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BANKING ON INSURANCE: BANK RETAILING OF INSURANCE PRODUCTS

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BANKING ON INSURANCE: BANK RETAILING OF INSURANCE PRODUCTS

INTRODUCTION

The appropriate role of banks in the insurance industry has been debated among policymakers, industry stakeholders and the public for many years. As early as 1922, at its first annual convention, the Canadian Federation of Insurance Agents adopted a resolution deploring "the fact that certain banking interests of this country should so forget and abuse the time-honored principles and practices of banking, as to engage or attempt to engage in the Insurance Business, as Competitors of the qualified Insurance Agents."(1) Currently, federal financial institutions legislation allows limited retailing of insurance by banks, but prohibits the complete integration of banking and insurance in Canada.

This paper considers the growing involvement of banks in the insurance industry and provides an historical overview of legislative reforms that have facilitated the evolution of "bancassurance"(2) in Canada. In addition, the divergent positions of stakeholders on this issue are discussed in the context of Parliament's mandatory 2006 review of federal financial institutions legislation.

CURRENT REGULATORY CONTEXT

The *Bank Act* and accompanying regulations contain specific rules pertaining to chartered banks and their involvement in the insurance business in Canada. The *Insurance Business (Banks and Bank Holding Companies) Regulations,* pursuant to section 416 of the Act, authorize banks to sell certain insurance products closely related to their lending businesses in

(1) Resolution adopted at the first Annual Convention of the Canadian Federation of Insurance Agents in 1922, cited in John Todd, Andrew Roman and Robert Horwood, *Insurance Retailing by Financial Institutions in Canada*, Public Interest Research Centre, Toronto, April 1989, p. 19.

(2) "Bancassurance," which refers to the integration of banking and insurance, may take a variety of forms, ranging from marketing agreements, to cross-shareholdings, to control by banks or insurance companies of subsidiaries in the other activity. The state of bancassurance varies considerably around the world, depending on the jurisdiction's regulatory regime and the local market.

their branches, including credit or charge card-related insurance, creditors' disability insurance, creditors' life insurance, creditors' loss of employment insurance, creditors' vehicle inventory insurance, export credit insurance, mortgage insurance and travel insurance. Banks may also sell other types of insurance through subsidiary companies, subject to certain restrictions. Table 1 compares the permissible sales and promotional activities for authorized versus other types of insurance.

Table 1: Bank Sales and Promotion of Authorized versus Other Types of Insurance

Activity	Authorized Types of Insurance	Other Types of Insurance
Sales	Can be sold in bank branches.	Can be sold through insurance subsidiaries of banks, but not bank branches.
Advice/Referrals	Can provide advice on an authorized type of insurance or a service in respect of an authorized type of insurance.	Can provide advice that is general in nature and not related to a specific risk, insurance policy or service, insurance company, agent or broker. Cannot refer customers to particular insurance companies, agents or brokers.
Promotion	Can promote policies of authorized types of insurance, as well as companies, agents and brokers that deal only in authorized types of insurance.	Can promote these types of insurance to all customers or credit or charge card holders who receive regularly mailed statements of account or to the general public, outside of bank branches. Cannot "target-market" customers; that is, cannot segment the customer base and promote specific types of insurance to selected customers. The same restrictions apply to bank promotion of companies, agents and brokers that sell these types of insurance.

Note: Authorized types of insurance are listed in section 2 of the *Insurance Business (Banks and Bank Holding Companies) Regulations*.

Source: *Insurance Business (Banks and Bank Holding Companies) Regulations*.

Moreover, sections 8 through 10 of the Regulations prohibit banks from conducting other activities in the area of insurance, including:

- sharing customer information with insurance companies (subsidiary or otherwise), agents or brokers;
- providing telecommunications devices (e.g., telephones and computers) to customers for the purpose of linking customers with an insurance company, agent or broker; and
- conducting business in a location that is adjacent to an office of an insurance company, agent or broker, unless the bank clearly indicates to its customers that the two premises are "separate and distinct."

In addition to rules explicitly related to the insurance activities of banks, the Act contains a provision to protect consumers from coercive tied selling of all products and services. Section 459.1(1) of the Act reads: "A bank shall not impose undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the bank and any of its affiliates, as a condition for obtaining another product or service from the bank."

Finally, banks' merger and acquisition activities are currently subject to a Department of Finance policy that prevents large banks and large demutualized insurance companies from acquiring or merging with one another.

While legislation concerning provincially/territorially regulated deposit-taking institutions and insurance tends to follow the federal model, some credit unions and caisses populaires have insurance abilities that exceed those available to federally regulated banks. Provincially regulated deposit-taking institutions in Quebec and British Columbia, in particular, have a greater degree of freedom in their insurance businesses.

