Weathering the Global Financial Crisis: An Overview of the Canadian Experience

Virginia Torrie
WEATHERING THE GLOBAL FINANCIAL CRISIS: AN OVERVIEW OF THE CANADIAN EXPERIENCE*

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ABSTRACT

The initial signs of a foundering American subprime mortgage market have proven to be merely the tip of the iceberg of dubious financial products and practices leading to the present economic crisis. In this time of heightened financial inquiry and reform, it is worth examining the impact of the financial crisis on the Canadian economy, as it has been markedly different from the American experience. Noteworthy is the fact that Canadian financial systems appear to have been remarkably insulated from much of the financial storm. This paper argues that Canadian resilience can largely be attributed to a more conservative regulatory environment, which curtailed much of the problematic behavior that has led the world to the point of financial crisis. Not an exhaustive study, this paper provides an overview of the impacts of the economic crisis on Canada and highlights key factors that have contributed to the Canadian experience.

I. INTRODUCTION

RUMBLINGS of an unsteady American subprime mortgage market in early 2007 have since cascaded into an economic crisis of global proportions, epitomized by the financial failure of numerous banks and corporations, as well as prodigious government bailouts of those entities deemed too large to fail. Even now, some two years later, many countries remain in the throes of this “global financial crisis,” as it continues to negatively impact national economies, thereby affecting nearly every aspect of society. While the financial crisis has not left any country entirely unscathed, the last couple of years have demonstrated the disparate effects of the financial turmoil on numerous countries around the globe—generating curiosity as to the reasons for its differing impact and whether the particular features of the “less affected” econo-

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* Research is current to July 2009.
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mies might serve as useful examples for a global economic community in the midst of heightened financial inquiry and reform.1

Canada is one example of a country that has been less affected by the recent financial crisis than other similarly situated economies. A Western industrialized nation, Canada shares much in common with its fellow members of the G8 and Organization for Economic Co-operation and Development ("OECD"), including and most specifically, its neighbor to the south, the United States. Nevertheless, the impact of the financial crisis on the Canadian economy has been markedly different from the American experience. The extent and severity of this global financial crisis has impacted and continues to impact the relatively small Canadian economy; however, what is noteworthy is that Canadian financial systems appear to have been remarkably more insulated from the crisis than most. As will be discussed in more depth in the sections that follow, this paper argues that this resilience can largely be attributed to a more conservative Canadian regulatory environment, which curtailed much of the problematic behavior that was the genesis of today's global financial crisis.

The factors that contributed to the global financial crisis the world is facing today are many and complex, as are the reasons for the differing impacts felt in national economies around the world. While it would be an oversimplification to boil the latter down to a single deciding factor, this comes very near the truth in the case of Canada. This article argues that in Canada, prudent government regulation has played the star role in mitigating the extent and severity of the impact of this financial storm on Canadian financial systems and the Canadian economy. Further, within the realm of Canadian regulatory control, where the economic impact of the financial crisis on Canada have been drastic, it can for the most part be directly linked to regulatory failure. Notwithstanding its regulatory shield, Canada's economy has suffered in many areas that are heavily interconnected with those of other countries through world trade and finance: softening American demand for Canadian exports, which are

densely concentrated in the logging, oil, mining, natural gas, and automotive sectors, has reverberated through the Canadian economy, particularly affecting employment opportunities; downsizing and bankrupt American companies with Canadian offices and subsidiaries have further taken their toll on the Canadian labor market; and instability in world credit markets has limited the availability of business financing for Canadian companies, adding further challenges to surviving the financial storm.

At the time that the American subprime mortgage crisis was making headlines around the globe, there was a fledgling subprime mortgage market in Canada. When foreclosures started to snowball in the United States, Canadian foreclosure rates did not experience the same spikes. Rather, rates remained near record lows. Later, in the autumn of 2008, when several large American banks collapsed or were teetering on the brink of bankruptcy, most of the largest Canadian banks turned a profit and not a single Canadian bank received a government bailout.

Curiosity notwithstanding, there is as yet very little academic writing on the global financial crisis that deals directly with its impact on Canada but, as the crisis is still ongoing, this is not surprising. Even at this early point in time, however, there is a great deal of insight to be offered through a careful study of the Canadian experience. Accordingly, though not an exhaustive study of the complete "Canadian Experience," this paper will provide a general overview of the impact of the global financial crisis on Canada and outline the major factors that have contributed to the resilience of the Canadian economy in the midst of a global financial crisis.

The rest of this article is organized as follows. Section II sets the stage for the discussion by giving an overview of the Canadian economy, focus-
ing on capital markets and financial systems structures and regulation, with relevant comparisons and contrasts to their American counterparts where appropriate. This section focuses on key features of the Canadian economy and regulatory structures which contributed to the unique impact of the financial crisis on Canada. Section III outlines the impact of the global financial crisis on Canada and highlights some of the corresponding government responses to these unfolding circumstances. Section IV provides a brief conclusion.

II. COMPARATIVE AMERICAN AND CANADIAN FINANCIAL REGULATION 101

A. Basic Contrasts: The United States and Canada

The United States boasts the fourth largest landmass, with an estimated 305.15 million people and a population density of approximately eighty-three people per square mile. By contrast, Canada is the second largest country by landmass, with an estimated population of a mere 33.21 million people and a comparatively roomy population density of 8.6 people per square mile, making Canada one of the most sparsely populated countries in the world. While at first blush these facts appear far removed from a discussion of financial systems regulation and economic crisis, they are in fact fundamental to understanding the unique features and development of the Canadian economy. Through a basic understanding of Canada and the Canadian economy, the differences in the American and Canadian experiences of the financial crisis begin to come into sharper focus, informed by an underlying knowledge of socio-political factors that extend beyond Wall and Bay Streets.

The Canadian economy is largely based on the services industry, which employs approximately seventy-five percent of Canadians; however, Ca-

3. Present day United States and Canada pose many interesting points for comparison and contrast; both are relatively young countries by global standards with a common British heritage and share many similar practices and customs. Taking a broader view of the history of European settlement of North America, the United States and Canada are perhaps better understood not merely as two distinct countries, but also as products of an ideological (and physical) bifurcation of settlers to North America beginning some 200 years ago. In other words, in comparing and contrasting these two countries it is often helpful to consider that the points of similarity and difference seen in our governments, legal systems and economies often stem from the overlapping or diverging viewpoints of two groups of people, rather than from these societal institutions themselves.


6. In this article the terms “economic crisis,” “financial crisis,” are used interchangeably to refer broadly to the difficulties facing national economies and financial systems around the world today.

