitor financial institutions and that certain of their regulatory powers be enhanced and urged the establishment of early warning systems with a computerized data base and better communications links with others involved in the regulatory system.⁴⁷ In common with other reports, the Committee also found that:

To a considerable degree, the recent problems in the financial sector appear to reflect not so much an inadequate range of regulatory powers as an inadequate exercise of existing powers.⁴⁸

The Senate Report supported most of the recommendations of the Green Paper designed to enhance the role of boards of directors of financial institutions⁴⁹ but it criticised the recommended ban on self-dealing largely because it felt synergy gains and efficiencies inherent

in the financial holding company concept would be dissipated as a result and because some non-arm's-length transactions (NALTs) are not solvency threatening and may increase efficiency.⁷⁰ Instead, the Committee proposed a three-pronged NALTs review procedure involving a partial ban, self-regulation or pre-clearance by the primary regulator depending upon the type of NALT.⁷¹

Although deciding that financial holding companies should not be regulated as such, the Committee recommended that when one financial institution controlled another, at least 35% of the shares of one of them should be publicly traded.⁷² The Committee felt that financial holding companies should not engage in non-financial activities and would allow non-financial companies to engage in financial activities only through a financial holding company, applying the 35% publicly traded rule. The Committee did not deal with the issue of concentration of power and share ownership, stating that it would do so in a future report.

With regard to the goal of enhancing competition, the Committee predicted that cross-pillar activity would increase and to the degree that regulation tried to prevent this, it would reduce efficiency and competitiveness. In common with other reports, the Senate Report supported a move to the quantitative or prudent portfolio approach to investment by financial institution. The Committee would allow commercial lending and leasing by trust and life insurance companies and credit unions to a maximum of 20% of assets (all reports chose different levels, this was the highest). Other powers could be expanded "unless a case can be made that such an expansion of in-house powers would run

counter to the public interest", with the exception of trust and fiduciary powers which should be added only through affiliated institutions.⁷³

Turning to federal-provincial considerations and jurisdictional harmony, the Committee recognized the complicating effect of multiple jurisdictions as well as the potential benefits of flexibility, innovation, experimentation and healthy competition.⁷⁴ However (again, in common with other reports), the policy infrastructure to harmonize regulation was found to be inadequate. The Committee recommended a "Permanent Committee of Ministers Responsible for Financial Institutions"⁷⁵ and reiterated the concern expressed by all trust and insurance companies which appeared before it that:

the long-awaited updating of their legislative frameworks could founder on the shoals of constitutional or jurisdictional disputes ...⁷⁶

The Committee acknowledged the complexity of the "federal-provincial jurisdictional labyrinth" and stated that exclusive jurisdiction does appear to facilitate the legislative process (citing the relatively frequent updating of the Bank Act and provincial securities statutes).⁷⁷ In the case of insurance and trust companies:

Divided jurisdiction, with its vertical and horizontal harmonization problems, would appear to be a recipe for legislative paralysis. In large measure, this is why we have placed such a premium on ensuring that the legislative framework for both federal trust companies and insurance companies be updated as soon as possible, including provisions for decennial review along the lines of the Bank Act.⁷⁸

The cost of a divided jurisdiction, when vertical and horizontal harmonization is required, may be "legislative stalemate".⁷⁹ Other costs include varying enforcement and varying standards.⁸⁰ Despite all

the problems of multiple jurisdictions, the Committee preferred the existing regulatory structure since it believed that it had served Canadians well and, said the Committee:

one of the distinguishing features of our report, in contrast to the Green Paper, the Wyman Report and the House of Commons report, is that our recommendations complement fully the existing federal-provincial allocation of powers and responsibilities in the Canadian financial sector.⁹¹

Conclusion

While many other studies and reports on financial institution regulation have been produced by or on behalf of governments since 1964, those represented in this and the previous Chapter adequately reveal the primary lines of policy development. A report by the Economic Council of Canada, released on November 14, 1986, looked at "some basic questions in a broad framework" and took stock of the issues and recommendations that had "been brought to light in the current debate".⁹² Another report of note was the Estey Report into the failures of the Canadian Commercial and Northland Banks in Canada.⁹³

The reports and other initiatives described earlier demonstrate the complexity and international scope of the issues, the enormous range of regulatory responses which might be chosen by governments, and (in most cases) the time lag between awareness of a problem and policy response. The range of responses is illustrated by the proposals to accommodate an expansion of powers (advocated to some degree by all reports). On the one hand, the Green Paper proposed a rigid framework of holding companies and subsidiaries. On the other, the Senate Report would allow an intra-institutional expansion of powers to a much greater degree than that advocated by the Green Paper, with greater opportunities for

networking and expansion through subsidiaries on a more flexible basis. Another example is found in the variety of positions on ownership controls. Every report took a different position, from a limit of 10% to no limit at all. Some reports advocated a total ban on self-dealing, others were prepared to allow self-dealing unless it was shown to be harmful.

The reports also demonstrate how the goals of the authors affect their recommendations. The reports which were more concerned with solvency (eg., the Green Paper) tended to be hard-line about self-dealing and conflicts of interest. The Senate Report (which emphasized efficiency and competition) was the most relaxed of all the reports on the issues of conflict of interest and self-dealing. The Ontario Task Force felt it necessary to support the equals approach because of its concerns about less stringently regulated extra-provincial institutions. In my view, the authors of the Green Paper tailored some recommendations either to minimize a potential loss of regulatory power to the provinces or to promote the acquisition of more federal power. I believe that the mandatory financial holding company proposals are partly explained by this hidden agenda. Pursuant to these proposals, the federal government would regulate the increasingly significant financial holding companies and thus extend its regulatory tentacles through to provincially regulated institutions under the control of the holding companies. The in-house expansion of commercial lending powers (seen as the last bastion of 'banking' by many) would be limited in the case of federally incorporated non-banks in a way which might support later federal attempts to restrict the commercial lending powers of provincially

incorporated non-banks under its 'banking' power. It was the almost universal opinion of those whom I interviewed for this thesis that most federal bureaucrats involved in financial institution regulation believe that all deposit-taking institutions (including credit union centrals) should be federally regulated. I think that the Green Paper reflected that bias. The House of Commons and Senate Reports explicitly avoided proposals which might trench on provincial jurisdiction.

It is interesting to note that a greater range or variety of proposals tended to occur when the subject matter was more easily influenced by biases toward competition or solvency or greater or lesser federal or provincial power. The Ontario equals approach, for example, stems in part from concerns about losing regulatory power or competitive advantage to Quebec. Consensus was more often found when the subject matter was little influenced by such biases. Most reports, for example, recommended a change to "prudent portfolio" investment requirements as well as more resources and powers to the regulators. These recommendations could be made regardless of the authors' views about competition vs. solvency or increasing or restricting federal powers.

The reports and initiatives outlined in Chapters IV and V shaped the parameters of discussion and of future action in all Canadian jurisdictions. In British Columbia, officials were, of course, very much aware of these reports and their recommendations and of the more significant initiatives taken outside Canada. However, as I describe in Chapter VI, the government of British Columbia did not react to pressures for reform in the same manner as Ontario, Quebec or the federal government. In fact, before October 1986, there was not much of

a response at all.

FOOTNOTES

1. Ontario, Ministry of Consumer and Commercial Relations, The Loan and Trust Corporations Act: a draft for consultation, Toronto, June 1985.
2. Canada, House of Commons, Standing Committee on Finance, Trade and Economic Affairs, Report on Canadian Financial Institutions (Blenkarn Report), Queen's Printer for Canada, Ottawa, November 1985.
3. Ontario, Ministry of Consumer and Commercial Relations, Task Force on Financial Institutions, Final Report (Dupre Report), Toronto, December 1985.
4. Canada, Senate, Standing Committee on Banking, Trade and Commerce, Towards a More Competitive Financial Environment: Sixteenth Report, First Session, Thirty-third Parliament, 1984-85-86, Ottawa, May 1986.
5. Ontario, Ministry of Consumer and Commercial Relations, Proposals for Revision of the Loan and Trust Corporation Legislation and Administration in Ontario (Ontario White Paper), Toronto, November 1983.
6. Ontario, Ministry of Consumer and Commercial Relations, Internal Review of the Loan and Trust Administration Financial Institutions Division With a Response from the Division, Toronto, November 1983; Ontario, Ministry of Consumer and Commercial Relations, Special Report of the Registrar Concerning Crown Trust Company, Greymac Trust Company, Seaway Trust Company, Greymac Mortgage Corporation and Seaway Mortgage Corporation, Toronto, November 1983; and Touche Ross, Report of the Special Examination by James A. Morrison F.C.A. of Crown Trust Company, Greymac Trust Company, Seaway Trust Company, Greymac Mortgage Corporation and Seaway Mortgage Corporation (Morrison Report) to The Honourable Robert G. Elgie M.D., Minister of Consumer and Commercial Relations, Province of Ontario, Toronto, June 1983.
7. Ontario, Legislative Assembly, Standing Committee on Administration of Justice, Report on the White Paper on Loan and Trust Companies, Toronto, May 1984.
8. Ontario, Ministry of Consumer and Commercial Relations, Task Force on Financial Institutions, Interim Report, Toronto, December 1984.

9. Ontario Draft Act, op. cit., note 1, p. 2. The draft Act is said to represent the policy approach of the Ministry, not the final view of the Ontario government. The draft Act is now in bill form. (Ontario, Legislative Assembly, 2nd Session, 33rd Legislature, Bill 116: An Act to revise the Loan and Trust Corporations Act, Government Bill, Queen's Printer for Ontario, Toronto, 1986.)
10. The Ministry of Consumer and Commercial Relations indicated its intent to properly confine the 'equals approach' to the regulation of the business of extra-provincial corporations as opposed to their corporate status and essential powers (Ibid., p. 3). As I have indicated in Chapter II, it may be argued that the draft Act does, in some respects, attempt to regulate corporate powers.
11. The 10% rule was rejected in part because strong conflict of interest rules were preferred and in part because concentration of ownership and foreign ownership (also limited by the 10% rule) were perceived to be "not relevant for the much smaller Canadian-based financial institutions regulated under the Loan and Trust Corporations Act". In view of the fact that many trust companies are increasingly closely held and growing in size relative to the big-five banks, this reason may no longer be valid.
12. Blenkarn Report, op. cit., note 2.
13. Canada, Minister of State (Finance), Working Committee on the Canada Deposit Insurance Corporation (CDIC), Final Report (Wyman Report), Minister of Supply and Services Canada, Ottawa, April 24, 1985.
14. Blenkarn Report, op. cit., note 2, p. 3.
15. Ibid., p. 5.
16. Ibid., p. 6.
17. Ibid., p. 15.
18. Ibid., p. 65.
19. Ibid., p. 65 and pp. 94-96.
20. Ibid., p. 16.
21. Ibid., p. 6.
22. Ibid., p. 16.
23. Ibid., pp. 74-78.
24. Ibid., p. 28.

25. Ibid., p. 38.
26. Ibid., p. 42.
27. Ibid., p. 79.
28. Ibid., p. 112.
29. Ibid., p. 117.
30. Ontario Task Force on Financial Institutions, op. cit., note 3.
31. Ibid., p. 1.
32. Ibid.
33. Ibid., p. 2.
34. Ibid. Again, this is not surprising in view of the many institutional failures in Ontario. Many credit unions were, and remain, in financial difficulty as well.
35. Ibid., p. 5. The Task Force called the upgrading of regulatory and policy-making resources an "urgent priority" (Ibid., p. 40).
36. Ibid., pp. 7-8.
37. Ibid., p. 5.
38. Ibid., p. 12. The same comments can be made about the Task Force support of the financial holding company concept as were made in my commentary concerning the Green Paper (see Chapter IV).
39. Ibid., p. 9.
40. Ibid., p. 96.
41. Ibid., p. 11.
42. Ibid., p. 55.
43. Ibid., pp. 54-55.
44. Ibid., pp. 15-16.
45. Ibid., pp. 17-19.
46. Ibid., p. 43.
47. Ibid., p. 29.
48. Ibid., pp. 79-80.