In 2001, Alberta amended its *Insurance Act* to allow provincial authorities to regulate, among other things, the insurance-related activities of federally chartered banks. In the case of *Canadian Western Bank et al.* v. *Alberta*, a number of federally chartered banks sought a declaration that the promotion of certain types of insurance authorized under the *Bank Act* and its regulations falls exclusively within the federal jurisdiction over banking. At trial, the Alberta Queen's Bench held that Alberta's regulation of the banks' insurance activities was constitutionally valid; the Alberta Court of Appeal characterized the Alberta regulations as "a modest degree of regulation for the valid purpose of consumer protection" and found that they do not undermine Parliament's intention to allow banks to promote insurance. The banks appealed the decision to the Supreme Court of Canada; arguments were heard on 11 April 2006 and the Supreme Court reserved judgment. The Supreme Court generally releases judgments within six months of hearings.

SELECTED CHRONOLOGY OF FEDERAL LEGISLATIVE REFORM IN THE FINANCIAL SERVICES SECTOR

Historically, the Canadian financial services sector has been viewed and regulated in terms of four distinct "pillars" – banks, trust companies, insurance companies and securities dealers. Temporary industry-specific legislation for banking was first passed by Parliament in 1867, and was later replaced by the *Bank Act* in 1871. Since then, the *Bank Act* has been regularly reviewed and revised. The following selected chronology of federal legislative reforms in the financial services sector is limited to those that have affected the development of bancassurance in Canada.

In the past, the *Bank Act* prohibited Canadian banks from selling most types of insurance either directly or indirectly through subsidiaries; banks were restricted to selling a limited selection of insurance products viewed as incidental to the business of banking.(3) Section 174(3) of the 1980 *Bank Act*, for example, expressly prohibited: an officer or employee of a bank from acting as an agent for any insurance company or any person in the placing of insurance; and the bank from exercising pressure on a borrower to place insurance for the security of the bank in a particular insurance agency.(4)

A. A New View on the Financial Services Sector

In the mid-1980s, the Department of Finance examined the financial services sector and reconsidered the traditional distinctions among financial institutions in light of changes occurring internationally. The department released *The Regulation of Canadian Financial Institutions* (the "Green Paper") in 1985 and *New Directions for the Financial Sector* (the "Blue Paper") in 1986. In many ways, these two discussion papers prompted the modernization of federal legislation governing financial institutions and the removal of institutional barriers among the four pillars over the coming years. The Blue Paper, in particular, set out a framework for a series of regulatory reforms intended to create a "sound financial system that provides Canadians with innovative and competitive services, that broadens the

(3) Task Force on the Future of the Canadian Financial Services Sector, *Organizational Flexibility for Financial Institutions: A Framework to Enhance Competition*, Background Paper #2, September 1998, p. 81, http://www.fin.gc.ca/taskforce/rpt/pdf/BG2_E.pdf.

(4) S.C. 1980-81-82-83, c. 40, s. 174(3).

range of choice for Canadian savers and investors, and that fosters safe and well-supervised financial institutions that can compete effectively around the world."[5]

Among the specific recommendations for reform, the Blue Paper[6] proposed that all financial institutions (including banks) should be allowed to form affiliations with other financial institutions (including insurance companies) under the umbrella of a holding company. In addition, it was proposed that all federally regulated financial institutions be granted full networking authority, with the exception of the retailing of insurance.[7] A speech delivered by the federal Minister of State (Finance) in May 1988 revealed the rationale for this omission:

> While we seek to ensure that the regulatory framework can meet the needs of the financial services industry in the 1990's, we must recognize that our reforms cannot ignore the realities of the industry's present structure. The insurance agents and brokers across this country have provided Canadians with an important and personalized financial service. They have formed a sound foundation to the protection of the consumer through protection. In addition, their contribution to Canadian communities large and small has proved invaluable.
>
> I have not been convinced that the deposit-taking institutions are better positioned to give the Canadian public the kind of informed and personalized access to insurance products that the present network of agents can. For these reasons, I have taken the view that the networking of financial products would be extensive – except as it relates to the retailing of insurance. Deposit-taking institutions will continue to be prohibited from retailing insurance after the reforms have been implemented.[8]

B. A Period of Reform: 1987 to 1997

Over the following years, Canadian financial institutions legislation underwent a series of reforms that collectively reduced distinctions among the traditional four pillars and

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(5) Todd, Roman and Horwood (1989), p. 13.

(6) Department of Finance, *New Directions for the Financial Sector*, 18 December 1986.