7. Bay Street in Toronto is representative of Canadian big business and high finance, as is Wall Street in New York for the United States.
Canada is unique among western industrialized nations for its disproportionately large focus on the primary sector, particularly logging, oil, natural gas and mining activities. Canada is the world’s largest exporter of pulp and paper—a world leader in the production of softwood lumber, uranium, zinc, nickel, and titanium; a major producer of iron ore, coal, petroleum, gold, copper, silver and lead; and is home to significant diamond mining operations. Canada also has the world’s second largest oil reserves as well as vast offshore natural gas reserves. The Canadian manufacturing sector is also sizeable, comprising twenty percent of the gross domestic product and employing fourteen percent of the Canadian labor force. Within the manufacturing sector, the automotive industry has been a key area, especially in Southern Ontario and Quebec.

International trade, particularly exports, plays a significant role in the Canadian economy, a fact that is further highlighted by the sensitivity of many primary sector industries to global price fluctuations. The United States is Canada’s largest trading partner and accounts for approximately seventy-five percent of all Canadian trade, with exports considerably outweighing imports. Due to its heavy reliance on the United States as the primary purchaser of exports, Canada’s economy has the propensity to rise and fall with American demand and international trade policies. Former Prime Minister of Canada, Pierre Elliot Trudeau, aptly described this phenomenon as follows: “Living next to [the United States] is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt.”

Since the latter half of 2007, the suffering United States economy has led to weakening American demand for Canada’s primary exports. With new home and commercial construction slowing to a near halt, the demand for Canadian lumber has also fallen. The flight of American consumers from the marketplace for large gas-guzzling trucks and SUVs has also lessened demand for Canadian gas, oil, automotive components, and new vehicles. Further, the financial failures of General Motors and Chrysler, both with an array of sizeable Canadian manufacturing and assembly plants, and considerable domestic automotive subcomponent manufacturing suppliers, have taken a toll on the Canadian economy. The last few years have served to illustrate for Canadians how interwoven the economies of the United States and Canada are, and the inherent risks of relying heavily on one trading partner to purchase Canadian exports.

9. Id. at 28, 30.
10. Id. at 31.
11. Id. at 32.
12. Id.
13. Id. at 30.
14. Id. at 34.
B. MAJOR DIFFERENCES IN FINANCIAL REGULATION

Differing regulatory frameworks employed in the two countries can account for much of the disparity apparent in the impact of the financial crisis on the United States and Canada. In the most basic terms, the American regulation in question allowed, or perhaps even encouraged, greater financial risk taking than comparable Canadian regulation. Risk taking is an essential component of a capitalist financial system, and the dichotomy of the American and Canadian approaches can be understood as two points on a spectrum of risk tolerance.

Some of the key regulatory features that influenced the proliferation of subprime mortgages, asset backed securities, and highly leveraged investment portfolios in the United States include the following. Note the contrast between the American and Canadian positions on many of these points.

Income tax and home mortgages. American income tax law permits homeowners to deduct the interest portion of their mortgage payments from their personal federal income tax. This feature, among other things, arguably provides an incentive for consumers to hold larger mortgages on their homes for longer periods of time, thus paying more interest (perhaps at higher rates) over the life of the mortgage than they otherwise would. In Canada, there is no similar income tax deduction for consumer mortgages. As a result, there is no artificial incentive to hold a mortgage, which might possibly influence consumer decisions when it comes to purchasing a home.

Subprime mortgage lending. Prior to the outbreak of the subprime mortgage crisis in 2007, American law placed few substantive limits on subprime mortgage lending, a fact that is largely due to decentralized regulators coupled with deregulation of the American financial services industry over the last few decades. The development of aggressive mortgage brokers in this market served to illustrate for the world how inadequate the regulatory checks and balances for this industry truly were. While the specific terms and conditions of American subprime mortgages varied widely, the most notable features were that they could be granted for as much as, and sometimes more than, 100% of the value

of the property purchase price,\textsuperscript{18} that the financial requirements for borrowers were generally quite low—as epitomized by the proliferation of so-called "ninja" (an acronym for "no income, no job, no assets") mortgages, a term used to describe mortgages sold to borrowers that appeared financially ill-equipped to maintain a mortgage in good standing,\textsuperscript{19} and that the ostensible gaps in regulatory oversight were often used to the advantage of mortgage brokers and lenders whom, after setting up borrowers with subprime mortgages, repackage these consumer receivables into mortgage-backed securities, (MBS) which were sold to eager investors on Wall Street and around the world.\textsuperscript{20}

Canadian law, by contrast, generally requires a minimum down payment of twenty percent of the purchase price in order to qualify for a consumer mortgage on real property.\textsuperscript{21} A mortgage obtained with a down payment of less than twenty percent is considered to be a "sub-prime mortgage" in Canadian terms. In exceptional circumstances where the borrower is considered to be financially well-qualified, a down payment of less than twenty percent and as little as five percent of the purchase price may be used to obtain mortgage financing.\textsuperscript{22} In such cases, the full value of the mortgage must be insured through Canada Mortgage and Housing Corporation (CMHC).\textsuperscript{23} CMHC is a Crown corporation, meaning that it is the Canadian government that takes the risk on the borrower defaulting on their mortgage, and the lending institution has guaranteed repayment. As a result of a fairly conservative regulatory framework and a much smaller mortgage market, sub-prime mortgage lending in Canada has not developed as rapidly as it has in the United States and was still in its infancy when the subprime crisis emerged. Sub-prime mortgages accounted for only five percent of outstanding mortgages in Canada in June 2007, while in the United States they reached nearly three times that number.\textsuperscript{24} Partially as a result of imposing higher financial requirements on potential borrowers, which is one indicator of

\begin{itemize}
  \item \textsuperscript{21} Bank Act, 1991 S.C., ch. 46 § 418 (Can.).
  \item \textsuperscript{24} Nicholls, supra note 2, at 186; Canadian Mortgages, Special Update (Scotiabank Group Global Econ. Res., Toronto, Can.), Sept. 25, 2008, at 1.
\end{itemize}
the borrower's financial ability to afford a mortgage, mortgage delinquencies in Canada have remained very low in the years following the outbreak of the subprime mortgage crisis, hovering around 0.42%.  

Beyond imposing more rigorous lending requirements, the creation of MBS in Canada is largely performed in accordance with the carefully crafted guidelines set out by CMHC and the resulting securities are fully guaranteed by the Government of Canada. CMHC is not responsible for creating MBS itself; rather, securitization is accomplished through private issuers. CMHC's issuer eligibility requirements set out the standards and practices that must be met by eligible issuers in order to avail themselves of the CMHC program. Eligible MBS are then assigned to CMHC in trust for MBS investors.