49. ibid., p. 88.
50. ibid., p. 96.
51. ibid.
52. ibid., p. 97.
53. ibid., pp. 96-97.
54. There are over 900 credit unions in Ontario which have assets of about \$6 billion (ibid., p. 101).
55. Canada, Senate, op. cit., note 4. It is interesting to note that the two outside advisors retained by the Committee were Prof. Thomas J. Courchene, Professor of Economics at the University of Western Ontario and former Chairman of the Ontario Economic Council and Mr. Gerald A. Lacoste, partner with the law firm of Martineau, Walker in Montreal and former Chairman of the Quebec Securities Commission. Prof. Courchene is now advising Tom Hockin, the Minister of State (Finance) who succeeded Barbara McDougall in that portfolio.
56. ibid., p. 15.
57. ibid., p. 16.
58. ibid., p. 15. Out of 41 submissions to the Committee, 33 were by corporations (mostly financial corporations) or corporate associations.
59. ibid., p. 21. As the Committee put it - "the challenge is to ensure that each dollar deposited with an institution is regulated somewhere while at the same time ensuring that this does not lead either to regulatory overlap or to the 'un-levelling of the playing field'" (ibid., p. 2).
60. ibid., p. 17.
61. ibid., p. 18.
62. ibid., p. 20. Referring to the mandatory holding company concept, the Committee pointed out that if every person holding 10% of the shares of a financial institution had to form a holding company, then there could be ten holding companies per institution and "a dramatic increase in the degree and scope of regulation" (ibid., p. 35).
63. ibid., p. 20.
64. ibid.

65. Ibid., p. 44.
66. Ibid., p. 23.
67. Ibid., p. 26.
68. Ibid., p. 24.
69. Ibid., p. 29.
70. Ibid., pp. 30-31.
71. Ibid., pp. 31-33.
72. Ibid., p. 35. While the Committee briefly explained its reasons for this recommendation, I did not understand them. I believe it was felt that 35% was enough to result in adequate outside scrutiny of the institution's affairs.
73. Ibid., pp. 47-48.
74. Ibid., pp. 62-63.
75. Ibid., p. 66.
76. Ibid., p. 61.
77. Ibid., p. 62.
78. Ibid.
79. Ibid.
80. Ibid., p. 63.
81. Ibid., p. 61.
82. Economic Council of Canada, "Speaking Out", Au Courant, Vol. 6, No. 4, 1986. The title of this report is Competition and Solvency: A Framework for Financial Regulation (Minister of Supply and Services Canada, Ottawa).
83. The Honourable Willard Z. Estey, Commissioner, Report of the Inquiry into the Collapse of the CCB and Northland Bank, Minister of Supply and Services Canada, Ottawa, August 1986.

CHAPTER VI

RESPONSE OF THE GOVERNMENT OF BRITISH COLUMBIA
("many a slip between cup and lip" - author unknown)

Financial institution regulation has rarely been of much public or governmental concern in British Columbia. There were two events before the 1980's, however, which made the operation of deposit-taking institutions in the Province the subject of some public debate. These were the demands made by Premier W.A.C. Bennett to the federal government in the 1960's for amendments to the Bank Act to allow the provincial government to control a federally chartered bank, and the enactment by the New Democratic Party (N.D.P.) government in 1975 of the Savings and Trust Corporation of British Columbia Act.¹ Both events illustrate earlier government concerns about financial institution regulation in the Province. The concerns were narrowly focussed on federal-provincial inequities rather than on the nature of the regulatory system itself.

The Bank of British Columbia

In 1964 (the year of the Porter Commission Report), the Social Credit government in British Columbia under Premier W.A.C. Bennett announced that it intended to promote the establishment of a federally chartered bank in which the provincial government would own 20-25% of the shares (and therefore control bank operations). Premier Bennett argued that the Province needed a chartered bank with direct knowledge of British Columbia's economic situation which would invest in the Province and assist its economic development in a way which the existing banks (based in Toronto, Montreal and Halifax) could not or would not.²

The Senate Committee which heard Premier Bennett's request for a charter was not happy with the idea of government ownership and in 1965 the federal government announced that it would pass legislation prohibiting government ownership of the voting shares of chartered banks. This was accomplished in the revised Bank Act of 1967. Despite this setback, the provincial government decided to support the charter of a private bank with a British Columbia head office and the Bank of British Columbia was established in Vancouver in 1968. By 1973, all four Western provincial premiers (now including Dave Barrett, N.D.P. Premier of British Columbia) were recommending to the Western Economic Opportunities Conference that the Bank Act be amended "to allow Provincial Governments to own and control existing, or to establish their own, chartered banks".³ The premiers felt that the higher interest rates and conservative and inflexible lending policies of the banks restricted economic development in the provinces. Their joint submission stated that:

economic, financial and tax policies of the federal government ... early assisted the concentration of the nation's business and industrial activity in Central Canada. These policies ... have worked against the allocation of financial and production resources to bring balance to the economies of all regions of Canada. The Western Provinces wish to extend their frontiers and broaden and diversify their industrial base in order to increase job opportunities for their citizens today and in the future. Essential to this undertaking is an adequate availability of financial resources at competitive rates through institutions which are responsive to the particular needs of the Western Provinces. The branch banking system, characterized by the five major Canadian chartered banks with branches coast-to-coast and head offices in Central Canada, has not been adequately responsive to Western needs.⁴

The federal government submission to the 1973 Conference stressed the importance of nationally efficient markets and international

competitiveness.⁵ The government did agree, however, that there were problems, particularly in the provision of funds to meet regional credit and capital requirements, stating:

head offices of major institutions are concentrated to a considerable degree in Toronto and Montreal, and this factor of location, together with the interlocking nature of the corporate business community, results in a lack of responsiveness to the needs for development capital in the West.⁶

But the government also noted that there were no legislative restrictions against the establishment of regionally based chartered banks and that federal and provincial government programs did exist to funnel funds to slow growth areas (eg., under the Department of Regional Economic Expansion).

The Canadian Bankers' Association (CBA) submitted a brief to the Conference arguing that the banks were competitive and did not discriminate and did not deserve to be the focus of criticism if certain financial needs were not being met.⁷ Despite this lobby, in March 1974, the federal government introduced Bill C-13 to amend the Bank Act to allow provincial governments to put up a total of 25% of the capital required to charter a bank, to be reduced to a total of 10% over a period of years. The CBA vigorously opposed the Bill, citing the dangers of government ownership such as political influence of the bank's management, conflict of interest between political goals and depositor or shareholder interests, pressures on business to bank with the government and concern for the privacy of banking activities.⁸ The Bill died, but the proposal was revived in the White Paper on Banking and found its way into the 1980 Bank Act.

In Premier Bennett's time, Western economic development was

perceived to be tied to activities in the financial sector, particularly the banks, but development difficulties were associated with the absence of regional banks rather than any local regulatory deficiencies.

B.C. Savings and Trust Corporation

In the meantime, following a full review and revision of credit union legislation, the N.D.P. government of British Columbia under Premier Dave Barrett introduced legislation in 1975 to establish a government controlled financial institution called the Savings and Trust Corporation. The objectives of the institution were:

1. to provide a full range of financial facilities and services;
2. to provide competition in the financial markets with a view to reduction of the rates of interest on borrowings by citizens and institutions of the Province;
3. to encourage the citizens and institutions of the Province to deposit their funds to support further economic and social development of the Province;
4. to ensure the maximum retention within the Province of the funds of the citizens and institutions of the Province;
5. to attain a more equitable balance between loans and deposits among all regions of the Province;
6. to increase the availability and amount of credit for low-income and middle-income citizens, and to farmers, fishermen, and small businesses;
7. to provide a full range of credit facilities and collection services, including the processing of payments to or from the Crown, and
8. to encourage the continuation of credit union offices.⁹

The government also intended to use the corporation as a vehicle for public involvement in the financial sector of the Province, working closely with (and also promoting) the credit union movement. The government believed that the focus of decision making about loans and investment should be in British Columbia. There was also considerable pressure on the government to find a way of increasing mortgage lending in the Province.¹⁰

The N.D.P. government presumably decided that a Provincial Crown corporation and the credit union movement (credit union legislation had been updated in 1974), both Provincially regulated, were more suitable vehicles for the provision of development capital and for the achievement of other Provincial goals than a privately controlled regional bank. Once the Bank of British Columbia was established, the previous Social Credit government had also lost interest in promoting its regional bank. This may have been due to an improving economy and the greater availability of capital. It is also possible that Premier W.A.C. Bennett's complaints about the Eastern banks had more to do with political rhetoric than anything else. British Columbia premiers have always received a favourable response from their voters when complaints about the Eastern establishment (including the federal government) have been aired. Certainly the Provincial government did not support the Bank of British Columbia to any significant degree. It did not, for example, make it the government banker. The Bank was on its own after it received its charter under the Bank Act.¹¹

In December 1975, the N.D.P. was defeated in the Provincial general election and the Social Credit Party assumed power under Premier William Bennett. A report commissioned by the previous government concerning the implementation of the Savings and Trust Corporation was submitted to the new Bennett government but it was never publicly released. The Savings and Trust Corporation of British Columbia Act was neither repealed, nor proclaimed into force and the Social Credit government (still in power) has not publicly stated its intentions with regard to the concept. The potential impact of such a corporation is enormous

(particularly if government funds are invested there) and it has been described as a "super bank", possessing most of the powers of a chartered bank as well as trust and insurance powers.¹² It is not surprising that the conservative Social Credit government did not implement the N.D.P. scheme in view of its campaign stance against direct public involvement in the economy.

Today, in Canada, the only publicly controlled near bank which offers a wide range of services is Alberta's Treasury Branch system.¹³ When governments want to allocate funds to certain economic sectors perceived to be inadequately serviced by private financial institutions, they tend to use mechanisms which offer incentives to (or require) financial institutions, individuals or corporations, to make certain kinds of loans or investments.¹⁴ Direct public involvement is usually restricted to limited purpose corporations such as the Federal Business Development Bank and the British Columbia Development Corporation or to direct loans or grants. Whether or not chartered banks and other types of financial institution are efficient or do discriminate,¹⁵ the fact remains that most provincial governments in Canada (with the possible exception of Ontario and Quebec), whatever their political stripe, feel some disaffection for the large financial institutions.

In the years 1976 to 1986, the old concerns raised by W.A.C. Bennett, Dave Barrett and the other Western premiers were not raised again in British Columbia. The only financial sector area in which the Provincial government saw (and continues to see) a need to promote a significant Provincial presence for economic development reasons was the securities industry. In the 1970's the lack of concern was

understandable since the economy was in reasonably good shape, the credit union movement was growing and filling some of the allocational gaps left by the banks and the N.D.P. had created the British Columbia Development Corporation and other mechanisms to fund Provincial companies. In the 1980's, as the recession worsened, Cabinet still seemed unconcerned about the health of the financial sector in British Columbia, but there were growing concerns among the regulatory officials about institutional solvency and an out-of-date regulatory framework.

The Response to the Green Paper

In 1983, partly in response to a series of trust company failures which peripherally affected the Province¹⁴ and partly in response to the dissemination of the Ontario White Paper following after the federal draft trust company legislation,¹⁷ the B.C. Ministry of Consumer and Corporate Affairs struck an intra-Ministry committee (the Thomas Committee) of public servants to review the Provincial trust and loan company legislation.¹⁸ This Committee did extensive research and thoroughly reviewed the Trust Company Act and various alternatives for regulatory reform (it was agreed by everyone that reform was necessary), but no significant public proposals were made as a result of the Committee's work. The Minister at this time did not seem to be particularly interested in the findings of the Committee. A draft Bill was scheduled by the Ministry for introduction in the 1984 legislative session, but was never presented to the Legislature and events overtook the original legislative plans.

Despite the perception that the Insurance Act and the associated regulatory regime was also in need of significant updating, the Ministry

did not make this goal a priority. The Act was later amended, however, to allow the Superintendent of Insurance to delegate the responsibility for the issuance, transfer and amendment of licences to the self-regulatory body the Insurance Council of B.C. This delegation was implemented in early 1985.

The Ministry had, since 1978, been steadily (although slowly) working on new securities legislation to bring British Columbia into line with significant changes in Ontario, the acknowledged leader in securities legislation. The Minister of Consumer and Corporate Affairs introduced a Bill into the Legislature in 1982 and a similar Bill was finally passed in 1985. The new Securities Act¹⁹ was proclaimed in force effective February 1, 1987.