(7) "Networking," as defined by the federal Department of Finance, is a term used to describe arrangements between financial institutions under which one of the institutions provides the public with access to an investment, contract or services issued by the other. This type of arrangement can exist between affiliated institutions or independent institutions; therefore, the issue of networking is separate from that of cross-ownership.

(8) Comments by the Honourable Tom Hockin, Minister of State (Finance), to a Symposium on Insurance in the 1990s, Toronto, 25 May 1988, cited in Todd, Roman and Horwood (1989), pp. 16-17.

moved the financial sector along the continuum towards a model of "universal banking" or "one-stop shopping," whereby all financial institutions can offer all financial products and services.(9)

Legislative reforms in 1987 and 1992, in particular, increased the potential for competition among financial institutions by enabling federal financial institutions to develop into financial conglomerates(10) with involvement in multiple financial industries. The 1992 reforms extended, to federal deposit-taking institutions, the ability to own insurance subsidiaries, but introduced restrictions that prevented banks from sharing customer information with an insurance company – subsidiary or otherwise – and from target-marketing insurance to their customers. At the same time, all federal financial institutions were granted increased in-house authority to provide financial services and were given the authority to network most financial services offered by affiliates or independent financial institutions. One noteworthy exception was the continued prohibition on the sale and networking of most types of insurance through branches of federal deposit-taking institutions.

The issue of banks retailing insurance products in their branches emerged as a dominant subject of early debate during consultations for the 1997 review of federal financial institutions legislation. In the March 1996 Budget Speech, the Minister of Finance revealed the federal government's intention to maintain the status quo, concluding that "the financial sector has yet to fully adjust to [the 1992 legislative] framework. Therefore, the present restriction on banks selling insurance will be maintained. The present framework for selling insurance through agents and brokers will be preserved."(11) This position was reiterated in the June 1996 White Paper entitled *1997 Review of Financial Sector Legislation: Proposals for Change*.(12)

The 1997 review resulted in the introduction of *An Act amending certain laws relating to financial institutions* (Bill C-82), which received Royal Assent on 25 April 1997. In addition to incorporating a number of changes aimed at updating and refining the 1992

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(9) Several articles survey federal legislative changes in the financial services sector, including: Fred Daniel, "Recent Changes to Canada's Financial Sector Legislation," *Bank of Canada Review*, Winter 2002-2003; Charles Freedman, "The Canadian Banking System," revised version of a paper delivered at the Conference on Developments in the Financial System: National and International Perspectives, New York, 10-11 April 1997; and Task Force on the Future of the Canadian Financial Services Sector, *Change, Challenge, Opportunity*, September 1998.

(10) The Joint Forum on Financial Conglomerates defines financial conglomerates as "any group of companies under common control whose exclusive or predominant activities consist of providing significant services in at least two different financial sectors (banking, securities, insurance)."

(11) Budget Speech, 6 March 1996, p. 22, http://www.fin.gc.ca/budget96/speech/speech.pdf.

(12) The 1996 White Paper is available on the Department of Finance Web site at: http://www.fin.gc.ca/fsl97/rev97e.pdf.

legislation, the 1997 reforms included measures to address consumer privacy and coercive tied selling. Bill C-82 authorized regulations to require federally regulated financial institutions to establish procedures for the collection, retention, use and disclosure of customer information and to establish customer complaint procedures, designate employees responsible for implementing such procedures and report on the actions taken to deal with privacy complaints. With respect to coercive tied selling, the reforms included the introduction of a statutory provision in the *Bank Act* that expressly prohibited undue pressure and coercive tied selling with respect to loans (section 459.1), and the power to make regulations establishing what conduct or transactions would constitute undue pressure or coercion.

C. The McKay Task Force and Beyond

In December 1996, the federal government created the Task Force on the Future of the Canadian Financial Services Sector (the "McKay Task Force"), with a mandate of assessing the current situation and future prospects of the financial services sector and making recommendations on public policy issues that affect the environment in which the sector operates. In the interest of strengthening the position of existing participants in the financial services sector in order to provide a more dynamic and competitive market, the 1998 report of the McKay Task Force recommended that banks be allowed "to retail insurance through their branches and to use their customer information files to assist in retailing insurance,"[(13)] noting that some provincially regulated deposit-taking institutions already engaged in this practice. This recommendation was subject to several conditions, including the adoption of recommendations to address the issues of coercive tied selling and consumer privacy, and the implementation of a transition period that would allow small deposit-takers the opportunity to retail insurance products in advance of larger market players (those with shareholders' equity in excess of $5 billion).[(14)]

In 1999, the Department of Finance issued a White Paper that set out the federal government's vision for future reform in the financial services sector, including measures to foster competition and promote consumer interests. Suggesting that these measures would take time to become fully effective, the federal government "agree[d] with the House of Commons

(13) Task Force on the Future of the Canadian Financial Services Sector, *Change, Challenge, Opportunity*, September 1998, p. 197, http://www.fin.gc.ca/taskforce/rpt/pdf/Main_E.pdf.