In addition to the Canadian legal requirements surrounding subprime mortgage lending, it is worth noting the more conservative attitudes toward mortgage lending in Canada. Canadian lenders have closely adhered to traditional borrower criteria when it comes to mortgage lending. The borrower's income and financial assets (as well as the income and financial assets of a co-signor or guarantor where applicable) are ordinarily the pivotal pieces of information in the decision to approve or deny a mortgage application. Due to the fact that Canadian lenders have tended to err on the side of caution, the Canadian government utilizes mortgage insurance as an inducement for lenders to grant mortgages in situations where they would ordinarily not do so. Thus, by the Canadian government assuming the risks of default through mortgage insurance, the rather conservative lender feels comfortable extending the mortgage. The more cautious Canadian attitude is exemplified through the fact that, while it is not a legal requirement, it is common practice for Canadian lending institutions to require mortgage insurance for down payments that sit at or slightly above the twenty percent minimum. The upshot of this approach to personal mortgage lending is that it will usually be more difficult for a Canadian homebuyer to obtain mortgage financing, and as much financing, than it would be for a similarly situated American homebuyer.

As an additional matter, Canada has benefited from higher real property appraisal standards in general, which tended to more conservatively

27. Id. at 1-3, 3-1, 3-2, 3-3, 3-4, 3-5.
28. Id.
29. Id.
30. Canadian Mortgages, supra note 24, at 2, 3.
estimate real property values before determining how much to lend to a prospective borrower.\textsuperscript{31} The higher standards combined with the fact that there were very few subprime mortgages in Canada, which facilitated a flurry of home buying activity in the United States, helped ensure that Canadian housing prices were not artificially inflated, as has turned out to be the case in the United States.\textsuperscript{32} As a result, when doubtful and bad subprime mortgages were exposed in the United States in summer 2007, there was no corresponding substantial drop in Canadian real estate prices. Rather, while some areas experienced price declines, real estate prices in most Canadian cities held steady or continued to grow.\textsuperscript{33}

In the United States, the subprime mortgage crisis can be traced to the convergence of two primary factors: a large number of subprime mortgages and a widespread and severe drop in real estate prices.\textsuperscript{34} Due to regulatory and market differences explained above, the Canadian real estate market was not broadly characterized by these two features, which helps to explain why Canada has not experienced a Canadian subprime mortgage crisis.

\textit{Lender remedies}. In the United States, mortgage lender recourse following foreclosure of residential properties varies according to state laws to a greater extent than is generally the case among Canadian provinces.\textsuperscript{35} While the American remedy of foreclosure is federally uniform, state laws differ in the recourse available to lenders who foreclose in negative equity situations.\textsuperscript{36} While most states allow the lender to obtain a

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deficiency judgment, some states preclude this remedy altogether or set out specific (and often onerous) criteria that must be met in order to obtain such a judgment.\textsuperscript{37} Certain states further limit the amount of deficiency judgments according to the fair market value of the property.\textsuperscript{38} Moreover, in some cases, debtors may be able to shield their other assets from the mortgage lender, or state law may protect the debtors' wages from garnishment.\textsuperscript{39}

In contrast to the United States, the legal recourse available to lenders in Canada is generally uniform and more easily enforced, which in turn affects the financial ramifications for the lender in the case of a delinquency. As a general rule, Canadian law provides that the borrower is legally obligated to pay the outstanding amount of the existing mortgage, regardless of the value of the mortgage collateral, and lender remedies extend to a debtor's other assets and income.\textsuperscript{40} As a result, even in the midst of the present financial crisis, not only is delinquency a rarity in the Canadian context, it is even more uncommon for borrowers to walk away from their home.\textsuperscript{41}

\textit{Community Reinvestment Act (CRA).}\textsuperscript{42} There has been no definitive empirical evidence that the CRA contributed to the recent proliferation of high risk lending in the United States, though this question has been a point of controversy in recent years as a result of an environment of financial inquiry and reform efforts.\textsuperscript{43} In outlining the impacts of the fi-

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\item \textsuperscript{37} See, e.g., \textsc{Alaska Stat.} § 34.20.100 (West 2008); \textsc{Ariz. Rev. Stat.} § 33.62 (West 2007); \textsc{Cal. Civ. Code} §§ 2920-44 (West 1993); \textsc{Iowa Code} § 654.6 (West 1995); \textsc{Minn. Stat.} §§ 580-582 (West 2000); \textsc{Mont. Code Ann.} § 71.1.232 (2009).
\item \textsuperscript{38} See, e.g., Ghent & Kudlyak, \textit{supra} note 36, at 4, 41; \textsc{Ark. Code Ann.} § 18.50.112 (2009).
\item \textsuperscript{39} Ghent & Kudlyak, \textit{supra} note 36, at 5, 43, 49, (citing \textsc{Fla. Stat.} § 40.702; \textsc{N.C. Gen. Stat.} §§ 45-21.36, 38).
\item \textsuperscript{41} \textsc{Dept. of Fin. Can.}, \textit{supra} note 32, at 5 (As of Q1 2008 only 0.3% of Canadian mortgages were ninety days in arrears, compared to 4.5% of American mortgages in the same period).
\item \textsuperscript{42} 12 U.S.C. § 2901 (2009). The CRA is an American federal law that is aimed at encouraging commercial banks as well as savings and loan associations to help meet the credit needs of the communities in which they operate. This law is particularly concerned with low-and moderate-income neighborhoods. See \textsc{Fed. Reserve Board, Comty. Reinvestment Act}, (2009), http://www.federalreserve.gov/decalera.
\item \textsuperscript{43} See, e.g., \textsc{R. Christopher Whalen, The Subprime Crisis—Cause, Effect and Consequences}, 17-SPG J. Affordable Hous. & Comty. Dev. L. 219 (2008), 219-234 at 221-222; \textsc{Fed. Reserve Bank of Dallas, The CRA and Subprime Lending: Discerning the Difference} (2009), http://www.dallasfed.org/ca/bcp/2009/bcp0901.cfm; \textsc{Neil Bhutta and Glenn B. Canner, Did the CRA cause the mortgage market meltdown?}, \textsc{Community Dividend} (2009), www.minneapolisfed.org/research/pub_display.cfm?id=4136.
\end{itemize}
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financial crisis on Canada, it is merely worth noting that there is no comparable Canadian law to the American CRA.