By 1985, there had been more financial institution failures and these failures and other pressures described in Chapter IV resulted in the publication of the federal Green Paper. The Green Paper was soon to be followed by two Western regional bank failures²⁰ and other reports were also underway which increased the public profile of the issues. The Minister of Consumer and Corporate Affairs created an intra-Ministry policy committee for the purpose of dealing with the issues of regulatory reform and the possibility of designating Vancouver an international financial centre. Preparing a response to the Green Paper and other reports and determining how their proposals would affect British Columbia was only a peripheral objective. The Thomas Committee ceased to exist although this second Committee contained some of its members. The Minister retained a consultant to assist the Committee, a lawyer with considerable governmental experience in the policy

formulation area. Others on the Committee included three members of the Ministry policy advisory staff, the Superintendent of Financial Institutions (after April 1986), the Assistant Deputy Minister of Financial and Corporate Relations and the Deputy Minister. Some in-house papers were completed by the Committee and papers on deposit insurance and the federal-provincial regulation of financial institutions were tabled at the January 1986 meeting of Deputy Ministers responsible for financial institution regulation.

Following the two regional bank failures at the end of 1985, the issue of regulatory reform took on a higher profile and became a higher priority for the federal and many provincial governments. At this time, the B.C. Ministry of Finance also became concerned to prevent the need for further infusions of public money into failing financial institutions²¹ and to formulate a coherent Provincial policy regarding financial institution regulation. The issues had now attracted Cabinet's attention and the decision was made in 1985 to prepare a discussion paper for public release regarding the Provincial regulatory response to perceived problems of solvency, efficiency and competitiveness. The Committee worked throughout 1985 and up to September 1986 to develop a discussion paper and to contribute on various levels to federal-provincial discussions on the subject of financial institution regulation.

The Ministry of Finance made some contributions to the policy formulation process on an informal basis, although the input of this Ministry seems to have been less important (at least before November 1986). The Ministry of Finance, through Treasury Board, is involved in

financial institution regulation due to its mandate to analyze and evaluate policy proposals and to review the proposals in light of the broader economic development goals of the Province.²² The Ministry is intended to have a broader perspective than the line Ministries like Consumer and Corporate Affairs. Any differences of opinion regarding policy proposals are generally ironed out before the proposals reach the Cabinet Committee stage. There was not a representative from the Ministry of Finance on the Consumer and Corporate Affairs Committee. Control of policy formulation in this area was thus very much in the hands of the Minister of Consumer and Corporate Affairs and his Deputy until November 1986.²³

Federal-provincial discussions formed a large part of the Committee's work. The provincial Ministers responsible for financial institution regulation met in Vancouver in March 1986 and again in October 1986. Their Deputy Ministers also met in advance of the Ministers but meetings were held far more often among lower level public servants who were attempting to come to a consensus about the more technical questions such as how to best control conflict of interest and regulate solvency. Considerable agreement was reached at this level, but agreement at the political level among the major regulatory jurisdictions in Canada was and is still far from achievement.

The over-riding concern of the Provincial government at this time (December 1986) was "economic growth and renewal" and "new employment through the development and diversification of British Columbia's economy". Measures introduced by the Finance Minister, then the Hon. Hugh Curtis in the Budget Address of 1985 were "designed to encourage

new investment" in a "partnership for economic renewal". In the government's view:

the changing world dictates the need for innovative policies to encourage and assist the development and diversification of our economy.²⁴

The only significant initiative involving the financial sector mentioned in the Budget Address concerned the establishment of an international financial centre in Vancouver. Mr. Curtis said:

Growth in international trade is crucially dependent on a world-class financial services industry. The government is committed to encouraging the establishment, in Vancouver, of an international financial centre which, by attracting financial transactions involving non-residents, would be complementary to the development of our domestic financial services sector. It is my hope that a joint federal-provincial review of the taxation and regulatory measures necessary to attract international financial business to Canada, and in particular to Vancouver, will be undertaken in the coming year.²⁵

Until November 1986, the government publicly committed itself only to implementing a new Securities Act and the establishment of an international financial centre. The 1986 Budget Address continued the "economic renewal" theme of 1985 "to strengthen the Province's economic base, preserve and create jobs, and make the Province more competitive".²⁶ The government predicted the beginning of an era "marked by an expanded world role" for the Province. There was general support for federal free trade negotiations with the United States but no mention of the financial sector, except that financial and business services were said to represent a major opportunity for the Province to broaden the economy and create jobs. Unlike the federal government, the Provincial government did not make a commitment to regulatory reform²⁷ and seemed not to connect regulatory reform to its economic development objectives.

In the 1986 Throne Speech, the Provincial government indicated that the financial sector was one of its priorities in "building the new economy" but its reference to the financial sector was concerned almost entirely with the proposed international financial centre. The Throne Speech emphasized "economic renewal", "building the new economy", lowering the costs of business, preserving and creating jobs, stimulating investment, economic diversification and trade expansion. With regard to the financial sector, the government wrote:

In my last message [the 1985 Throne Speech], I advised you of my Government's efforts to establish Vancouver as an International Financial Centre, to take advantage of the city's strategic placement between New York and the nations of the Pacific Rim.

My Government was pleased with the Federal Government's recent announcement that designated Vancouver and Montreal as international banking centres and will intensify its efforts in the coming years to strengthen the entire financial sector - which plays a vital role in British Columbia's economy.

An Advisory Committee will be named by my Government to assist in developing the opportunities and meeting the challenges provided by the delegation of Vancouver as an International Financial Centre.

...
In the last Session, you enacted the Securities Act, the Small Business Venture Capital Act, and the British Columbia Equity Investment Plan Act. I am advised that these initiatives will, when taken together, give a significant boost to the financial sector in our Province.²⁸

The failure to mention any of the issues raised in the Green Paper was significant and revealed that Cabinet did not see regulatory reform and a stronger regulatory staff as an initiative in the areas of economic development, stimulating investment or even financial sector development.

It seems fair to say that the priorities of Cabinet in the area of financial institution regulation were the new Securities Act and the proposed international financial centre. In a sense, however, the

enactment of a new Securities Act is unrelated to the present debate regarding financial institution regulation since initiatives to amend the statute were commenced in 1978 largely in response to regulatory changes in Ontario. The international financial centre is really the only significant initiative taken by the government in 1985 and 1986 and it, too, is largely unrelated to the present regulatory reform debate in Canada. The idea had already ripened several years earlier in Quebec and apparently Premier Bennett returned from a trip to China in early 1985 convinced by the support he received there that the initiative would be a reasonable one for British Columbia.

In March 1986, following their meeting in Vancouver, the Ministers responsible for the regulation of financial institutions in Canada (including the Minister of Consumer and Corporate Affairs) issued a Press Communique²⁹ which announced the agreement of the Ministers:

to implement measures to strengthen confidence of consumers and investors in financial institutions and to improve supervision and regulation of the industry.

The Ministers also wanted "to give the public and the industry a signal on the future direction of financial institutions regulation and supervision" and "agreed to the following initiatives":

1. To improve federal-provincial coordination of financial institutions regulation, while respecting each jurisdiction, by:
 - regular federal-provincial ministers' meetings with a continuing committee of officials to facilitate consultations and the development of coordinated policy responses to changes in the industry;
 - enhancing information-sharing among jurisdictions and the Canada Deposit Insurance Corporation ... and the Regie de l'assurance-depots du Quebec;
 - working towards a data base on federal and provincial financial institutions, as well as a directory of ownership, to provide a sounder basis for decisions of regulators;
 - ensuring consultation in cases when the interests of more

than one jurisdiction are involved in decisions to rehabilitate or liquidate a financial institution;

2. To improve financial institutions regulation by:
 - standardizing inspection procedures and reporting forms;
 - strengthening monitoring to reveal earlier signs of problems;
 - tightening controls over self-dealing through a ban with limited exceptions and continuing work to develop a common definition of restricted parties and transactions to be covered by the ban;
 - agreeing on a prudent portfolio approach with quantitative restrictions as the framework for the regulation of investments;
 - working towards a common definition of commercial lending to more properly define the role of financial institutions in this area;
 - exploring ways to investigate and resolve consumer complaints of conflicts of interest abuses;
 - raising standards of care of directors, managers and officers of financial institutions, and the professionals who serve them, particularly with respect to actions which may affect solvency.³⁰

While these "initiatives" are perhaps better described as "goals", they clearly emphasize solvency rather than efficiency. This reflects, in part, concerns about the bank failures. It probably also reflects the fact that it is easier to agree on solvency regulation than on measures to improve efficiency and competitiveness and the economy generally. Most of the "initiatives" are relatively uncontroversial. Quebec, Ontario, the federal government and New Brunswick have proceeded more quickly than British Columbia to take concrete steps to achieve these goals.³¹

Quebec has accomplished more than any other jurisdiction. The Quebec government was slowly making changes in line with the philosophy of the Parizeau Report throughout the 1970's. In 1983, the government created a central supervisory and control agency, the Inspector General of Financial Institutions. The Insurance Amendment Act, 1984 (Bill 75)

continued the process of deregulation in that industry by allowing insurance companies more powers. A draft Bill was prepared in 1986 to similarly expand trust and loan company powers. In both cases, measures have been adopted to improve regulatory supervision and control as well.³² The province's securities and credit union legislation is relatively up-to-date. Quebec was moving toward these and other changes long before the other jurisdictions and its policy course has been fairly steadily followed since the release of the Parizeau Report in 1969. The philosophy of the Report has been followed and executed by both Liberal and Parti Quebecois governments.

In Ontario, draft trust company legislation was put forward by the government for discussion in 1985 and Bill 116, replacing Bill 87 (1985), based on this draft was placed before the Legislature on July 3, 1986. The government drafted proposals to strengthen its credit union system which were targetted for implementation in 1987. Securities legislation is relatively up-to-date, but insurance legislation is not and some updating is necessary.³³

The federal government published draft trust and loan company legislation in 1982,³⁴ but this draft was not presented in Bill form to Parliament. The government announced its intention to submit a comprehensive Bill concerning financial institution regulation to Parliament in the Fall of 1986 then delayed its release to await the publication of the Estey Report concerning the 1985 chartered bank failures. The Estey Report, published in November 1986,³⁵ provided major support for the policies of the federal government which were subsequently released in the form of a White Paper in December 1986.³⁴

The government of New Brunswick also presented new draft trust company legislation in the form of a green paper.³⁷

The B.C. Minister of Consumer and Corporate Affairs, then the Hon. Elwood Veitch, announced in April 1986 that the Ministry would release the discussion paper regarding financial institution regulation in May 1986 and would then consult with members of the financial community in May and June before reporting to Cabinet. The Minister also stated that new legislation affecting credit unions, trust companies, insurance companies, real estate companies and mortgage brokers would be introduced in the Fall of 1986 or the Spring of 1987.³⁸ The release of the discussion paper was delayed partly because of the need to adjust its contents to suit the priorities of a new Minister (Mr. Veitch was appointed early in 1986) who was less concerned than the previous Minister, Mr. Hewitt, with the details of regulation and regulatory controls and more concerned with how regulatory reform might assist economic development in the Province. The new Minister also placed a greater emphasis on deregulation which was perceived to be more conducive to the development of the financial sector in B.C.³⁹

In April 1986, the government appointed Allan Mulholland to the newly created position of Superintendent of Financial Institutions, then reporting to the Assistant Deputy Minister of Financial and Corporate Relations. He was assigned responsibility for the regulation of trust and insurance companies, credit unions and cooperatives. The Superintendent of Brokers, (also newly appointed in June 1986) was responsible for the regulation of the securities and real estate industries. In May 1986, the Minister's office announced that the

discussion paper would not be released until it had been dealt with by Premier Bennett's replacement to be elected at the Social Credit Party convention in July 1986.⁴⁰ Premier William Vander Zalm was elected at that convention and then secured the re-election of the Social Credit government in the general Provincial election held on October 22, 1986.