(14) *Ibid.*, pp. 95-96.

Standing Committee on Finance that these regimes should be given time to work before any changes can be considered to bank business powers in the areas of car leasing and insurance networking."(15)

Also in 1999, the federal government passed legislation to permit demutualization, as recommended by the McKay Task Force.(16) At that time, a policy prohibiting mergers or acquisitions between or among large demutualized insurance companies and large banks (those with shareholders' equity in excess of $5 billion) was established. With this policy, the federal government aimed to ensure the presence of strong, independent insurance companies in Canada and to create a transition period for large demutualized insurance companies to adjust to their new form of ownership.(17)

On 1 January 2001, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) came into force for the banking, telecommunications, transport and broadcasting industries. The PIPEDA sets out rules – including the requirement to obtain customer/employee consent – for private-sector organizations regarding the collection, use and disclosure of personal information in the course of commercial activities. In addition, the legislation gives individuals the right to access and request correction of the personal information these organizations may have collected about them.

The 2001 financial sector reforms, which culminated in *An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions* (Bill C-8), enacted additional recommendations of the McKay Task Force. Among other things, the reforms extended eligibility for membership in the Canadian Payments Association to life insurance companies, securities dealers and money market mutual funds, thus enabling life insurance companies to offer payment services with features broadly similar to

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(15) Department of Finance, *Reforming Canada's Financial Services Sector: A Framework for the Future*, 25 June 1999, p. 60, http://www.fin.gc.ca/finserv/docs/finservrept_e.pdf.

(16) Demutualization is the process by which a mutual life insurance company owned by insurance policyholders is converted to a public stock company owned by shareholders.

(17) Department of Finance, Response of the Government to *Large Bank Mergers in Canada: Safeguarding the Public Interest for Canadians and Canadian Businesses* (a Report of the House of Commons Standing Committee on Finance) and *Competition in the Public Interest: Large Bank Mergers in Canada* (a Report of the Standing Senate Committee on Banking, Trade and Commerce), 23 June 2003, p. 18, http://www.fin.gc.ca/activty/pubs/mergers_e.pdf.

those of deposit accounts offered by banks, for example. The legislation also established a holding company regime, which provides Canadian banks and insurance companies with increased flexibility in structuring their organizations. Under this regime, for example, a bank may reorganize into a holding company that owns several subsidiaries, each involved in a specific type of financial service (e.g., banking, insurance and securities). In addition, the coercive tied selling provision of the *Bank Act* was strengthened to apply to all financial products and services. The 2001 reforms did not, however, implement the McKay Task Force recommendation to allow banks to offer insurance to their customers through their branches.

D. 2006 Review of Financial Institutions Legislation

Sunset clauses in the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act* and the *Cooperative Credit Association Act* ensure that financial institutions legislation is reviewed and renewed every five years, and October 2006 is the next deadline for introducing legislation to amend the financial institutions statutes.(18) The 2005 federal budget launched the 2006 review of federal financial institutions legislation, with a consultation document entitled "An Effective and Efficient Legislative Framework for the Canadian Financial Services Sector."(19) The consultation document set out three principal goals for the 2006 review:

- enhancing the interests of consumers;
- increasing legislative and regulatory efficiency; and
- adapting the framework to new developments.

While the subject of bank involvement in the retailing of insurance products was not specifically addressed, several stakeholders shared their positions on this issue in their submissions to the Department of Finance. The boxed text below summarizes the key messages of these stakeholders.

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(18) The 2006 federal budget proposed to extend the sunset date for the financial institutions statutes by six months, from 24 October 2006 to 24 April 2007.

(19) *The Budget Plan 2005*, Annex 6, pp. 336-346, http://www.fin.gc.ca/budget05/pdf/bp2005e.pdf.

Stakeholder Views on Banks and the Insurance Business from Department of Finance Consultations for the 2006 Review of Financial Institutions Legislation

The *Insurance Brokers Association of Canada* reiterated its long-standing support for the existing insurance networking restrictions and coercive tied selling provisions for banks.