*Bank Assets and Balance Sheets.* Prior to the outbreak of the subprime mortgage crisis, American banks routinely moved riskier assets (and liabilities) off the balance sheet, a practice that had the effect of reducing the level of risk apparent to regulators and the public, (though, as the economic crisis has shown, banks were not totally insulated from risks associated with these off balance sheet assets). By contrast, Canadian banks were neither as active in the subprime mortgage market, nor in securitization programs that moved such assets and liabilities off the balance sheet. (In this regard, Canadian bank practices can be largely attributed to differing regulatory capitalization requirements as discussed below.) The movement of banks' assets into off-balance sheet formats was fostered in part due to the use of mortgage securitization and the "originate to distribute" model employed by many American mortgage originators, factors which were not so prevalent in the Canadian mortgage market where lenders have a much greater tendency to hold onto the mortgages they originate. As a result, only approximately twenty-nine percent of Canadian subprime mortgages have been securitized, contrasted with the roughly sixty percent of American residential mortgages. Moreover, the Government of Canada, through CMHC, essentially guarantees approximately ninety-two percent of Canadian MBS. Accordingly, neither Canadian banks, nor investors in Canadian MBS were faced with as heavily leveraged risks as American banks and American MBS investors.

*Bank Regulation.* Bank regulation in Canada differs in a number of significant respects from bank regulation in the United States. Though the summary that follows only scratches the surface, it highlights a number of key differences in American and Canadian bank regulation.

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46. *Kiff,* supra note 40, at 5. These figures are current to June 2009.

47. *Id.*


50. The term "bank" in the Canadian context is used to refer to federally chartered and regulated commercial banks. Note, however, that a smaller, though nevertheless important, cohort of financial institutions in Canada are comprised of trust companies and cooperative institutions (credit unions and caisses populaires). The regulation of these financial institutions is not discussed here, but see, Nicholls, supra note 2, at 21, 135-43.
At the outset, it is worth noting that Canadian banks, though not nearly as large as the most prominent American banks, are not so much smaller as to entirely preclude a careful comparison. Illustrative is the case of Royal Bank of Canada (RBC), recently ranked the twelfth largest bank by market capitalization in the world (C$80 billion/US$73 billion). To situate this in the context of the American banking landscape, this puts RBC behind American banks JP Morgan, Bank of America, Wells Fargo, and Goldman Sachs in terms of market capitalization.

In Canada, regulatory oversight of banks is achieved by a single federal regulator, the Superintendent of Financial Institutions, through the Office of the Superintendent of Financial Institutions (OFSI). Prudential regulation of Canadian banks is achieved through several channels, including: the federal Bank Act, the associated regulations to the Bank Act, guidelines issued by OFSI, as well as through less formal OFSI communications, such as letters to Canadian banks on behalf of the Superintendent of Financial Institutions.

Recently, the Canadian approach to bank regulation, once criticized for being too conservative, has proven to be quite sensible with its fairly robust system of regulation, a fact that suddenly received international recognition when the World Economic Forum ranked Canadian banks the soundest in the world for two consecutive years during the economic crisis.

Capitalization requirements are one of the most significant measures by which regulators help mitigate bank risk and foster prudential banking practices. According to regulatory requirements, American banks must maintain Tier one capital ratios of at least six percent, though in practice many banks maintain Tier one capital ratios of at least seven percent. Canadian banks by contrast are required to have minimum Tier one capital ratios of seven percent. In practice, however, the five largest Cana-

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52. Id.
54. Id.; Nicholls, supra note 2, at 25-28, 102-03.
Canadian banks maintained Tier one ratios of nine percent and above, and
total capital ratios of over eleven percent for fiscal year 2008, easily ex-
ceeding the required minimums by several percentage points.58 By the
end of the third quarter 2009, these figures rose to 10.4% and above and
over 12.6% respectively.59

Additionally, Canadian banks must generally maintain a maximum “as-
sets to capital multiple” (ACM) of twenty to one.50 This ratio cap means
that the assets of the bank must not be greater than twenty times the
bank’s capital.61 Unlike capital ratios, which measure regulatory capital
by risk-weighted assets, the ACM takes into account the total assets of
the bank, including some pertinent off-balance sheet items, and thus gives
a broader picture of bank risk than Tier One and total capitalization ra-

58. The five largest Canadian banks, known as the “Big Five,” are the Royal Bank of
Canada (RBC), Toronto-Dominion Bank (TD Bank), Bank of Nova Scotia (BNS),
Bank of Montreal (BMO), and Canadian Imperial Bank of Commerce (CIBC).
ROYAL BANK OF CAN., 2008 TIER 1 AND TOTAL CAPITAL RATIOS FOR BIG FIVE
ir_quarterly.html (In 2008, RBC’s Tier 1 capital ratio was 9.0%; total capital ratio
was 11.1%); TORONTO-DOMINION BANK, 2008 ANNUAL REPORT 57 2009, http://
www.id.com/ar2008/index.jsp (in 2008, TD Bank’s Tier 1 capital ratio was 9.8%;
total capital ratio was 12%); BANK OF NOVA SCOTIA, 2008 ANNUAL REPORT 23
2009, http://scotiabank.com/cda/content/0,1608,CID7148_L1D6n00.html (in 2008,
BNS’ Tier 1 capital ratio was 9.3%; total capital ratio was 11.1%); BANK OF MON-
TREAL, 191ST ANNUAL REPORT 2008 27 (2009), http://www2.bmo.com/content/
0,1263,divId-3langId-1navCode-3198,00.html#ArchivedAR (in 2008, BMO’s
Tier 1 capital ratio was 9.77%; total capital ratio was 12.17%); CANADIAN IMPE-
RIAL BANK OF COMMERCE, CIBC ANNUAL ACCOUNTABILITY REPORT 2008 2
(2009), http://www.cibc.com/ca/investor-relations/annual-reports.htm (In 2008,
CIBC’s Tier 1 capital ratio was 10.5%; total capital ratio was 15.4 %).

rbc.com/investorrelations/ir_quarterly.html (At the end of Q3 2009, RBC’s Tier 1
capital ratio was 12.9%; total capital ratio was 14.4 %); TORONTO-DOMINION
BANK, 3RD QUARTER 2009 QUICK FACTS 1 (2009), http://www.id.com/investor/
qr_2009.jsp (At the end of Q3 2009, TD Bank’s Tier 1 capital ratio was 11.2%;
total capital ratio was 14.7%); BANK OF NOVA SCOTIA, SUPPLEMENTARY FIN.
end of Q3 2009, BNS’ Tier 1 capital ratio was 10.4%; total capital ratio was 12.7%);
BANK OF MONTREAL, 2009 SUPPLEMENTARY FIN. INFO Q3 2 (2009), http://
www2.bmo.com/financialresults/0,divId-3langId-1navCode-228,00.html (At the
end of Q3 2009, BMO’s Tier 1 capital ratio was 11.71%; total capital ratio was
14.32%); CANADIAN IMPERIAL BANK OF COMMERCE, SUPPLEMENTARY FIN. INFO
Q3 1 (2009), http://www.cibc.com/ca/investor-relations/quarterly-results/quarterly-
financial.html (At the end of the Q3 2009, CIBC’s Tier 1 capital ratio was 12 %;
total capital ratio was 16.5 %).