On September 10, 1986, the Minister announced that consultations on financial institutions would proceed "as a result of Cabinet discussions". The discussion paper was still to be finalized, but was to be printed "shortly" and "[meeting] dates with industry, consumer and business groups [were] to begin in October". The objectives of the consultation process were stated to be to:

1. ensure British Columbia financial institutions maintain and increase their share of markets in British Columbia and elsewhere;
2. increase the potential for Vancouver to develop as an international financial centre; and
3. ensure there is a safe, flexible and progressive regulatory environment and that confidence of consumers, savers and investors is maintained.⁴¹

The Minister said:

I want to know what direction British Columbia financial institutions and the public think we should take to ensure our province's financial sector can grow, develop and contribute to economic prosperity.⁴²

The broad goals of the Ministry with regard to financial institution regulation are the same as those expressed by all governments (although the emphasis on one aspect or the other may vary), namely, solvency and efficiency or competitiveness in the industry, and these goals have been described by the then Deputy Minister of Consumer and Corporate Affairs as:

balancing public confidence in commercial, financial services and investment markets with the need to ensure the regulations governing activities in the insurance, real estate, securities and financial institutions fields do not unnecessarily impede business activity and growth.⁴³

The Minister, Elwood Veitch, took these goals one step further, however, by adding another goal, that of using regulation not just to enhance solvency and consumer protection while at the same time minimizing constraints on efficiency and competitiveness but also as, in his words, "a proactive instrument of economic recovery".⁴⁴

The Discussion Paper on financial institutions was released on October 6, 1986 by the Ministry of Consumer and Corporate Affairs. Its title is Perspectives for Growth in British Columbia's Financial Sector: Background Information for a Consultative Process.⁴⁵ As the first part of the title suggests, the emphasis of the paper is on the promotion of the development of the financial sector. For the first time, the Premier actively and publicly inserted himself in the process of discussion by a press release from the Office of the Premier which expressly linked the discussion paper to the Premier's recently unveiled "economic blueprint to foster the confidence of business and to diversify our province's economy". This was also the first time that effective financial institution regulation was publicly recognized by the government as related and important to financial sector growth, business confidence and economic diversification. Meeting dates for feedback on the Discussion Paper were now scheduled for November 1986.

The Discussion Paper comprised five parts and appendices. The "Minister's Introduction" called for a consultation process by "emphasizing issues and questions, rather than solutions, ... to avoid

pre-empting discussion". The rest of the paper was largely a summary of many of the regulatory issues raised in the federal Green Paper interspersed with questions such as:

Should mingling of functions continue? Can more of our financial institutions be internationally competitive? What opportunities for development can the financial sector identify, and how can the Government of British Columbia assist and support in these developments?

Questions like these were extraordinary in view of the fact that the government had already spent years studying the issues and formulating responses for federal-provincial discussions and other purposes. The senior bureaucrats and Ministry policy advisors were already well aware of most interest group positions on the issues and the regulatory reform alternatives were now fairly clear. Asking questions could not further clarify the alternatives and, in any event, they provided very little to interested parties as a firm point of departure for the consultation process. Response to the Discussion Paper was difficult since its presentation was so amorphous. When concrete proposals were made (and they were few), they were so broadly worded as to be meaningless. For example, the Paper stated that the government was considering nine major areas of regulatory reform of the Trust Company Act including:

raising minimum capital requirements and qualifications of directors, officers and major shareholders; and increased penalties for contravention.

The Paper then stated that:

Legislation will be drafted on the basis of response to these proposals. Are any additional areas of legislative change required?⁴⁴

It was, practically-speaking, impossible to respond to such broad proposals or to indicate additional need for legislative changes since

no legislative specifics were provided.

It is unlikely that interest groups responded to the Paper any differently than they had already responded to similar questions from the Ontario and federal governments. It is difficult to view the Discussion Paper as anything more than a delay mechanism and an indication that the government was not yet ready, able or willing to make a decision. The Paper demonstrated that the British Columbia government, despite years of research into the issues, had still not passed the stage of asking questions and moved to the stage of concrete policy proposals, if only to deal with the most urgent concerns. In fact, the Paper actually retreated in some measure from the consensus of Ministers described on pages 151 and 152. Failure to institute reforms might not have been particularly unusual if the Province had been content to play second fiddle to the major financial players, Ontario and Ottawa, and simply wait until the major decisions had been made by those jurisdictions and then follow (or not follow) suit.⁴⁷ The limited nature of its response (compared to Quebec, Ontario, the federal government and even New Brunswick) was particularly unusual because Provincial officials had strongly voiced their belief that British Columbia was a significant player in the Canadian financial sector and that the Provincial government was not going to abdicate the responsibility for policy formulation to Ontario, Ottawa and, to a lesser extent, Quebec. The British Columbia profile had also been heightened by the government's promotion of Vancouver as an international financial centre.

In fact, despite some rhetoric to the contrary from the Ministry of

Consumer and Corporate Affairs, the government of British Columbia was abdicating responsibility to the federal and Ontario jurisdictions in the areas of trust and insurance regulation and with regard to the resolution of the more global issues such as the regulation of financial holding companies and the expansion of institutional powers. There may not have been a conscious decision to abdicate but abdication resulted from Cabinet's failure to act. I believe that there were many reasons for this failure. The most significant reasons may be summarized as follows:

1. little pressure for change at the Cabinet level in British Columbia;
2. low priority of the issues at the Cabinet level;
3. lack of expertise about financial institution business and financial institution regulation;
4. overwhelming 'de facto' regulatory power exercised now by Ontario and Ottawa;
5. regulatory "paralysis" caused by lack of expertise, complexity of issues and the difficulty of deciding upon regulatory goals and the means to implement them; and
6. greater interest by the politicians in attracting business than in regulating solvency and the choice of the international financial centre as the primary initiative for economic development.

Little Pressure for Change

There was not a great deal of pressure on the politicians in British Columbia from 1980 to 1985 to significantly amend financial institution regulation for several interrelated reasons. First, although most interest groups were unhappy about the regulatory regime, they were also not keen on changes which might increase regulatory controls or otherwise might be prejudicial to their interests. Many

changes (such as increased powers) may be allowed (or not disallowed) by the regulators without legislative change. In addition, it seems fair to say that a relatively unregulated environment in British Columbia benefits some financial institutions (with positive or negative results for the public interest and other financial institutions). Second, industry groups tend to direct their attentions to Ottawa and Toronto, rather than Victoria, since activities in those jurisdictions have a much greater impact on their business and regulatory reform is well underway there. Non-industry groups like the Consumers Association of Canada have also made their views more forcefully known in Ottawa and Toronto than in British Columbia. Third, most trust, insurance and securities companies and banks are not based (or incorporated) in British Columbia and British Columbia is not the primary regulator of these companies. Fourth, the media and other commentators have not been quick to point the finger of blame for institutional failures at the government of British Columbia. The opposite is true in Ontario and at the federal level where both governments faced harsh criticism from the media for inadequate legislation and supervision.⁴⁹

To the degree that institutional and other interest groups (and the bureaucracy) lobby strenuously for incremental legislative and regulatory changes, they are often successful. The credit unions (which direct most of their lobbying efforts toward the Provincial government) have regularly succeeded in obtaining incremental legislative changes to the Credit Union Act. Because the Credit Union Act allowed the credit unions to do most of the things that they wished to do, there was no real pressure until 1986 for a major overhaul of the statute. The

credit union lobbyists have only recently begun to push for a major overhaul of the legislation (the last major review occurred from 1972-1974) and this push will presumably result in the desired intensive review, particularly because the new Superintendent of Financial Institutions is now forcefully communicating the need for such a review to the Minister. This push reflects a recent awareness in the industry of the implications for it of the long-term structural changes in the financial sector.

The politicians tend to give credit unions a better hearing in British Columbia because they are more likely to be familiar with credit union issues. Most politicians have at least one credit union in their constituency and credit union lobbyists are careful to present their positions and requests to both political parties. Politicians associate credit union membership with a large and distinct voter group in a way that does not occur with other financial institutions. They also associate credit unions with local community and small business development. Cabinet views the credit unions as important indigenous financial institutions and as a large, defined, political constituency. To the degree that legislative changes assist credit unions to provide greater benefits to their members, the politicians are also seen as providing benefits to the members (voters).

Credit unions were also the most immediate financial sector problem area in British Columbia in 1986. About 30 of the Province's approximately 130 credit unions were "under supervision" by the Credit Union Deposit Insurance Corporation (CUDIC) for financial management reasons. In addition, CUDIC, which insures credit union deposits to

100% of their value, has enough funds to pay for several small credit union failures, but not enough to pay for a run on the credit unions if consumer confidence is reduced by such failures. It is likely that the government would be at least politically liable to make up a shortfall.

The Trust Companies Association of Canada does not present a strong lobby in British Columbia and most of their proposals for incremental change have not made it onto the legislative agenda of Cabinet.

Amendments to the Trust Company Act have been relatively rare compared to the Credit Union Act. Until November 1986, the bureaucracy had not persuaded Cabinet that changes to the Act should be a priority and there was no significant public pressure for change since there had been no recent trust company failures with serious implications for British Columbia consumers. The existence of the industry-funded (with the banks) deposit insurance corporation (CDIC) backed by the federal government also significantly reduces the risk of loss to the British Columbia consumer or government should a trust company become insolvent. However, the failures of the Teachers' Cooperative, the Columbia Trust Company and the Bank of British Columbia in 1986 all helped to push Cabinet to re-evaluate its "second level" priority ranking for reregulation in the area of financial institution regulation in October 1986.

There has not been a strong lobby for changes to improve the regulation of solvency (and other institutional matters) with regard to insurance firms in the Province although the insurance agents' lobby is a strong one and issues relative to the business practice of insurance do receive a good hearing from the politicians. Again, there are many

insurance agents throughout the Province and they form a strong political constituency. Incremental changes to the Insurance Act and regulations in the area of insurance practice are relatively frequent.

The concerns of the Insurance Agents' Association members include the need to institute a compensation fund to protect the public from the failure of insurance companies, the need for more self-policing by the companies, fears about networking (arrangements between financial institutions to access each other's products or services) and, perhaps most important, total opposition to the involvement of the banks (and other financial institutions) in the provision of insurance services.⁴⁹ The implementation of a compensation fund is close to achievement but the agents have partly lost the battle concerning the ability of other financial institutions to offer insurance services. Credit unions may now offer insurance services under the existing legislation as long as they comply with certain requirements. However, all persons dealing with the public must be licensed under the Insurance Act.

Low Priority of the Issues

The politicians did not see regulatory reform (or a response to the federal Green Paper) as a priority. This fact was reflected in the Throne and Budget speeches as described above, in the debates in the Legislature where matters involving financial institution regulation are rarely raised, and in the almost total lack of response from Cabinet before October 1986. The New Democratic Party did not have a position paper on financial institution regulation and also seemed unconcerned with or unaware of the issues raised in the Green Paper and other reports.⁵⁰ Up to October 1986, neither the Ministry of Finance nor

Cabinet had become directly involved in the policy formulation process with the Ministry of Consumer and Corporate Affairs.

This was in part due to the lack of pressure for change from outside interest groups and in part due to the fact that the bureaucracy (as interest group) had not been able to convince the politicians about the need for or the benefits of regulatory reform.⁵¹ Within the Provincial bureaucracy the consensus was and is that there is a pressing need for regulatory reform. Ministry officials (the regulators) express concern about the fact that they often do not have the supervisory and enforcement tools to fulfill their responsibilities and do not receive adequate policy guidance to deal with new situations. Pleas for more resources and better legislation, however, have generally fallen on deaf Cabinet ears. One official told me that outside lobbying of Cabinet is encouraged by the bureaucracy "because they don't listen to us". The officials directly responsible for enforcing financial institution regulation do not have much time to examine the larger issues of regulatory reform such as those raised in the federal Green Paper. Even so, both the regulators and the policy advisors (who have a direct mandate to examine the larger policy issues), have had trouble convincing Cabinet (and perhaps the Minister) that the resolution of at least the most immediate concerns should have some priority.

Financial sector regulatory reform has not always been a top priority in Ottawa either, at least not until the mandate for reform was entrusted to the Minister of State (Finance), first Barbara McDougall then Tom Hockin. Even in 1986, a publication from the Conservative government placed financial sector regulatory reform at the end of a

list of other initiatives taken in the area of "Finance"⁵² and Bills C-103 and C-123, seen as an immediate necessity, had still not been passed by Parliament.⁵³ Lengthy delays in implementing reform proposals are occurring even though bank, trust, loan and insurance company failures have been costing the federal government millions of dollars.