The *Canadian Bankers Association (CBA)* called for removal of the restrictions on in-branch information and promotion, in-branch referrals, target-marketing of insurance products to bank customers, and information-sharing between banks and insurers. It believes that the pre-conditions for allowing banks to retail insurance set by the federal government in 1999, including increased consumer protection and competition in the financial sector, have been met. *Scotiabank* also proposed that the list of insurance products that banks are authorized to sell be expanded to include life-contingent annuities and creditor insurance up to the value of the authorized limit. *RBC Financial Group* advocated more extensive legislative change: "Removing the constraints on the ability of consumers to obtain insurance services, products and advice from banks would constitute the single most important initiative that the government could undertake in [the 2006] review to promote the interests of Canadians."

Credit Union Central of Canada expressed support for legislative changes that would permit the in-branch distribution of insurance products by associations and retail associations under the *Cooperative Credit Associations Act*.

Advocis, the Financial Advisors Association of Canada, questioned the sufficiency of existing regulation governing coercive tied selling by banks and the application of licensing and other market conduct requirements to bank distribution of insurance products.

Canada's Association for the Fifty-Plus expressed its belief that: "Canada's chartered banks are not able to compete fairly with life and health insurance companies that are allowed to offer banking services to their clients, while the banks are not able [to] offer insurance services to theirs. As our members age, the linkage between banking, insurance, taxation and wealth preservation is ever increasing, and it becomes all the more important that they be able to choose the financial institution and advisor they feel the most comfortable with, not the ones they may be forced to use on account of outdated regulations."

Notes: Submissions from the Canadian Life and Health Insurance Association and the Insurance Bureau of Canada did not reveal their present positions on the issue.

Sources: Stakeholder submissions to the Department of Finance regarding the 2006 Review of Financial Sector Legislation, http://www.fin.gc.ca/activty/consult/06Rev_e.html.

The original timeline for the 2006 legislative review called for: receipt of stakeholder comments until 1 June 2005; preparation of a White Paper for the fall of 2005; review of the White Paper by the Standing Senate Committee on Banking, Trade and Commerce and the House of Commons Standing Committee on Finance; and introduction of legislation in early 2006. This timeline was subsequently revised in the 1st Session of the 39th Parliament.

In June 2006, the federal government issued a White Paper entitled *2006 Financial Institutions Legislation Review: Proposals for an Effective and Efficient Financial Services Framework,*(20) which recommended proposals to: enhance the interests of consumers; increase legislative and regulatory efficiency; and adapt the framework to new developments. No explicit mention was made of bank involvement in the retailing of insurance products; however, the White Paper stated that: "Generally, stakeholders' input suggests that this review offers the opportunity to refine the legislative framework, but that no major overhaul is needed. The Government agrees with this general assessment."(21) Stakeholders were invited to comment on implementation of the White Paper proposals by 21 July 2006. Legislation is anticipated in the fall of 2006 in order to meet the extended deadline of 24 April 2007 proposed in the 2006 federal budget.

BANKS AND THE BUSINESS OF INSURANCE

In 1989, before Canadian chartered banks were permitted to own insurance subsidiaries, the Toronto Dominion Bank entered into an agreement with Simcoe & Erie General Insurance Company to provide a mortgage-insurance referral service called "Home GreenPlan." Under this agreement, the bank referred mortgage loan customers to Simcoe & Erie General Insurance Company for related insurance products in exchange for a premium collection payment from the insurance company for customers who opted to purchase the insurance and pay their premiums periodically using a pre-authorized electronic payment plan. The Bank of Nova Scotia partnered with Canada Life Casualty Insurance Company to create a similar referral program called "Scotia Home Insurance." The nature of these partnerships generated interest from the House of Commons Standing Committee on Finance and the Office of the Superintendent of Financial Institutions (OSFI), both of which independently reviewed the arrangements and obtained opinions as to their legality.

A legal opinion from an external law firm obtained by the Finance Committee corroborated the opinion obtained by it from the law clerk and parliamentary counsel. These

(20) Department of Finance, *2006 Financial Institutions Legislation Review: Proposals for an Effective and Efficient Financial Services Framework*, June 2006, http://www.fin.gc.ca/activty/pubs/White06e.pdf.