60. Nicholls, supra note 2, at 103 n.39 (citing CAR GUIDELINE, supra note 57, at 1.2,
which states that ‘‘Capital’’ for this purpose, refers to the sum of the bank’s ad-
justed net Tier 1 capital and adjusted net Tier 2 capital, as defined in section 2.5 of
the CAR guideline响)

61. Id.
tios alone. (In the United States, movement of assets and liabilities off balance sheet may also remove them from the calculation of the bank’s tier 1 capital ratio. The effect of this was to create a particular incentive for American banks to move liabilities off balance sheet. In Canada there is not the same incentive to do so because use of the ACM as a regulatory capitalization measurement tool prevents banks from hiding certain of their assets and liabilities in this manner. ) Canadian banks are known to stay well below the maximum ACM. For instance, in the third quarter of 2009, the ACMs for the Big Five banks ranged between 14.9 to 1 and 16.6 to 1. Thus, both capital adequacy requirements and strong bank compliance have the effect of keeping bank risk taking in Canada within regulatory acceptable levels.

A rough and ready way to illustrate how different bank regulation impacted bank risk taking is through a comparison of leverage ratios. A leverage (gearing) ratio is a figure that expresses a company’s capital leverage. The higher the figure, the more highly leveraged are the company’s financial affairs, and thus the greater risk of financial loss. At the outset of the financial crisis, the collective leveraged ratio for American investment banks was 26.5, compared with 19.8 for Canada’s largest banks, which encompass both commercial and investment banking operations.

A further difference to note between American and Canadian bank practices is the degree of bank reliance on short-term liquidity lines extended by other financial institutions. In the United States, banks depend more on these types of liquidity support than do banks in Canada. Therefore, American banks suffered from greater exposure to short-term market swings during the economic crisis due to their greater interconnectivity with one another.

62. Id.
63. ROYAL BANK OF CAN., supra note 51, at 1 (At the end of Q3 2009, RBC’s assets to capital multiple was 16.3 to 1); Press Release, CNW Group, TD Bank Financial Group Reports Third Quarter 2009 Results (Aug. 27, 2009), http://www.newswire.ca/en/releases/archive/August2009/27/c7986.html (At the end of Q3 2009, TD Bank’s assets to capital multiple was 16.6 to 1); BANK OF NOVA SCOTIA, 2009 Third-Quarter Report to Shareholders 29 (2009), http://scotiabank.com/images/en/files/aboutscotia/21512.pdf (At the end of Q3 2009, BNS’ assets to capital multiple was 16.6 to 1); BANK OF MONTREAL, Q3 2009 Financial Results 9 2009, http://www2.bmo.com/bmo/files/financial%20information%20slides/3/1/Q3%202009%20Financial%20Highlights.pdf (At the end of Q3 2009, BMO’s assets to capital multiple was 14.9 to 1); Press Release, CNW Group, CIBC Announces Third Quarter 2009 Results (Aug. 26, 2009), http://www.newswire.ca/en/releases/archive/August2009/26/c6651.html (At the end of Q3 2009, CIBC’s assets to capital multiple was 16.2 to 1).
64. For more on “Gearing ratios” see A DICTIONARY OF ACCOUNTING (Jonathan Law & Gary Owe eds. 1999), http://www.oxfordreference.com.ezproxy.library.yorku.ca/views/ENTRY.html?subview=Main&entry=t17.e1669 (last visited Aug. 25, 2009).
66. Canadian Mortgages, supra note 24, at 3.
67. Id.
Another critical difference between the two banking systems is the absence from the Canadian landscape of large investment banks that have characterized the recent financial services landscape in the United States. An investment bank is a financial institution that advises companies on mergers and acquisitions and provides finance for industrial corporations through its underwriting services. Investment banks thus differ from commercial banks that provide a broad range of banking services, both to individuals and businesses, including: operation of bank accounts, receipt of deposits, personal and business lending activities, and the taking in and paying out of currency.

Regulations in the United States impose significantly lower capitalization requirements on investment banking institutions than commercial banks, a fact which is expected to change through regulatory amendments stemming from the financial crisis. The flexibility was is due in large part to the historical development of banking regulations and investment banking in the United States, with the effect that American investment banks are not subject to the more comprehensive regulatory regime applicable to commercial banks. Scant regulatory oversight coupled with risky business activity thus contributed to the recent financial difficulties faced by the American financial sector, especially large investment banks.

The environment for investment banking in Canada is considerably different—a contributing factor to the resilience of Canada’s financial institutions in the economic crisis. Once again, Canadian conservatism in the realm of banking stands as a major reason for the different approach to investment banking. In Canada, the largest investment banking operations fall under the auspices of the Big Five banks. The result is that investment banking comes under the close supervision of OFSI—the same regulator responsible for commercial bank oversight. Therefore, banking regulations, such as those pertaining to capitalization requirements, apply to investment banking branches through their application to the bank as a whole. The absence of standalone investment banks—with the regulatory challenges those entities posed in the United States—eliminated a number of high-risk financial institutions from the Canadian banking sector. Indeed, prior to the beginning of the subprime crisis there were five large, stand-alone investment banks in the United States. Less than two years later there are none, all five having been devastated.

69. For more on "commercial bank" see id.
by the financial crisis. The recent financial failure of American investment banks is striking from a regulatory standpoint, highlighting the need for effective and prudential regulation of investment banking to preserve the safety and soundness of the financial services industry (and indeed the economy) in both the United States and Canada.

As a final point, Canadian law imposes very strict requirements regarding bank control, largely due to the fact that the Big Five banks account for nearly ninety-two percent of domestic bank assets, making these banks a subject of particular concern for regulators in matters relating to the safety and soundness of banking practices and foreign control. Historically, the Canadian government has refused to grant the necessary approval for significant changes in bank control, and in particular refused to consent to mergers involving Canadian banks during the 1990s—when many financial institutions around the world were conglomerating into “megabanks.” During this period, American banks were involved in mergers and formed some of the world’s largest financial institutions. For example, the 1998 Travelers and Citibank merger that created Citigroup became the first company to operate globally in all areas of finance. In Canada, governmental control kept banks and banking practices along the same fairly conservative trajectory they have followed for many years—a fact that easily may not have been the case had banking regulation permitted the creation of larger, more aggressive Canadian banks through bank mergers or allowed for greater foreign influence in banking operations through non-Canadian ownership.