British Columbia has always lagged considerably behind Ontario and Quebec and other provinces in the modernization of its corporate/commercial legislation. The financial sector is no exception.⁵⁴ Cabinet has rarely placed much importance on a sophisticated and modern regulatory system in the Province. The promotion of the local economy has always been a priority but Cabinet has not viewed a sophisticated regulatory environment as being necessary to achieve this goal. The British Columbia Cabinet has seen economic development as something which is best achieved by deregulation and a laissez-faire approach along with specific, narrowly targetted initiatives such as the international financial centre. Unless Cabinet is persuaded that more rigorous regulatory controls and more modern legislation are needed, new financial institution legislation will not reach the top of the legislative agenda. There are, however, two very clear signs that Cabinet has reconsidered its priority ranking of regulatory reform. In November 1986, the regulatory and policy development functions were transferred from the Ministry of Consumer and Corporate Affairs to the Ministry of Finance and Corporate Relations and the Premier and Mel Couvelier, Minister of Finance and Corporate Relations, announced that draft trust, insurance and credit union legislation would be prepared by February 1987 (an extremely ambitious undertaking). No public

statements were made at that time to indicate where Cabinet stood on the many policy issues such as ownership and the broadening of powers.

Lack of Expertise

The Ministry of Consumer and Corporate Affairs employed few personnel who might be considered to be experts in the area of financial institution regulation. Of the half dozen people who were knowledgeable about developments in the financial sector, all were also occupied on a daily basis with other unrelated matters or with strictly regulatory or enforcement concerns which occupied a significant amount of their time. Because Ministry resources were spread so thinly, it was difficult for the Ministry to respond to the changing financial sector environment in as thorough and sophisticated a fashion as the governments of Ontario and Quebec and the federal government. This is due in part, of course, to the lack of priority of the issues with Cabinet. If Cabinet had indicated a desire to see some changes, then the resources would have been found.

Few Cabinet members had any significant financial institution experience. There were no Jacques Parizeaus⁵⁵ in the bureaucracy or in the British Columbia Legislature and the government has not retained any such persons to assist it in the policy formulation process as other jurisdictions have done. Comprehensive financial institution regulation is a very complex subject. As the federal Green Paper has demonstrated, there is an intimidating range of regulatory reform proposals, many of which conflict. The implications of many proposals are unknown since research in many areas is limited. Taking the initiative in regulatory reform is somewhat risky and certainly daunting. Without a strong

regulatory and policy staff, the bureaucracy and the politicians in British Columbia were at a disadvantage (compared to Ontario and Quebec) in formulating regulatory reform proposals.

The Cabinet which was appointed in November 1986 contained many new faces as a result of the general election in October and of the addition of a large number of new seats in the Legislature. This Cabinet also contained more members with an expertise or experience more conducive to dealing with the issues of regulatory reform. This change may be one factor in the apparent change of heart exhibited by Cabinet in the November announcement by Mr. Couvelier of the February 1987 release of draft legislation.

De Facto Regulatory Power of Ontario and Ottawa

The regulatory influence of Ontario and the federal government is considerably greater than appears from a simple reading of the legislation and the Constitution. Most financial institutions which operate in more than one province are incorporated under federal, Ontario or Quebec law and most Canadian financial institution business is transacted in Ontario and (to a lesser degree) Quebec. The federal government has assumed a significant amount of regulatory power over trust companies (federally or provincially incorporated) through the CDIC and the Canadian Payments Association (as well as through the federal incorporation power). Regulatory changes in British Columbia will not have a major impact (or any impact) on most banks and trust and insurance companies in Canada.⁵⁴

To the extent that the regulatory system in B.C. differs from or does not keep pace with that of Ottawa, Ontario and Quebec, the

government must be careful not to discourage financial institutions from doing business in the Province or to threaten the ability of British Columbia incorporated institutions to do business in other provinces. For example, a loose regulatory structure in the Province which allows institutions greater powers and greater operational discretion may attract more financial institution business to the Province (and possibly increase the risk to consumers at the same time if adequate controls and supervision are not also present). At the same time, however, provinces such as Ontario which have stricter regulatory controls may restrict the ability of B.C. institutions to do business in Ontario if it is perceived that B.C. institutions are a financial risk or may have a competitive advantage over Ontario incorporated companies.⁵⁷

In other words, significant constraints are placed on the range of regulatory choices available to British Columbia due to the overwhelming de facto regulatory power of Ontario and Ottawa. At the same time, the fact that the financial sector is concentrated in eastern Canada reduces the pressure on British Columbia to introduce any reforms at all, at least in the trust, loan and insurance areas. If anything, the concentration of power in Ontario encourages the smaller jurisdictions like British Columbia to compete by jurisdictional laxity in order to attract new business and jobs.

Regulatory Paralysis

All jurisdictions suffer to some degree from regulatory paralysis. The phrase "regulatory paralysis" means the inability of decision makers to decide on regulatory goals or the means to achieve those goals. Both

the United States and Great Britain have been trying for years to resolve regulatory problems and deficiencies (see Appendix E). The federal government in Canada proposed draft trust company legislation in 1982³⁸ and a new Bill has still not been passed by Parliament. Delays such as this are common to all jurisdictions in Canada. Virtually all corporate/commercial legislation of some complexity takes years to enact (eg., federal Competition Act and B.C. Securities Act).

At the federal level and in Ontario, it is probably true to say (as Schultz and Alexandroff and Thorburn do) that decision making is made far more difficult by the need to aggregate interest group demands in a way which was not previously necessary.³⁹ When the "four pillars" were more truly segregated and their functions did not overlap as they do today, it was easier to make decisions because banks (for example) were not so concerned about trust company regulation. They performed different functions. Industry interest groups now are just as concerned about the regulation of the other 'pillars' as they are about their own. Governments must now look at financial sector regulation as a unit with different subsections.

As changes in the financial and regulatory environment are causing these once fairly distinct 'pillars' to overlap, governments are also becoming even more interested in using legislation to promote the various 'pillars' and even to 'plan' in the broader economic sense. All governments are concerned that the financial institutions which they regulate be internationally competitive and some have used financial institution regulation as a proactive instrument of economic development (Quebec has done this very successfully).⁴⁰ These changes have

certainly involved decision makers in much more complex interdependent relationships as Schultz and Alexandroff describe.⁶¹ This is compounded in the case of financial institution regulation which is already an extremely complex area in its own right. It is also an area which is rapidly changing and about which the state of knowledge is still relatively undeveloped.

Regulatory paralysis at first glance appears to be even worse in British Columbia which has not yet decided publicly (if at all) on its regulatory goals, let alone the mechanisms to achieve those goals. But on second glance, the lack of reform seems better explained by lack of political will to make any change at all, rather than indecision about what to do, at least at the Cabinet level. Until October or November 1986, Cabinet had not decided that the need for change was urgent enough to push legislation through the Cabinet decision making and legislative process. Cabinet had not been persuaded (rightly or wrongly) that it was appropriate to impose more regulatory control when its overall goal is a laissez-faire economy and deregulation. It had not been persuaded that regulatory change of any sort would significantly assist the Provincial economy (or assist it more than other items on the legislative agenda such as the international financial centre). It had not been persuaded that regulatory change was necessary to protect consumers in the Province.

Intergovernmental relations involving British Columbia have not been a problem in this policy field since there is substantial agreement at the bureaucratic-policy advisor level about the appropriate mechanisms to achieve the narrow goals of consumer protection and

financial sector efficiency and competitiveness. When (and if) the politicians decide to get involved, this may change.⁶² One need only look to Ontario's very sharp criticisms of Quebec's decision to open up the financial sector in Quebec and effectively encourage financial institutions to broaden their functions. Ontario responded by proposing to restrict the operation in the province of extra-provincial companies which are not regulated to its satisfaction. This is a government decision which has little to do with any interest group input. It illustrates the thesis advanced by Thorburn that the dynamics of federalism and interest group consultation are different and may impede each other.⁶³

Political Emphasis on Economic Development

The British Columbia Cabinet clearly has its eye on the economic development of the Province, rather than on regulatory reform in the financial sector. This means not only that regulatory reform is not a government priority, but also that, insofar as it does become a priority or at least reaches the legislative agenda, the emphasis will be on Provincial economic development rather than the regulation of solvency or even the enhancement of the competitiveness and market share of British Columbia based companies.

While the government must at some point modernize its trust and insurance company legislation to some degree, it is unlikely to do anything particularly original or to assume greater regulatory responsibility. The British Columbia government will probably enact legislation which is less restrictive than that enacted in Ontario, in part because of the government's laissez-faire attitude and in part

because failures of trust and insurance companies have not been such a high profile issue in the Province. At the same time, the government will not significantly increase its supervision of trust and insurance companies unless it sees some economic development potential in doing so. Assuming or duplicating federal supervision or increasing existing Provincial supervision will cost money and implies increasing government involvement at a time of restraint and political rhetoric regarding government downsizing. The Province will probably continue its present policy of minimum interference with trust, securities and insurance company and credit union operations. As John Schreiner recently reported an interview with Jill Bodkin (formerly Deputy Minister of Consumer and Corporate Affairs and newly appointed Chairman of the B.C. Securities Commission):

While the enforcement [of the securities industry] is buttressed under the new act, the legislation's bias remains against overregulation. 'We should allow the legitimate operators to operate as freely as possible', Bodkin believes.''

Conclusion

The government of British Columbia has responded in two ways to changes in the financial sector environment and to the federal Green Paper and other related regulatory reform reports and initiatives. The Minister of Consumer and Corporate Affairs, with his staff, participated in federal/provincial and inter-provincial meetings to develop a common response to perceived legislative and regulatory deficiencies in many areas of financial institution regulation. The Minister also initiated the publication of a Discussion Paper which contained questions but no specific proposals for regulatory reform or change. Provincial

government initiatives in other areas, such as the passage of a new Securities Act and the promotion of Vancouver as an international financial centre, have no direct relationship with the issues raised in the Green Paper. In effect, regulatory reform in the trust, insurance and credit union areas was subordinated to the promotion of Vancouver as an international financial centre.

This limited response (compared to Ontario, Quebec and the federal jurisdiction) was caused not by problems related to conflicting interest group demands or federal-provincial or inter-provincial disputes, but by the lack of political will to institute significant regulatory reform. If the factors described in this Chapter remain unchanged (and there is some indication that they are changing), then it is unlikely that broad reregulatory reforms will occur. Reform will be incremental and will be instituted pillar by pillar over a relatively long period of time and the government will not significantly increase its role in financial institution regulation in the Province.

FOOTNOTES

1. S.B.C. 1975, c. 68.
2. John N. Benson, Provincial Government Banks: A Case Study of Regional Response to National Institutions, The Fraser Institute, Vancouver, 1978, p. 11, citing Senate, Standing Committee on Banking and Finance, Hearings, 26th Parliament, Second Session, October 14, 1964, No. 3.
3. Ibid., p. 14, quoting Joint Submission of the Premiers of Manitoba, Alberta, Saskatchewan, British Columbia, Western Economic Opportunities Conference, Calgary, July 24-26, 1973, Capital Financing and Regional Financial Institutions.
4. Ibid., p. 13, quoting Joint Submission, p. 3.

5. Ibid., pp. 14-15, citing Canada, Capital Financing and Financial Institutions, brief prepared for the Conference on Western Economic Opportunities, Calgary, July 24-26, 1973.
6. Ibid., p. 16, quoting Canada, ibid., p. 47.
7. Ibid., p. 17, citing "The Banks and the West: Facts, Figures and the Future", CBA Bulletin, Vol. 16, No. 2, July 1973.
8. Ibid., pp. 19-20, citing "Governments' Place in Bank Ownership: The Industry View", CBA Bulletin, Vol. 17, No. 1, February 1974.
9. Savings and Trust Corporation of British Columbia Act, S.B.C. 1975, c. 68, s. 3.
10. Interview with David Stupich, M.L.A. and Minister of Finance in 1975.
11. Ibid.
12. Benson, op. cit., note 2, p. 35.
13. Treasury Branches Act, R.S.A. 1980, c. T-7.
14. For example, the Home Owner Grant Act, S.B.C. 1980, c. 18 and the Small Business Venture Capital Act, S.B.C. 1985, c. 56.
15. John Benson, op. cit., note 2 found little evidence of discrimination in his study but everyone that I spoke to in the course of the preparation of this thesis (including politicians, bureaucrats and industry representatives) felt that the large Eastern-based deposit-taking institutions did indeed discriminate, albeit perhaps unintentionally, against British Columbia businesses of all sizes. As Gary Lauk, then an N.D.P. M.L.A. recently said to the Legislature:

[The Social Credit] government is hard pressed to point out the policies it has implemented in the last five to six years which support the western system of banks in Canada - a system that emerged, I might say, because the former Premier of the province, W.A.C. Bennett, and other business people in western Canada, particularly in British Columbia, were sick and tired of the dictatorial tyranny of the eastern chartered banks. Eastern chartered banks have done more - before this government came to power - to cripple the economy of British Columbia than any other single financial structure in Canada. (British Columbia, 3rd Session, 33rd Parliament, Official Report of Debates of the Legislative Assembly (Hansard), Vol. 14, June 13, 1985 to December 2, 1985, p. 7146 - November 26, 1985.)