(21) *Ibid.*, p. 5.

opinions indicated that the activities of the TD Bank, in particular, were in contravention of the *Bank Act*. However, the OSFI, after considering whether the bank was acting as an agent, whether the activities were ancillary to the business of banking and whether there was pressure applied, determined that the TD Bank and Bank of Nova Scotia insurance referral programs did not put the banks in contravention of the Act. As a result, the Superintendent of Financial Institutions concluded: "I do not have the evidence in front of me provided by the counsel from the Department of Justice, provided by our own analysis or anywhere else, that virtually compels me to tell them they are breaking the law; cease and desist. I do not have that evidence in front of me."(22)

Since 1992, when banks gained the authority to underwrite insurance through subsidiaries, all of Canada's largest banks – Royal Bank, Toronto Dominion Canada Trust (TD Canada Trust), Canadian Imperial Bank of Commerce (CIBC), Bank of Montreal and Scotiabank – have established insurance subsidiaries. Given the current restrictions on in-branch promotion and sale of most insurance products and services, the banks use alternative marketing and distribution mechanisms, including their financial group Web sites, telemarketing and telephone banking, proprietary sales forces, independent insurance distributors, television advertisements, and direct mail advertisements in bank statements and credit card bills, for example.

RBC Financial Group's global insurance operations, RBC Insurance, fall under its Canadian personal and business segment called Personal and Business Clients Canada, which accounted for nearly 70% of the bank's total net income in 2005. Through RBC Insurance, the bank offers life, creditor, health, travel, home and auto insurance products and services to customers in Canada and the United States, and reinsurance to clients globally. RBC Insurance is the largest Canadian bank-owned insurer and one of the top ten Canadian life insurance producers.(23) In 2005, the bank's global insurance business contributed 26% of total revenues from Personal and Business Clients Canada. In the fiscal year ended 31 October 2005, insurance-related revenue was $3.27 billion, an increase of approximately $400 million or 14% from 2004. The bank attributes this growth to the acquisition of UnumProvident in May 2004

(22) Minutes of Proceedings and Evidence of the House of Commons Standing Committee on Finance, pursuant to Standing Order 108(2), consideration of the *Bank Act* in relation to chartered banks acting as agents for insurance companies, 20 June 1989, 22:32.

(23) Royal Bank of Canada, "Corporate Profile," http://www.rbc.com/aboutus/index.html (accessed: 17 February 2006).

and strong growth in its property and casualty, life and reinsurance businesses. In July 2005, RBC Insurance opened its first retail insurance office next to a Royal Bank branch in Scarborough, Ontario. Additional retail insurance offices have followed in locations such as Hamilton, Kingston, and Kirkland, and more are planned in the future. These retail insurance offices are intended to allow customers to meet face to face with advisors on a broad range of insurance, including home, auto, travel and life insurance products; requests for more complex insurance products are referred to specialized sales representatives.

TD Bank Financial Group's global insurance operations (excluding the United States) fall under its Canadian Personal and Commercial Banking business line. Under the TD Insurance and TD Meloche Monnex brands, the bank offers auto insurance, life and health insurance, and credit protection insurance on TD Canada Trust lending products. In the fiscal year ended 31 October 2005, TD Bank Financial Group recorded insurance income, net of claims, of $826 million, an increase of 39.3% from 2004 and 153.4% from 2001. The bank attributes the recent growth in its insurance business to the acquisition of the Canadian personal property and casualty insurance operations of Liberty Mutual Group, the acquisition of TD Banknorth's insurance business, growth and a slightly lower claims ratio. TD Bank Financial Group has identified growth in under-penetrated businesses, including insurance, as a key component of its overall business strategy for the future.

Canadian Imperial Bank of Commerce (CIBC) offers: creditor insurance on lending products such as mortgages, personal loans, lines of credit, credit cards, small business loans and farm loans; it also offers supplemental insurance including travel insurance, accidental death insurance, hospital accident insurance, and utility bill protection. The bank recorded insurance fee income of $265 million in the fiscal year ended 31 October 2005, an increase of $89 million or 51% from the previous year. CIBC attributes this growth primarily to an increase in reinsurance revenue. In January 2005, CIBC became the first Canadian chartered bank to include a link on its Web site to an independent on-line automobile and property insurance shopping tool powered by Kanetix.(24) This on-line tool allows a direct comparison of automobile and property insurance from competing insurance providers in Alberta and Ontario.

(24) Kanetix.ca, "CIBC becomes the first Canadian bank to offer access to online comparison shopping for automobile and property insurance in Alberta and Ontario," 11 January 2005, http://www.kanetix.ca/about_press_oct_04.

The *Bank of Montreal Financial Group's* insurance operations fall under its Personal and Commercial Client Group business line, along with deposit accounts, loans, credit cards and personal investment products. The bank offers life insurance, mortgage insurance, insurance for loans and lines of credit, accident and illness insurance, and travel insurance. Insurance income during the fiscal year ended 31 October 2005 totalled $162 million, an increase of $23 million or approximately 17% from 2004 and nearly 30% from 2001.