This section has provided a basic overview of a number of key regulatory differences between the American and Canadian legislative frameworks, particularly with respect to mortgage and financial systems regulation. Though far from comprehensive, the comparison is telling, and underlines the fact that, while the United States and Canada have much in common, their legal frameworks governing various aspects of financial regulation differ in some significant respects.

III. THE GLOBAL FINANCIAL CRISIS IN CANADA

The global economic crisis has impacted economies around the world in two primary ways, which are delineated in this paper as direct and indirect effects. Direct effects refer to the immediate and localized impact resulting from exposure to the true risk associated with highly leveraged financial products that has formed the root of the financial crisis. One example of this is where a bank suffers a financial loss from holding subprime mortgages that have become doubtful or bad debts. Indirect effects describe all impacts of the financial crisis which are not direct ef-

72. Id. at 735.
73. Nicholls, supra note 2, at 19, 69–77.
75. Id. at 329-37.
effects, including, for example, the impact on Canadian lumber exports to the United States due to a drop in American new home construction. As will be discussed in more detail below, this differentiation will serve to help compare the impact of the financial crisis on Canada, which has experienced indirect effects of the financial crisis, with the United States, which has suffered both direct and indirect effects.

This section details the major impact on Canada resulting from the global economic crisis. Canada has suffered the indirect effects of the global economic crisis—meaning that the underlying problems leading to the crisis were not present. Nevertheless, specific sectors, and the Canadian economy at large, have been negatively impacted. Of these indirect effects, some have been highly visible, while others are more difficult to ascertain. The first of the following subsections traces the effects of the American subprime crisis to the Canadian third-party asset-backed commercial paper (“ABCP”) liquidity crisis, an event that was the most immediate secondary impact of the economic crisis in Canada and was significant from both securities and insolvency law perspectives. The second subsection highlights several of the less quantifiable impacts of the financial crisis that have weighted down the Canadian economy since the start of the economic crisis.

A. A Reaction to the Subprime Crisis: The Financial Collapse of Third-Party ABCP

The most immediate, and perhaps most concrete, impact of the global financial crisis on Canada was the August 2007 liquidity crisis and ensuing insolvency of third-party ABCP conduits (trusts). Canadian third-party ABCP is a highly liquid money market security, usually maturing in thirty to ninety days, backed by an investment portfolio of securitized receivables, which is usually linked to issuing trusts by a credit default swap agreement. The C$32 billion (approximately US$29.76 billion) insolvency marks the largest dollar value insolvency in Canadian history and was a groundbreaking case for Canadian insolvency law because of the

76. Canadian legal terminology distinguishes between the terms “bankruptcy” and “insolvency”. Compare Bankruptcy and Insolvency Act, R.S.C., ch. B 3 (1985) (illustrating a legal process conducted under statute) with Companies Creditors Arrangement Act, R.S.C., ch. C 36 (1985) (referring generally to the inability to pay one’s debts at they become due and to reorganization proceedings, which is the closest Canadian equivalent to American Chapter 11 proceedings.).

77. In the time leading up to the third-party ABCP liquidity crisis there were two primary types of ABCP in Canada, bank-backed ABCP and third-party (non-bank) ABCP. Only third-party ABCP experienced a liquidity crisis in August 2007, resulting in insolvency proceedings. Bank-backed ABCP programs, while faced with similar liquidity issues, received emergency funds from their sponsoring institutions, thereby averting the prospect of insolvency. ABCP Restructuring Plan Gets Court Approval, CBC News. Mar. 17, 2008, available at http://www.cbc.ca/money/story/2008/03/17/abcpcourt.html.

78. American dollar value approximation based on mid-day exchange rate of C$1.00=US$0.93 for August 15, 2007.
The third-party ABCP liquidity crisis resulted from a series of events triggered by a loss of investor confidence in the underlying assets of ABCP trusts (which consisted primarily of American consumer receivables) due to the outbreak of the sub-prime mortgage crisis in the United States. In Canada, several regulatory and advisory bodies have inquired into the third-party ABCP liquidity crisis with a view to the possible reform of existing regulatory frameworks. These investigations have revealed that third-party ABCP was insufficiently regulated, leaving open the possibility of a liquidity crisis such as the one experienced in August 2007.

While the Canadian third-party ABCP liquidity crisis was triggered by the loss of investor confidence, the lack of a sound regulatory framework for ABCP programs is arguably to blame for allowing the development of the very risky business practices with few checks and balances that left ABCP programs needlessly financially vulnerable.

A detailed description of the structure of third-party ABCP programs is beyond the scope of this article, and thus is not discussed at any length here. Rather, the following gives a brief account of the regulatory and business model shortcomings of ABCP. In very basic terms, ABCP was a short term, highly liquid security for which issuing trusts were not required to file a prospectus or comply with the ordinary securities registration requirements. This was possible due to a legal exemption that applied when one of a list of approved debt rating agencies gave ABCP notes a rating that met the minimum rating requirement according to securities law. Due to the lack of disclosure requirements, very little information about specific ABCP programs made its way into the

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81. Chant, supra note 80, at 12.

marketplace, giving rise to an increased risk that misinformation could circulate among investors.

The main business structure issue apparent with third-party ABCP programs was that they were only financially tenable so long as the governing trust could continue to “roll paper” (issue new ABCP notes). To backstop the possible negative consequences of the arrangement, third-party ABCP conduits entered into credit line agreements with major banks that allowed them to draw down funds in times of “general market disruption.” Unlike credit line agreements used by many American ABCP programs, this Canadian style of liquidity support would not foreseeably cover every instance where an ABCP trusts would require emergency funds.

The year 2007, superimposed on the regulatory and business model eccentricities of Canadian third-party ABCP, was the beginning of the American subprime mortgage crisis. Investors in Canadian third-party ABCP vaguely knew that their investment was backed by the American consumer receivables that were now proclaimed by news media to be of dubious value. (Later it was discovered that less than ten percent of the assets backing third-party ABCP were subprime assets.) Without being able to turn to full disclosure documents, ABCP noteholders did not know the quantity or quality of the American consumer receivables to which their investment was tied. Fearing the worst, nearly all large investors in Canadian third-party ABCP declined to purchase more notes, opting instead to redeem their outstanding ABCP.