The CBA proposed that chartered banks be allowed to set up regional

subsidiaries since they would be a "more flexible vehicle to enable banks to adapt more closely to the need for specialized services in individual regions of the country". (Benson, ibid., p. 44, citing CBA, The Industry's Brief, Number 2, Bank Act 77, October 1975.)

16. See note 56 in Chapter IV.
17. Ontario, Ministry of Consumer and Commercial Relations, Proposals for Revision of the Loan and Trust Corporation Legislation and Administration in Ontario (Ontario White Paper), Toronto, November 1983; Canada, Department of Insurance Canada, Discussion Paper on Revision of the Trust Companies Act and the Loan Companies Act, Summary of and Guide to the Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act, and Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act, Ottawa, July 1982.
18. Trust Company Act, R.S.B.C. 1979, c. 412.
19. S.B.C. 1985, c. 83.
20. The Canadian Commercial Bank and the Northland Bank.
21. The government of British Columbia contributed at least \$13 million to the bail-out of the CCB and Northland Bank and lost significant amounts of money to other institutional failures as well.
22. The Ministry of Finance also becomes involved when financial institutions in the Province have solvency or liquidity problems and may need bailing out.
23. All this changed in November 1986 when Premier Vander Zalm eliminated the Ministry of Consumer and Corporate Affairs. He moved the Superintendents of Brokers and Financial Institutions into a reformulated Ministry of Finance, now the Ministry of Finance and Corporate Relations under a new Minister, the Hon. Mel Couveller. It was announced that the Ministry had been "eliminated" as part of a plan to further downsize government.
24. British Columbia, 3rd Session, 33rd Parliament, Official Report of Debates of the Legislative Assembly (Hansard), Vol. 11, March 4, 1985 to April 11, 1985, Queen's Printer, Victoria, p. 5281 - March 14, 1985.
25. Ibid., p. 5283 - March 14, 1985.
26. British Columbia, Budget, March 1986, Queen's Printer, Victoria, p. 1.
27. Canada, Department of Finance, Securing Economic Renewal: The Budget Speech, Ottawa, February 26, 1986.

28. British Columbia, Speech from the Throne, March 11, 1986, Queen's Printer, Victoria, p. 9. It now seems unlikely that the Equity Investment Plan will be enacted (at least in its present form). The Vancouver Sun recently reported VSE President Don Hudson's prediction that there will be a "complete reassessment" of the Plan (October 27, 1986) and Premier Vander Zalm has been reported to say that the new government (elected on October 22, 1986) will not make "special deals" or provide "special packages" to attract new business to the Province ("New enterprises won't get special deals, premier says", The Vancouver Sun, October 24, 1986, p. C4.).
29. Federal-Provincial-Territorial Meeting of Ministers Responsible for Financial Institutions, Press Communique, Document No. 830-217/015, Vancouver, March 3-4, 1986.
30. Ibid.
31. Saskatchewan passed new trust and loan legislation in 1983, but I have not reviewed the statute.
32. For a current expression of Quebec's position on financial institution regulation see: Federal-Provincial-Territorial Meeting of Ministers Responsible for Financial Institutions, Statement by Mr. Pierre Fortier, Minister for Privatization, Quebec, Document No. 830-217/018, Vancouver, March 3-4, 1986.
33. See Ontario Task Force on Financial Institutions, Final Report (Dupre Report), A Report to The Honourable Monte Kwinter, Minister of Consumer and Commercial Relations, Toronto, December 1985, Chaps. VIII and IX.
34. Canada, op. cit., note 17.
35. The Honourable Willard Z. Estey, Commissioner, Report of the Inquiry into the Collapse of the CCB and Northland Bank, Minister of Supply and Services Canada, Ottawa, August 1986.
36. Canada, Department of Finance, Minister of State for Finance, New Directions for the Financial Sector, Ottawa, December 1986. This White Paper, commonly described as the "New Directions" paper, retreated substantially from the reregulatory and strict controls approach of the Green Paper. Proposals for a mandatory financial holding company and Schedule C banks were dropped. Controls over commercial-financial links were more pragmatically formulated. The expansion of in-house powers was to be more liberally allowed. Attempts were made to make the policies less intrusive on provincial powers.
37. New Brunswick, Department of Justice, The Loan and Trust Companies Act (the proposed Act), An Explanation Paper: Volume 1, Fredricton, June 1986.

38. Bruce Constantineau, "Minister promises financial rule re-do", The Vancouver Sun, April 25, 1986, p. D1.
39. Interview.
40. "Banking Study Stays Closed", The Vancouver Sun, May 30, 1986, p. D8.
41. British Columbia, Ministry of Consumer and Corporate Affairs, News Release, Victoria, September 10, 1986.
42. Ibid.
43. British Columbia, Ministry of Consumer and Corporate Affairs, Annual Report For the Year Ending March 31, 1985, Queen's Printer for British Columbia, Victoria, 1986, p. 5.
44. Statement of the Hon. Elwood Veitch, Minister of Consumer and Corporate Affairs, in Shauna McGovern, "A Fair and Consistent Regulator", Enterprise, August 1986, p. 4.
45. Queen's Printer for British Columbia, Victoria.
46. Ibid., p. 15.
47. This usually does occur in the area of securities regulation where Ontario is the acknowledged leader (although Ontario often obtains the views of the other provinces before it makes regulatory changes and sometimes adopts regulatory changes made in other jurisdictions). British Columbia habitually adopts most Ontario practices (usually years later) and then adapts them to a somewhat different environment and different regulatory goals (the emphasis is more on encouraging capital investment than on reducing risk to investors).
48. For example, newspaper articles were published with titles such as "Ontario knew of irregularities involving seized trust companies" (Les Whittington, The Vancouver Sun, November 16, 1983) and "Greymac Aftermath: Study says industry controls inadequate" (Patricia Best, The Financial Post, Western Edition, November 26, 1983).
49. The B.C. Agent, a publication of the Insurance Agents' Association of British Columbia, reports on meetings between the executive of the Association and the Minister and the Deputy Minister of Consumer and Corporate Affairs (now Finance and Corporate Relations) and the Superintendent of Insurance.
50. Interview.
51. I believe that it may also have been caused by a lack of expertise in Cabinet (making it even more necessary that Cabinet be made

- aware of the issues by the bureaucracy). This is speculative, since I have not interviewed any members of Cabinet, but to the best of my knowledge only one Minister, James Hewitt (who was not re-appointed in October 1986) had some limited experience in the financial sector and only Jack Davis, so far as I am aware, had any training in economics. There were some lawyers in Cabinet.
52. A Record of Accomplishments: The Mulroney Government 1984 to 1986, Progressive Conservative Party of Canada, August 1986, pp. 14-15.
 53. These Bills to amend the loan, trust, bank and Quebec savings bank legislation and to amend insurance company legislation, respectively, were introduced in April 1986 and June 1986 and reintroduced in the second session of the 33rd Parliament convened October 1, 1986.
 54. The B.C. Company Act, Condominium Act, personal property security legislation, expropriation legislation and so on have long been in need of major revision.
 55. Jacques Parizeau is the economist who chaired the Quebec study committee which produced the Parizeau Report (Report of the Study Committee on Financial Institutions 1969, Quebec Official Publisher). He later became Minister of Finance in the Parti Quebecois Cabinet.
 56. This would not be the case if British Columbia was to enact a significantly stricter regulatory regime similar to that now proposed for trust and loan corporations in Ontario. Given the laissez-faire attitude of Cabinet in British Columbia, this is highly unlikely to occur.
 57. See the discussion of the "Big Bang" in Appendix E. A loose regulatory structure in the Province may also affect the survival rate of B.C. institutions faced with increasing international competition. Indeed, as the "Big Bang" in London, England has shown, deregulation may result in the swift elimination by merger or acquisition of many local firms when the international conglomerates move in.
 58. Canada, Department of Insurance Canada, Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act, Ottawa, July 1982.
 59. Richard Schultz and Alan Alexandroff, Economic Regulation and the Federal System (Study No. 42, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1985 and Hugh G. Thorburn, Interest Groups in the Federal System (Study No. 69, Royal Commission on the Economic Union and Development Prospects for Canada), University of Toronto Press, Toronto, 1985.

60. Governments have been interested in using financial institution (or economic) regulation as a tool of economic development since the first regulatory controls were enacted. The change is one of degree. For example, the first Loan Societies Act in the United Kingdom (1835 (U.K.)(5-6 Wm. IV), c.23) contained this recital:

Loan Funds have been and may be established ... for the Benefit and Advantage of the Labouring Classes of His Majesty's Subjects and it is expedient to give Protection to the Funds of such Institutions, and to afford Encouragement to the Formation of other Institutions of a like kind.

A different purpose is expressed in a recital to the Loan Companies Out of Ontario Act, 1876 (Ont.) (39 Vict.), c.27:

Whereas it would greatly tend to assist the progress of Public Works and other improvements now going on within the Province of Ontario if facilities were afforded to institutions and corporations incorporated out of the Province of Ontario for the purpose of lending moneys, to lend their money within the Province, and with that object it is expedient to confer on such institutions and corporations powers to contract and also to hold as security lands within the Province of Ontario.

For a description of the history of the Ontario Loan and Trust Corporations Act see the case of Sidmay Ltd. et al. v. Wehttam Investments Ltd. (1967), 61 D.L.R. (2d) 358 (Ont. C.A.).

61. Op. cit., note 58, p. 23. See the discussion in Chapter I of this thesis.
62. There is some friction in the one area where Cabinet has recently decided to act. The federal and Provincial governments do not see eye to eye on the federal legislative changes required to implement the proposed international financial centre in Vancouver.
63. Op. cit., note 58, p. 18. See the discussion in Chapter I of this thesis.
64. "Vancouver grooming for bigger spot in international finance", The Financial Post, Western Edition, August 9, 1986, p. 17.

CHAPTER VII

CONCLUSION

The response of the government of British Columbia to initiatives such as the federal Green Paper and to the same financial sector developments and events which spawned the Green Paper illustrates several things about the policy formulation process in general and about the process in British Columbia in particular. It illustrates that the aggregation of interest group demands and federal-provincial relations is less likely to be problematic when the bureaucrats and policy advisors are left alone to formulate policy alternatives which are as consistent as possible with interest group demands, changes in the financial sector, the existing regulatory framework (and its limited objectives) and the constitutional division of powers. It is the involvement of the politicians with their broader goals such as province building or national economic integration which significantly increases the complexity and difficulty of the policy formulation process. As I have described in Chapter I, several authors have written about the effect on the policy formulation process of governments' greater involvement in the economy and the area of financial institution regulation is no exception.

As Schultz and Alexandroff and others have argued, attempts to implement broader goals make the policy process more complex. In addition, changes in the financial sector are themselves causing difficulties. The blurring of functions among institutions is necessitating a much closer interrelationship between the regulatory regimes governing the various financial institutions. The regulatory

framework described in Chapter III is no longer adequate and is inhibiting the ability of the regulated institutions to compete and the regulators to regulate. The financial sector is evolving so rapidly that what little opportunity politicians do have to direct and control the changes diminishes with each delay in the policy formulation process. When "planning" goals of economic development, Canadian ownership and increasing or maintaining constitutional powers are added to "policing" goals, with the increased potential for federal-provincial and interprovincial conflict, the process can get very complicated indeed.

The hypotheses of Schultz and Alexandroff seem to apply very well to the Ottawa, Ontario and Quebec triangle where most of the regulatory reform activity is now taking place. Although I have not researched events in those jurisdictions in detail, all of the "symptoms" to which Schultz and Alexandroff refer are apparent there. Governments are making unilateral decisions with or without the support of the interest groups. Ontario has declared its policy of the "equals approach" and tabled trust company legislation which is largely reregulatory. Quebec has enacted significantly deregulatory insurance legislation and has stated that it will soon proceed with trust company legislation in the same vein. Both provinces clearly feel that these decisions are in the provincial interest and should proceed with or without agreement by the other jurisdictions. Differing policy goals are taking precedence over the once important shared goal of regulatory harmony. Quebec is most concerned to open up the financial sector to allow it to compete internationally and to better assist economic development in Quebec.