Scotiabank Group offers a range of insurance products through ScotiaLife and Scotia Insurance, including accident insurance, accidental death insurance, accident care hospitalization insurance, credit protection and travel medical insurance. Since insurance-related revenues are accounted for in "other revenue" in the bank's financial statements, it is difficult to monitor their change. Between 2004 and 2005, however, other revenue rose slightly from $473 million to $475 million, which the bank attributes to higher insurance revenues offset by decreased revenues in areas such as loan collection fees.

CONSIDERING THE ISSUE

The issue of chartered bank involvement in the insurance business has polarized stakeholder groups, especially those within the financial services sector, with arguments being made both for and against the removal of existing restrictions on bank involvement in insurance. A fundamental area of disagreement among stakeholders is whether the removal of current restrictions would increase or decrease competition among suppliers of insurance products and services in the long run; each scenario would result in vastly different consequences for consumers and stakeholders in the financial services sector.

A. Arguments for Maintaining the Current Restrictions

Those who support maintaining the current restrictions on bank involvement in insurance retailing fear increased concentration of power in the hands of bank conglomerates at the expense of lost jobs and business by small business insurance brokers and independent insurance agents. Bank conglomerates are already dominant market players in the financial services sector and their access to privileged customer information could provide a competitive advantage in the insurance industry. Some believe that banks could leverage this access to engage in predatory pricing in an effort to drive their competitors from the insurance market. It

has also been argued that insurance brokerages may find it difficult to obtain credit from banks that are competing for the same business. Reduced competition among suppliers of insurance products and services could negatively affect consumers by decreasing their access to insurance products and services, reducing their choice and lowering the quality of service they receive.

In addition to negative effects from reduced competition, those in favour of current restrictions believe that their removal could negatively affect consumers in two additional ways. First, selling insurance requires specialized knowledge, and professionals who specialize in the field are relatively better equipped than bank employees, who have multiple roles, to provide consumers with insurance products and services. Second, there is a concern that if banks are permitted to sell insurance in their branches, they may engage in coercive tied selling and/or invade consumer privacy given their access to extensive information on the financial condition and activities of their customers. According to the Insurance Brokers Association of Canada: "Tied selling whether resulting from coercion by a seller, or from a customer's realization that they stand a better chance of securing a particular product or service by volunteering to accept another product or service from the same seller, is a practice that adversely affects competition as consumers no longer base their purchasing decisions on factors of price or product attributes."(25)

B. Arguments for Reducing or Removing the Current Restrictions

Advocates of reducing or eliminating restrictions on bank involvement in insurance retailing believe that consumers would benefit from improved access to insurance, increased convenience, and lower prices for insurance products and services. Permitting banks to offer insurance information in their branches would provide an additional source of information and advice regarding insurance products and services, resulting in more informed decision-making by consumers.(26) In addition, consumer convenience would be enhanced by: first, the option of "one-stop shopping," which would allow a customer to obtain a car loan and car insurance, for example, at the same place at the same time; and second, an expanded number

(25) Insurance Brokers Association of Canada, Submission in Response to the Department of Finance's 2006 Review of Financial Sector Legislation, 31 May 2005, http://www.fin.gc.ca/consultresp/06Rev_14e.html.

(26) The Canadian Bankers Association believes that certain groups of Canadians – including those who rely primarily on bank branches, lower-income individuals who are less likely to use full-service investment advisors, and seniors who are seeking insurance-related information and advice for retirement planning – are particularly disadvantaged in their current access to insurance information and could especially benefit from increased in-branch service.

of points of distribution for insurance products and services. This latter point may be especially relevant in regions where bank branches exist and alternative insurance outlets are not readily available (e.g., rural areas). Finally, advocates of eliminating the restrictions argue that competition among insurance providers would increase, resulting in improved service and better prices for consumers as market players seek a competitive edge in the marketplace. Banks contend that they may have a cost advantage in providing insurance products and services to the extent that they already have the physical infrastructure and staff necessary to sell insurance and that these overhead costs could be spread over a greater number of financial products and services. In particular, banks view the possibility of offering standard, "no-frills" insurance policies that do not require extensive tailoring to the client as a niche market opportunity where insurance broker commissions could be eliminated.

Banks would benefit from increased access to the insurance business through greater diversification of their revenue sources, as well as the potential for increased revenues from insurance products and services and from the bundling of various types of financial products and services. Proponents argue that the removal of existing restrictions would allow banks to compete more equally with credit unions and caisses populaires in certain Canadian jurisdictions, as well as with banks internationally, that have more flexibility in their involvement in the insurance business.