Unable to roll more paper, third-party ABCP trusts attempted to draw down funds from their credit line agreements to pay out maturing notes. Due to the more restrictive nature of Canadian style liquidity support arrangements, however, most lending institutions found that they were not obligated to provide funds and accordingly denied the requests of ABCP trusts. Canadian ABCP programs—now in a situation of technical insolvency because of their inability to pay out maturing ABCP, hurriedly met with

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83. See IIROC Report, supra note 79 at 5.
84. Id. at 19.
85. Financial System Review (Bank of Can., Ottawa, Ont., Can.) June 2003, at 46. (American debt rating agencies Standard & Poor and Moody’s were among those to have pointed out the shortcomings of Canadian-style liquidity agreements prior to the 2007 liquidity crisis).
89. Id. at 5–6, 15.
their largest investors and reached a standstill agreement (essentially freezing the entire third-party ABCP market in Canada) to facilitate further negotiations. Months of intense negotiations produced a draft restructuring plan for the twenty-two affected third-party ABCP trusts and the negotiations committee proceeded with formal court supervised insolvency proceedings.

The restructuring process tied up C$32 billion of investors' money for approximately eighteen months. Upon completion of insolvency proceedings, investors were left with new, restructured notes worth only a fraction of their pre-liquidity crisis value. It is expected that over time the value of the notes will increase—an outcome facilitated by the fact that the notes are free trading.

The impact of this freeze on investors is not to be underestimated. Most investors in third-party ABCP were large institutions that used the highly liquid notes as a place to park working capital for short periods of time. Commercial paper was an attractive place to store funds because it offered a slightly higher rate of return than most similar investment vehicles and (supposedly) could be sold at any time. Thus, the financial strain placed on institutional investors by the market freeze, followed by the loss suffered by taking the restructured and discounted notes, all at a time of great market uncertainty, was considerable.

During the course of insolvency proceedings, it was discovered that there were some 2,000 retail investors who held third-party ABCP (yet another disconcerting revelation stemming from the ABCP debacle). Retail investors had been sold third-party ABCP under somewhat dubious circumstances, due in large part to a lack of dealer comprehension of the appropriateness of these securities for individual portfolios. Needless to say, these investors, most of whom had placed their life or retirement savings in ABCP notes, were in a financially perilous position vis-à-vis the restructuring plan. Fortunately for these investors, due to the convergence of several factors, a special deal was struck with respect to retail investor holdings. Upon the successful completion of the restructuring
plan, retail investors received the full dollar value of their investment (as calculated just before the time of the market freeze). In essence, these investors were made whole. By many accounts, this was the right result, though the way that it came about was somewhat surprising from a Canadian insolvency law perspective.

Due to the parties involved and the private nature of the negotiations, the ABCP liquidity crisis and insolvency proceedings have been largely overshadowed by the progressively worsening financial situation around the globe. Hence, the third-party ABCP liquidity crisis is hardly a topic known to most Canadians other than those actively connected to the securities and financial sectors. Nevertheless, the financial failure of third-party ABCP trusts serves as a striking example of regulatory failure in the Canadian securities law context. In particular, if Canadian ABCP trusts had in place global style liquidity support agreements (as was common practice for American ABCP programs) or had securities regulation required appropriate disclosure, there likely would not have been a liquidity crisis to discuss. In other words, Canadian third-party ABCP would have been better placed to weather this financial storm.

The Ontario Securities Commission has been investigating the third-party ABCP debacle since it began and has recently issued enforcement notices with hefty settlements to one of the largest ABCP trusts and four of its former executives. Regulator concern stems from conduct in July 2007 that suggests that these parties improperly used information regarding third-party ABCP at a time when it had not yet been disclosed to the public as required by securities law. Enforcement action in this case, while it cannot directly deal with inadequacies in the governing regulation of ABCP, arguably demonstrates the close attention paid by regulators to ABCP programs following the liquidity crisis and the seriousness of the situation from a regulatory perspective.

Governmental response to the third-party ABCP liquidity crisis has largely come by way of studied proposals for reform stemming from substantial research reports prepared by regulatory and advisory bodies. Three major reports on point have been prepared and released: a Consultation Paper of the Canadian Securities Administrators (“CSA”), a report by the Investment Industry Regulatory Organization of Canada (“IIROC”), and a research study prepared for the Expert Panel on Secur-

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100. Id.
ities Regulation ("Expert Panel"). The CSA consultation paper examined the use of third-party ABCP conduits of currently available prospectus exemption for commercial paper and the role played by debt rating agencies. Included in its suggestions were that commercial paper issuers no longer be permitted to use this exemption, and that consideration be given to regulating debt-rating agencies and reducing regulator reliance on such agencies in the future. IIROC is the Canadian investment dealers’ self-regulatory body; accordingly, its report was the result of a substantial research project addressing problematic practices employed by its members that resulted in the sale of ABCP to retail investors. IIROC proposed a number of reforms to address the issues identified with dealer practices in this regard. It is noteworthy that all IIROC-regulated entities involved with retail client holdings in third-party ABCP instituted client relief plans upon news of the market freeze of August 2007. The Expert Panel report provided a detailed account of the factors leading up to the liquidity crisis as well as an examination of the current regulatory framework and policy issues stemming from the crisis. The study concludes that the liquidity crisis was predictable and preventable, and outlines the implications of this finding for securities regulation. These three reports have outlined a number of suitable suggestions regarding legal reform in this area; however, as of this writing, securities law reforms to address the problems in the current regulatory framework have yet to be designed and implemented.

B. Fallout from the Global Financial Crisis

Beyond the third-party ABCP debacle, the Canadian economy at large has suffered the indirect effects of the global financial crisis. Highlighted here are three broad interconnected areas that have been significantly impacted: availability of credit, trade with the United States, and unemployment.

Financial turmoil around the world, and particularly in the United States, contributed to a tightening of credit in Canada—the so-called “credit crunch.” Following the failure of several banks in the United States, Canadian banks, in typical conservative fashion, were hesitant to extend funds. The trickle down effects of this reluctance resulted in a general tightening in the availability of business and consumer credit. For businesses, obtaining financing at all was at least challenging and at most impossible, as the cost of capital also increased during the same period. Notably, the third quarter of 2008 saw no initial public offerings on the

101. See CAN. SEC. ADM’RS, supra note 80; IIROC Report, supra note 80; Chant, supra note 80.
102. See CAN. SEC. ADM’RS, supra note 80, at 4.
103. IIROC Report, supra note 80, at xii.
104. Id. at 74.
105. Id. at 66.
106. See Chant, supra note 80.
107. Id. at 42.
Toronto Stock Exchange, an unprecedented first for Canada's senior equities market. Further, the credit crunch, though only one of several contributing factors, has ushered in the insolvencies of several blue-chip companies with large operations or headquarters in Canada, including Chrysler LLC, General Motors Canada, and AbitibiBowater Inc. (the third largest pulp and paper manufacturer in North America). The Government of Canada responded fairly swiftly to deteriorating national credit conditions in order to inject liquidity and spur bank lending. Governmental action will be discussed below. (It should be noted that while aimed at combating the credit crunch, many initiatives were implemented with the intention of maintaining the international competitiveness of Canadian banks at a time when other banks, particularly in the United States, were receiving government backing.)