Ontario perceives that its interests will be better protected by strict solvency controls and a conservative broadening of functions. As Schultz and Alexandroff have argued, "changes in the function of economic regulation [have caused] changes in the politics of regulation".

The federal government wants to encourage a more integrated economy in Canada and sees financial sector regulation as one tool to achieve this goal. The Canadian White Paper and the Green Paper reviewed in Chapter IV reveal that the federal government also views itself as the best regulator of financial institutions. The provinces (with the exception of Quebec) have proved the federal government to be correct to some degree in this belief since the provinces have not acted as quickly and effectively as the federal government (relatively speaking) to correct regulatory deficiencies. Subtly and not so subtly, the federal government has promoted programs and policies which encourage greater federal participation and control. As described in Chapter III, these mechanisms include federal incorporation statutes, the Canadian Deposit Insurance scheme, the Canadian Payments Association and the Canadian Co-operative Credit Society. They also include the mandatory financial holding company proposal and other related proposals in the Green Paper. In the end (or for the time being), the federal government has been content to take the low road and simply attend to the updating of its own statutes, rather than enacting reregulatory reforms like the mandatory regulation of financial holding companies which would significantly infringe on provincial powers.

In the December 1986 White Paper, the federal government assumed a

less aggressive stance and adopted a deregulatory approach more in line with interest group demands and international financial sector developments. The government position can be loosely described as falling between that of Ontario and Quebec. If Schultz and Alexandroff are correct, then we should soon see a smoother federal-provincial policy formulation process as a result. Disagreement over policy goals and mechanisms should have less of a 'zero-sum' character. I suspect that this shift in attitude is due to: (a) a desire to avoid federal-provincial conflict; (b) heavy lobbying against the more restrictive Green Paper proposals by interest groups; (c) changes in the international financial sector environment which are making it increasingly obvious that too many controls will negatively affect the ability of Canadian institutions to compete and will restrict investment in the Canadian economy; and (d) negative comments about many Green Paper proposals in subsequent reports (such as those reviewed in Chapter V) and from some provinces.

In British Columbia, the response (until December 1986) was quite different. As described in Chapter VI, the government had not released substantive policy proposals. While there may have been problems of aggregating interest group demands as Schultz and Alexandroff and Thorburn discuss, there were no problems of federal-provincial or interprovincial relations since there were no policy proposals to fight over. Until October or November 1986, Cabinet had seen no pressing need to proceed with regulatory reform in the Province. Since there was no decision to act in any significant way, the problems described by Schultz and Alexandroff and Thorburn never really came to the fore.

Patterns of interest group representation changed as the functions of the "five pillars" began to blur and other government departments became more concerned about regulatory issues but there were few changes (or proposed changes) in regulatory functions or goals which might have affected the politics of regulation in the manner described by Schultz and Alexandroff. In sum, the hypotheses of Schultz and Alexandroff and Thorburn are not particularly helpful in explaining the response of the government of British Columbia to pressures for reform before November 1986. Of greater assistance are the theories concerning markets for regulation and the vote maximizing behaviour of the politicians. The solution to a perceived problem which is desired by an interest group will not be adopted by a politician or Cabinet unless he or it perceives that solution to be one which maximizes the self-interest of the politician(s).

The officials in British Columbia who are directly concerned with financial institution regulation are primarily interested in ensuring solvency and proper disclosure (in the securities area). They are not concerned with promoting the British Columbia economy or British Columbia financial institutions (except insofar as these goals can be achieved by ensuring solvency and other "policing" requirements). Such a concern is not part of their regulatory mandate. Only Quebec has explicitly directed its regulators to concern themselves with economic development. First on the reform agenda for the line bureaucrats is having the staff and the regulatory tools to properly perform their mandate. The regulators also perceive a need for policy direction in the many areas which are no longer adequately covered by an out-dated

regulatory framework. Until October or November 1986, the regulators had not been able to persuade Cabinet that regulatory changes and increased resources were necessary.

The policy advisors in the Ministry, while aware of the concerns of the line bureaucrats, have more time, and the mandate, to contemplate the broader regulatory changes demanded by the financial institutions and by the line bureaucrats. The advisors formulated various policy alternatives in light of interest group submissions, existing enforcement problems and developments in financial institution regulation elsewhere. These alternatives also met with no response from the politicians.

Interest groups have held a variety of positions regarding the issues raised in the federal Green Paper including the broadening of functions, the regulation of holding companies, ownership restrictions, investment standards and solvency controls. Because of the trend toward an expansion and a blurring of functions, financial sector interest groups are all more and more interested in each other's business and regulatory controls. All interest groups are making their views known to the bureaucrats and politicians of both levels of government. Cabinet in British Columbia did not respond to those demands except to release the October 1986 Discussion Paper with its invitation for submissions. The Paper did not stimulate much response for the reasons discussed in the previous Chapter. The release of a sketchy Discussion Paper (at least six months late) confirms Cabinet's lack of interest in proceeding with reform at that time.

Everyone involved in the regulatory process except Cabinet agreed

that regulatory change was needed for various reasons including inadequate solvency controls, inadequate government supervision, competitive inequities, ineffective and inefficient regulation and regulatory gaps. Cabinet's failure to react cannot be explained by the Schultz and Alexandroff hypotheses since there was never any attempt by Cabinet to find a policy solution to the "problem". While these hypotheses apply to some degree to policy formulation at the bureaucratic level in British Columbia where the formulation of policy alternatives went relatively smoothly, in part because regulatory goals were limited, the lack of political will in British Columbia is better explained by theories of vote maximization. Cabinet in British Columbia was not persuaded that its interests would be better served by placing regulatory reform as high on the list of legislative priorities as, for example, the international financial centre and economic development generally. There are several reasons for this and they have been described in greater detail in Chapter VI. None of these reasons relates to the economic efficiency of the existing regulatory framework or the effect of the framework on the efficiency of the financial sector.

Financial institution business does not form as large a part of the provincial economy in British Columbia as it does in Ontario and Quebec. Therefore, the pressures for change from the financial institutions have not been as great in British Columbia. Credit unions in the Province are an exception. These institutions have only just begun to lobby for significant reform of the Credit Union Act and the politicians are likely to respond to this lobby relatively quickly (although not

necessarily in the manner requested by the lobbyists). Most other financial institutions in the Province are not based here and British Columbia is not their jurisdiction of incorporation. Their lobbying efforts are largely directed at the primary regulator. At the same time, Cabinet has not experienced the same degree of public concern about institutional solvency as has Ontario and the federal government since institutional failures in or affecting the Province have not been as dramatic or severe.

The bureaucracy was unable to convince Cabinet of the need for reform, in part because there seems to have been an unwillingness on the part of Cabinet to take bureaucratic advice seriously and in part because the bureaucracy did not successfully "sell" the need to Cabinet. Apart from the communication problem between Cabinet and the bureaucracy, the failure to "sell" also occurred because of lack of expertise (in the bureaucracy and in Cabinet) and because the policy formulation structures were inadequate for the job. The policy formulation system in British Columbia still very much fits the elite accommodation model described in Chapter I. Without a formal inter-ministerial policy structure (to some degree resisted by the policy advisors in the Ministry of Consumer and Corporate Affairs), it was difficult to put a strong, well-rounded policy package together which had the support of other relevant ministries (particularly the senior Finance Ministry). The elite accommodation process probably inhibited the complex decision making and forceful arguments for change required in this situation.

The fact that regulatory reform finally received Cabinet support at

the time of the transfer of the regulatory function from Consumer and Corporate Affairs to the more senior Ministry of Finance (now Finance and Corporate Relations) supports this view. With centralized Treasury Board backing, it is more likely that the politicians will back reform as a priority. Alternatively, the politicians may have found it more convenient to centralize the regulatory and policy functions following the decision to move toward regulatory reform. In fact, the dissolution of Consumer and Corporate Affairs is equally well explained in terms of an internal power struggle for control over financial institution regulation as in terms of downsizing government. Since late 1985 with the collapse of the CCB and Northland Bank and the resulting \$13 million payout by the Provincial government, Treasury Board has been concerned by its lack of control over regulatory issues. Centralization of control in the Ministry of Finance reflects similar centralizations in Quebec and Ottawa. It probably also marks a much improved ability of the bureaucracy to communicate with Cabinet about the issues.

Lack of policy expertise was also a problem which has been alleviated somewhat by the transfer of responsibility from Consumer and Corporate Affairs to Finance and Corporate Relations (and Treasury Board). The problem has also been alleviated by the election and ministerial appointment in November 1986 of several M.L.A.s who may be better equipped by experience or education to recognize and deal with the issues.'

Another reason for Cabinet's failure to jump more quickly onto the regulatory reform band-wagon is the bias in Cabinet toward less regulation and a laissez-faire economy. Cabinet has not seen regulatory

reform as a mechanism to grease the wheels of the economy. To advocate stricter regulation and more resources for the regulators in a time of restraint and in view of clearly expressed political goals of less regulation would be difficult for Cabinet without very compelling justification.

However, the lack of response from British Columbia was becoming more and more visible in the face of stepped-up activities in Ontario, Quebec and Ottawa and this may also help to explain the sudden announcement of the Premier in November 1986 that draft legislation would be prepared by February 1987. Ottawa was scheduled to release comprehensive draft legislation but instead released a White Paper in December 1986; Ontario lifted many restrictions on the ownership of securities firms; Quebec was close to releasing draft trust company legislation. This increased the pressure on Cabinet to do something, which it did in November 1986 by announcing draft trust, insurance and credit union legislation.

The process of regulatory reform must be supported by the politicians. Until November 1986, neither the bureaucrats (including the policy advisors) nor the outside interest groups in British Columbia were able to persuade Cabinet that a significant regulatory review was necessary. As Trebilcock has argued, Cabinet did not see any benefit in proceeding with regulatory reform at that time. Cabinet did see some benefit in releasing the Discussion Paper and announcing consultations with the financial sector, but these policy instruments served largely (as Trebilcock would say) to "[create] the illusion that progress [was] being made towards a final solution".²

The British Columbia Cabinet has been happier to deal with concepts like the international financial centre which is perceived to have a higher political profile, greater potential for economic development and less potential for government regulatory interference and the consequent restrictions on business in the Province and, in sum, a greater political return. A new Securities Act, the lobby for which was relatively strong, took at least eight years to implement. The trust and insurance company statutes which are much further out-of-date may take a similarly long period to make their way through the Cabinet and legislative processes if the Cabinet attitude described in Chapter VI continues to prevail. Alternatively, changes will be implemented slowly on an incremental basis consistent with interest group pressures, changes in other jurisdictions and urgent regulatory needs.

Ontario, Quebec and Ottawa will continue to set the pace for securities, insurance and trust company regulatory reform and with regard to the broader regulatory issues as well. In those jurisdictions, a resolution of the issues will continue to be complicated by the problems of interest aggregation and federal-provincial (and interprovincial) relations as described by Thorburn and Schultz and Alexandroff. These complicating factors should not have the same effect in British Columbia even if regulatory change does become a political priority. This is so because the regulatory options and regulatory impact of the Province are relatively limited in the face of actions taken or to be taken in other jurisdictions.

FOOTNOTES

1. British Columbia, Provincial Report, December 1986, p. 3. For example, Mel Couvelier, Minister of Finance and Corporate Relations and Peter Dueck, Minister of Health. Mr. Couvelier's declared priorities for the Ministry of Finance and Corporate Relations are "legislation concerning financial institutions" (first), and "Vancouver as an international financial centre" (second).
2. Trebilcock et al., The Choice of Governing Instruments, Economic Council of Canada, Minister of Supply and Services Canada, Ottawa, 1982, p. 43.

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Re Canadian Deposit Insurance Corp. and Canadian Commercial Bank (1986), 27 D.L.R.(4th) 229 (Alta. Q.B.).

APPENDIX B

LIST OF PERSONS INTERVIEWED

Joan Rush, Insurance Administrator, B.C. Ministry of Consumer and Corporate Affairs - September 17, 1986.

David Stupich, Chartered Accountant, N.D.P. M.L.A. and Finance Critic - September 24, 1986.

Gerry Armstrong, Director, Taxation and Intergovernmental Relations Branch, B.C. Ministry of Finance - September 26, 1986.

Frank Klassen, Director, Government Estimates and Administrative Policy Branch, B.C. Ministry of Finance - September 26, 1986.

Alayne Lyndon, Manager, Delta Credit Union - September 27, 1986.