In response to certain concerns of those in favour of maintaining the existing restrictions, advocates of removing the restrictions argue that predatory pricing, coercive tied selling and invasion of consumer privacy are prohibited under federal legislation. Specifically, these practices are prohibited under the *Competition Act*, the *Bank Act* and the *Personal Information Protection and Electronic Documents Act*; compliance is supervised and enforced by the Competition Bureau, the Financial Consumer Agency of Canada and the Privacy Commissioner, respectively. Moreover, they argue that competitive forces and banks' desire to maintain their reputations would limit the incentive to engage in these practices.

C. Stakeholder Perspectives

Banks and their industry association, the Canadian Bankers Association, support legislative changes that would allow an expansion of their insurance-related activities, ranging from increased flexibility in the area of in-branch promotion and referrals to permission for in-branch sale of all insurance products and services.

The views of the insurance industry appear to be less uniform. Insurance brokers, as represented by the Insurance Brokers Association of Canada, are opposed to changes that would allow banks or other non-insurance companies to distribute insurance products. Insurance companies, however, may perceive both potential advantages and disadvantages to altering the status quo. Should the existing restrictions on bank activities in the insurance business be removed, banks could choose to promote and underwrite their own insurance products and services, and thereby compete directly with existing insurers. Alternatively, banks could serve as a new distribution channel for the insurance products and services of existing insurance companies, although perhaps at the expense of the companies' proprietary sales forces.

Seemingly inconsistent survey results have made it difficult to determine public opinion on this issue. Given the many methodological similarities between three recent surveys described below, it is possible that the divergent outcomes may be attributable to differences in the way in which information and questions were presented or phrased.

In May 2005 and February 2006, the Canadian Bankers Association released the results of two public opinion surveys on Canadian attitudes toward access to insurance information and the obligation to purchase.(27) When informed that information about banks' insurance products is available through bank financial groups' Web sites, telephone and mail, but is unavailable at bank branches, 73% of survey respondents believed that the regulations prohibiting information within branches do not make sense. When informed of the reasons for the existing restrictions as well as new laws with respect to privacy and coercive tied selling, the majority of respondents – 73% in the case of privacy and 57% in the case of coercive tied selling – believed that the new legislation addressed their concerns in these areas. Survey respondents supported changes to existing regulations that would allow bank branches to: provide printed information about all insurance products (85%); market their insurance products to clients based on client information, with client consent (77%); and refer clients to qualified insurance professionals outside the branch (83%). Ninety-one percent of survey respondents indicated that they would feel no obligation to purchase insurance through bank sources because of the provision of information or referrals at branches or through the mail.

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(27) The results of both public opinion surveys, which were commissioned by the Canadian Bankers Association and conducted by The Strategic Counsel, are available at: http://www.cba.ca/en/ViewDocument.asp?fl=4&sl=337&tl=341&docid=591. The figures presented refer to one of the two sources.

A public opinion survey commissioned by the Financial Advisors Association of Canada (Advocis) in November 2005 produced somewhat different results.(28) Seventy-eight percent of Advocis survey respondents believed that consumer protections should be kept in place due to concerns about privacy and coercive tied selling, while 15% believed that protections should be removed to give consumers greater access to information. Moreover, 63% of respondents believed that current protections should be kept in place because life and health insurance companies will not be able to compete against banks over the long term, which will eventually lead to less choice for consumers. Eighty-one percent of survey respondents said that they already have enough access to life and health insurance information, 91% believed that banks already have enough personal information about them, and 83% did not want their banks to use their personal banking information to try to sell them products or services offered by the bank. Of respondents who had been approved by their bank for a loan, line of credit or mortgage within the past seven years, 19% indicated that they felt pressure to give their bank more business when approved.

CONCLUSION

The financial services sector, and the legislation and regulations that govern it, have evolved considerably over the past quarter-century, with the traditional four-pillar taxonomy becoming increasingly irrelevant as the business of different financial institutions converges. Nonetheless, certain cross-pillar activities remain prohibited under legislation, including the promotion and sale of many insurance products and services by banks in their branches.

The banking industry has repeatedly indicated its interest in the removal of restrictions, most recently during the consultations for the 2006 federal review of financial institutions legislation. Other stakeholders, including the Insurance Brokers Association of Canada and Advocis, remain critical of the idea.

To date, the federal government has retained the restrictions through several successive rounds of legislative reform and intense lobbying by interest groups. By remaining silent on the issue, the 2006 White Paper may be interpreted as signalling the federal government’s intention to maintain the status quo regarding bank involvement in the insurance industry at this time.

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(28) The results of the survey, which was conducted by POLLARA Inc., are available at: http://link.advocis.ca/email/021506/pdf/POLLARA-REPORT.pdf.