Following the events of October 2008, the Bank of Canada instituted term loan auctions where non-mortgage loans and other securitized financial products were temporarily accepted as collateral at a forty percent discount. Further efforts aimed at expanding the amount of money available in the banking system included directly increasing liquidity available at the central bank's auctions, guaranteeing interbank lending, and loaning money directly to banks. Additionally, the Department of Finance Canada expanded its purchases of MBS from banks, purchasing C$25 billion in insured mortgages through CMHC under provisions of the National Housing Act. All the while, the Bank of Canada has continued to reduce its key interest rate, which is sitting at 0.25% as of this writing, slashed from a rate of three percent one year ago.

The recently passed federal budget will also specifically target economic issues pertaining to the financial crisis through a series of measures dubbed "Canada’s Economic Action Plan." This plan aims to do the following:

- Help Canadians and stimulate spending by providing $8.3 billion for the Canada Skills and Transition Strategy to help Canadians weather today's economic storm and to provide them with the necessary training to prosper in tomorrow's economy. In addition, $20 billion will be provided in personal income tax reductions over 2008–09 and the next five fiscal years.
- Improve access to financing and strengthen Canada’s financial system by providing up to $200 billion through the Extraordinary Financing Framework to improve access to financing for Canadian consumers, households and businesses.

Nearly a year after the financial chaos of October 2008, credit conditions are more or less stable in Canada, though they have arguably not returned to their pre-crisis strength. Canadian banks, having weathered the brunt of the financial storm thus far, have maintained a solid financial position, remained competitive in the marketplace, and preserved the trust and confidence of Canadians—as exemplified through their successful access to capital market financing as early as December of 2008 and into 2009. Though consumer credit has been affected, low interest rates, a fairly stable Canadian economy, and targeted government funding initiatives seem to have contributed to a flurry of home buying activity in major Canadian cities. By many accounts, these events appear to be indicators of economic stability and perhaps even recovery. While Canada may be faring better than most nations, it is essential to remember that Canadian recovery will doubtlessly be linked to that of other countries, particularly the United States.

As alluded to above, trade with the United States is an integral component of the Canadian economy. Hence, factors affecting trade between the Canada and the United States, especially Canadian exports, may have

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118. Id., See Budget Implementation Act, 2009 S.C., ch. 2 (Can.).
huge financial implications for Canada. Accordingly, the global financial crisis, with the United States at the epicenter, has taken its toll on Canadian-American trading activity. In particular, a number of events have served to curtail American demand for Canadian exports. The comparative strength of the Canadian dollar to the American dollar has negatively impacted Canadian exports by making Canadian products more costly for American purchasers. Further, the slowdown in American new housing construction and automobile manufacturing have lessened demand for Canadian softwood lumber as well as new cars and automotive components, traditionally two of the major Canadian exports to the United States.

The Government of Canada is obviously not in a position to single-handedly solve problems afflicting trading activity between the United States and Canada. Nevertheless, the federal government has responded to challenges posed by declining American demand in several ways. One example is its economic stimulus package for the Canadian construction sector. Included in the aims of government action plan are the following:

Stimulate housing construction by providing C$7.8 billion to build quality housing, stimulate construction, encourage home ownership and enhance energy efficiency.

Accelerate and expand the recent historic federal investment in infrastructure with almost C$12 billion in new infrastructure stimulus funding over two years, creating new construction jobs, so that Canada emerges from this economic crisis with more modern and greener infrastructure.

Support businesses and communities to protect jobs and support sectoral adjustment during this extraordinary crisis with C$7.5 billion in extra support for sectors in need—automotive, forestry and manufacturing—along with regions and communities.

The expected benefits of these initiatives are manifold. A bustling construction sector will maintain and create job opportunities for Canadians, maintain or increase demand for Canadian exports such as softwood lumber, and have trickle down effects, which will be positively felt by the many businesses and industries that support or rely on the construction industry.


123. See *Government Economic Stimulus*, supra note 117; *Budget Implementation Act, 2009 S.C., ch. 2* (Can.).

The apparent resilience of the Canadian financial system and timely government intervention notwithstanding, the financial crisis has unfortunately resulted in numerous job losses across Canada. Canadian unemployment rates have risen in the past year, from 6.1% in July 2008, to 8.6% in July 2009.\textsuperscript{125} Comparing national unemployment rates for July 2009, unemployment in Canada was slightly lower than in the United States, which posted a national unemployment rate of 9.4%.\textsuperscript{126} Hopefully for Canadians, Canada’s Economic Action Plan, with its focus on creating jobs in the most affected sectors, will not only stem the tide of unemployment, but also help reverse the recent upward trend.

As highlighted above, the impacts of the economic crisis on Canada have generally been less severe than those suffered by the United States to date, largely due to a more conservative regulatory regime that backstopped the direct effects, as well as many indirect effects, of the financial crisis. The indirect effects of the financial crisis on Canada, as exemplified though the credit crunch, declining cross-border trade, and job losses, serve to illustrate once again the interconnectedness of the Canadian economy with the United States, as well as other countries around the world. It may be that a better regulatory framework could have mitigated the negative consequences of the financial crisis in these areas; however, the author contends it is more likely that no amount of regulation could have completely insulated all aspects of the Canadian economy from a financial crisis of this magnitude. Thus, those areas in need of obvious regulatory reform should arguably take precedence. For instance, the failure of third-party ABCP trusts demonstrates a hole in the securities regulatory framework governing commercial paper—one, which it appears, will be patched over by regulators in the near future.

\section*{IV. CONCLUSION}

This article has attempted to situate Canada and the Canadian economy in the context of the global economic crisis. While not an exhaustive account of the Canadian experience, it serves to underline how fairly conservative Canadian financial regulation has shielded Canada from much of the fallout of the global financial crisis. The Canadian position has been explained in part by briefly describing a number of significant legislative differences between the United States and Canada. Moreover, the case of third-party ABCP illustrates the failure of the Canadian regulatory bulwark arguably caused economic repercussions that quite possibly could have been avoided.


Prudent regulation is by no means the remedy for every situation; however, this account illustrates some ways in which Canada has benefited tremendously from its rather conservative regulatory regime. Insofar as the financial crisis has increased awareness and sparked interest in regulatory reform around the globe, it is suggested that a close study of Canadian financial regulation, as well as its recent successes and failures, could prove informative to the efforts of reformers. At a minimum, an examination of the Canadian approach offers an interesting look at a more conservative regulatory culture with which to contrast the more risk inclined frameworks of other leading countries around the world.