Mark Krasnick, Consultant to the B.C. Ministry of Consumer and Corporate Affairs - September 30 & October 7, 1986.

Sam Ho, Policy Analyst, Policy and Legislation, B.C. Ministry of Consumer and Corporate Affairs - October 8, 1986.

Peter Hobb, Vice-president Corporate Services, Guarantee Trust Company of Canada and Chairman, Trust Companies Association of Canada (B.C.) - October 17, 1986.

Allan Mulholland, Superintendent of Financial Institutions, B.C. Ministry of Consumer and Corporate Affairs - October 20, 1986.

Peter Podovnikoff, CEO, Delta Credit Union - October 21, 1986.

Oksana Exell, Director of Provincial Affairs, B.C. and the Yukon, Canadian Federation of Independent Business - October 23, 1986.

Vicki Easingwood, Government Affairs Officer, B.C. Central Credit Union - November 5, 1986.

Jill Bodkin, Chairman, B.C. Securities Commission - December 16, 1986.

David Edgar, Assistant Deputy Minister, Ministry of Finance and Corporate Relations - March 19 and 24, 1987.

APPENDIX C

LIST OF STATUTESCanada

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APPENDIX D

BRITISH COLUMBIA ADMINISTRATIVE FRAMEWORK
(December 1986)

Ministry of Finance and Corporate Relations

Corporate Relations Division

Assistant Deputy Minister

1. Brokers and Real Estate

Superintendent of Brokers and Real Estate

Superintendent of Real Estate

2. Financial Institutions

Superintendent of Financial Institutions

Superintendent of Credit Unions and Co-operatives

Superintendent of Insurance

Superintendent of Trust Companies

3. Investigations

Director of Investigations

APPENDIX E

REGULATORY TRENDS IN
GREAT BRITAIN AND THE UNITED STATESGreat Britain

The British government is also tackling regulatory reform in the financial sector. Financial institutions have failed in this country and, in addition, London, one of the financial centres of the world, was beginning to lose business to New York, Tokyo, Geneva and other financial centres. Several studies were commissioned by the government. In this section, I will briefly summarize two reports, the Report of the Committee to Review the Functioning of Financial Institutions (1980 Report) and Financial Services in the United Kingdom: A New Framework for Investor Protection (1985 Report).¹

The Committee which produced the 1980 Report was appointed by the British Government in 1977 on broad terms of reference similar to those of the Porter Commission.² In its report, the Committee pointed out the obscurity of the financial system to most people due to its complexity, the constant state of change in the system "so that even specialists find it hard to keep up" and the fact that most of its practitioners are primarily concerned with their daily activities in their own part of the system so that few people "are well placed to understand the system as a whole and still less likely to devote time to explaining it".³ Explanation (said the Committee) is also made difficult in a situation "where widely different views are held and where it is difficult to establish the truth or falsity of different beliefs".⁴

Among the developments in the United Kingdom economy described by

the Committee were the attempts by government since 1960 to link financial institutions more closely with strategies of government intervention in the economy in the face of persistently depressed growth.⁵ However, concluded the Committee, the problems faced by British industry were not generally caused by the financial institutions and were not within their capacity to solve.⁶ As in all other reports regarding financial institution regulation, the Committee discussed the sometimes contradictory goals of competition and solvency and again, as in many other reports, stressed that more competition requires more supervision pointing to the "danger of promoting greater competition between financial institutions unmatched by a corresponding change in the supervisory arrangements".⁷

In the United Kingdom, more emphasis seems to have been placed on self-regulation than "direct" regulation, although the Committee found the differences in approach between the U.K. and other countries to be "not as sharp as is often implied". The trend in the U.K. in any event was to more, and more stringent, statutory controls,⁸ although at the same time greater emphasis was being placed on competition.⁹ The 1985 Report, a White Paper produced by the Department of Trade and Industry, spoke of Britain's status as a "great financial centre" as well as the contribution of the financial sector to the nation's wealth.¹⁰ The Department found Britain's investor protection laws to be out-of-date and incomplete to the detriment of both consumers and providers of financial services.¹¹ The White Paper set out "the Government's proposals for a new system of regulation for the financial services industry in the United Kingdom" in anticipation of the introduction of

legislation in the 1985-86 Parliamentary Session.¹²

The regulatory structure proposed was described as "self-regulation within a statutory framework, the Government intending to build upon what is best in self-regulation".¹³ The regulatory objectives of competition and efficiency were emphasised over "confidence", based on the principle that "[market] forces provide the best means of ensuring that an industry meets the needs of its customers".¹⁴ The principle of self-regulation was felt to be "crucial", not so much for reasons relating to the enhancement of competition and efficiency, but to enhance professional integrity and so reduce the need for outside regulation. The Report stated:

It means commitment by practitioners to the maintenance of high standards as a matter of integrity and principle, not because they are imposed from outside. Regulation should encourage the commitment of individuals in the financial services industry to high standards.¹⁵

Although there was a greater emphasis on efficiency in the 1985 Report, both British reports, while calling for some deregulation, were largely asking for higher standards, more regulation and vigorous enforcement and clear laws that would facilitate the raising of capital in the U.K. A Financial Services Bill was introduced in the British Parliament in the summer of 1986 and the "Big Bang" in London was a very well publicized event, the "Big Bang" being the "deregulation" of the securities industry in Britain in an attempt to keep and bring back business to London. October 27, 1986 was the date on which two significant deregulatory actions occurred, namely, the lifting of the enforced separation of brokers and jobbers of securities and of controlled commissions (these events had already occurred in Canada and

the U.S.). Even more significant was the earlier lifting of the ban on foreign participation in the London Stock Exchange, previously the sole domain of British firms. This deregulation caused an unprecedented frenzy of buyouts and mergers of and between British and foreign (largely U.S. and Japanese) firms.¹⁴

United States

The United States has already undergone significant reform and restructuring since 1979 by such instruments as the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) and the Garn-St Germain Depository Institutions Act of 1982 (1982 Act). Throughout the 1970s there had been a growing concern about the extent of government regulation and influence in the economy and the 1971 Report of the President's Commission on Financial Structure and Regulation (the Hunt Report)¹⁷ recommended a complete revision or removal of many regulations. Many of its recommendations were incorporated into the Financial Institutions Act of 1973 (which was never passed) and finally in the DIDMCA and the 1982 Act. Increased disintermediation in 1974-75 led to a congressional study in 1975 and the Financial Institutions and the Nation's Economy (FINE) Report.¹⁸ The FINE Report reached the same conclusions as the Hunt report and made similar recommendations, but the Financial Institutions Act of 1975, like that of 1973, "did not find a receptive Congress and failed to become law".¹⁹

Although the Reagan Administration did not initiate the deregulation process in the U.S., it is still the premise of the present administration:

that extensive government regulation, supervision, and active stabilization policy were, in fact, the primary cause of the poor economic performance in the 1970s ... Deregulation would allow competitive forces to increase supply, reduce prices, and stimulate productivity.²⁰

In the U.S., there has been a high degree of interference in the economy by constraints on market behaviour such as interest rate ceilings and the "pervasive influence by the Federal Reserve in money and capital markets to target interest rates".²¹ It is probably true to say that the U.S. financial sector is more highly regulated than the Canadian. Present commercial banking regulations are very complex and are now generally more restrictive than those applying to other financial institutions. For example, banks may provide only products which are designated by the Federal Reserve as "congeneric financial products" (i.e., directly related to banking).²² While the overall U.S. regulatory structure is inconsistent and "untidy", the most important impetus for change is described by George Benston as:

the entry of unregulated suppliers of financial services as a consequence of high nominal interest rates and low cost technology [i.e., disintermediation], and the failure of banks and thrifts on a scale not seen since the Great Depression.²³

Recent Financial reforms in the U.S. have been directed toward a more competitive and flexible financial system.²⁴ The DIDMCA in 1980 removed or modified interest rate ceilings, increased the sources of funds for deposit institutions, and expanded the allowable uses of such funds and other powers for savings and loans institutions. However, financial sector instability continued and the institutional failure rate was still increasing. The 1982 Act was directed at providing relief to savings and loans institutions and mutual savings banks (otherwise known as "thrifts" which are deposit institutions which

allocate most of their loan portfolios to mortgages).²⁵ The emphasis on deregulation may be deceptive, however. When compared to the Canadian environment, many deregulatory moves do no more than bring the U.S. closer to the Canadian situation (eg., the removal of interest rate ceilings). As in Canada, the 'deregulation' effort is now (since early 1984) "focussed on removing only a small number of key competitive constraints".²⁴ Some institutions will be subject to increased regulation. The same may also be said of the British situation.²⁷

The perception remains in the U.S. that while progress has been made, several important regulatory issues remain unresolved.²⁸ As in Canada, it is still unclear how far deregulation should go, which regulations should be removed or which regulatory alternatives should be chosen. Apparently (in 1985) the Chairman of the Senate Banking Committee, Senator Jake Garn, favoured further deregulation, while the Chairman of the House Committee, Congressman Fernand St Germain, was considering a reversal of "the recent deregulatory tide".²⁹ Recent Executive Branch proposals include those of a committee chaired by Vice-President Bush regarding further restructuring of the system.³⁰ No significant financial sector bills have yet managed to get through Congress or the Senate.

FOOTNOTES

1. Great Britain, Report of the Committee to Review the Functioning of Financial Institutions, Her Majesty's Stationery Office, London, June 1980 and Great Britain, Department of Trade and Industry, Financial Services in the United Kingdom: A New Framework for Investor Protection, Her Majesty's Stationery Office, London, January 1985.

2. Great Britain, 1980, ibid., p. 1.
3. Ibid., p. 1.
4. Ibid., p. 2.
5. Ibid., p. 18.
6. Ibid., p. 267. A dissenting report by four Committee members disagreed strongly with this view (Ibid., p. 274).
7. The Committee pointed to the need for competent and properly qualified staff "able to take an independent line of their own" (Ibid., p. 298).
8. Ibid., p. 290.
9. Ibid., p. 291.
10. Great Britain, 1985, op. cit., note 1, p. 1.
11. Ibid.
12. Ibid.
13. Ibid., p. 2.
14. Ibid., p. 6.
15. Ibid. Reliance on the principle of self-regulation has been viewed with increasing skepticism in the U.S. and Britain in the face of certain scandals in the financial sector which attracted world-wide attention. (See Paulette Roberge, "Scandal soils City's image", The Financial Post, January 26, 1987, p.10 and James Sterngold, "With Key Executives' Arrest, Wall Street Faces Challenge", The New York Times, February 15, 1987, p.1.)
16. For a summary of "Big Bang" events see "Big Bang Brief", The Economist, August 16, 23 and 30 and September 6, 1986.
17. Government Printing Office, Washington, D.C., December 1971.
18. United States, Congress, House, Committee on Banking, Currency and Housing, Government Printing Office, Washington, D.C., 1975.
19. Thomas F. Cargill and Gillian G. Garcia, Financial Reform in the 1980's, Hoover Institution Press, Stanford University, 1985, p. 53.
20. Ibid., p. 2.
21. Ibid., p. 7.

22. George J. Benston, "The Regulation of U.S. Banking", in Ontario Economic Council et al., Conference on the Changing Regulatory Environment for Canadian Financial Institutions, Toronto, May 1985, pp. 6-7.
23. Ibid., p. 10.
24. Cargill and Garcia, op. cit., note 19, p. 8.
25. Ibid., p. 194.
26. Ibid., p. 21.
27. Newspaper articles with titles such as "Britain braces for the Big Bang: Deregulation set to change face of financial sector", (Paulette Roberge, The Financial Post, Western Edition, August 16, 1986, p.7) on closer review describe proposed changes such as the abolition of fixed commissions in the securities sectors, a change which is already well underway in Canada (and the U.S.). While the writer of the above-mentioned newspaper article states that "London looks poised to become the least regulated financial centre in the world", other articles relate how the new regulatory framework is having a "rough ride through Parliament" ("Critics push for more controls", The Financial Post, Western Edition, August 16, 1986, p.7) and "U.K. to keep closer watch on banks", (The Vancouver Sun, December 18, 1985, p.F5).
28. Cargill and Garcia, op. cit., note 19, pp. 73 and 141.
29. Ibid., p. 176.
30. Ibid., p. 155, citing Bush Commission, Blueprint for Reform: The Report of the Task Group on the Regulation of Financial Services, Washington, D.C., July 1984.

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