Falconbridge on Banking and Bills of Exchange is known to every solicitor in Canada who deals with commercial law and, while containing much scholarly discussion and argument, is basically a practitioner’s book. This review is based on galley proofs that I received in May and June, publication of the book not being scheduled until later this year. The first edition of Falconbridge was published in 1907,¹ and subsequent editions followed decennial revisions of the Bank Act. While the Bills of Exchange Act² has changed little since the 1969³ edition of the book, the massive revision of the Bank Act in 1980⁴ makes the present revision of the book welcome if overdue.

The detailed and technical nature of the statutes involved and the subjects that they deal with preclude a book review in the ordinary sense. In this short review I cannot—and do not think that it is my position to—discuss my views on, and sometimes my disagreements with, some of the conclusions reached by or argued for by the authors.

As the present edition follows more or less the format of earlier editions of reproducing the provisions of the statute and commenting on them, a significantly larger proportion of the book than in earlier editions deals with the provisions of the Bank Act with respect to incorporation, organization, directors, shareholders, securities issued by a bank and other aspects of the corporate side of a bank. The authors have refrained from writing a complete book of corporate law for Canadian banks and to a large extent have confined themselves to pointing out the differences between the provisions of the Bank Act and of the Canada Business Corporations Act⁵ (upon which the former provisions are based) and the

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¹ J.D. Falconbridge, Banks and Banking, Bills, Notes and Cheques (1907).
⁵ S.C. 1974-75-76, c. 33.
reasons for these differences. These chapters are of greater interest to corporate counsel for banks than to those involved with banking business, but provide a useful guide to counsel who are familiar with the Canada Business Corporations Act and who then have to deal with corporate matters for a bank. The book contains a table of concordance of the sections of the two statutes.

While the book is exhaustive on the Bank Act and the Bills of Exchange Act and deals comprehensively with the relationship of banker and customer, there are some matters involved in the business of banking or the business of a bank where the book does not—and does not purport to—provide a complete text. The sections dealing with letters of credit are an example; although the text has been substantially expanded from that in the seventh edition of the book, principally because of the increased use that has been made of letters of credit in recent years, it does not pretend to be a complete presentation of the law on this subject. There is also a detailed comment on the current clearing system and on credit cards, and brief comments on labour legislation affecting banks. On these and similar matters reference should be had to books published on the subjects; the authors have provided useful bibliographies in their footnotes. There is also a chapter on deposit insurance in Canada with respect to banks.

Many of the changes in the business and powers of banks introduced in 1980 are those that would be considered normal on a decennial revision. However, two new Divisions have been added: Dealing in Securities, and Investments. In addition, under Part XII of the Bank Act are provisions with respect to activities of foreign banks and corporations associated with them (other than Schedule B banks) in Canada. I think that it is charitable to say that the draughtsmanship of some of the sections of the Act involved is unsatisfactory. While the authors have commented on these provisions (on which, of course, there are as yet no authorities other than the occasional pronouncements from the Inspector General’s office), they have not dealt with or pointed out some of the ambiguities or contradictions that are involved in them. With respect to Dealing in Securities there is a useful, but not exhaustive, discussion of the impact of provincial legislation on this field. Since the Bank Act now restricts the activities of banks with respect to data processing—the former restriction being only that it had to appertain to the business of banking—the authors spend considerable time and space examining the various services given by banks in which automated teller machines, electronic transfer of funds and computers are involved, and provide their analysis of the legal relations created by them; there is, of course, little jurisprudence directly on point.

Since there has been little change in the Bills of Exchange Act the sections of the book that deal with this Act include, but are not confined
to, comments on the effect of the cases that have been decided since the last edition. This part of the book is more than just a revision of the last edition, as the authors have in many cases considerably expanded the commentary of the earlier edition and added their own comments on the same or related matters, not always agreeing with the views expressed by Falconbridge or his subsequent editors. By and large this is useful, as many observations on cases in the earlier editions were inclined to be cryptic; Dean Falconbridge was well known for economy of words and the precision of his English. In many cases the present edition sets out facts of cases which were not set out in earlier editions, and such additions help to reduce the necessity of referring to the reports in which the cases appear. The copious footnotes refer to the views of other authors and articles that have been written on some of the difficult provisions of the statute. The authors also refer in considerable detail to the provisions of the Uniform Commercial Code of the United States dealing with negotiable instruments. While the latter references are of little use to the practitioner in this area of law in Canada, they, together with references to articles written on innumerable subjects throughout the whole of the book, reflect the thoroughness and the thought that went into the preparation of the present edition.

While, as I have said, the present edition basically follows the format of the 1969 edition, the editors decided that rather than reproduce the sections of the two statutes in the order in which they appear they would, in certain instances, group sections together that deal with similar subject matters. This may, in some cases, be beneficial, but it is sometimes difficult, particularly for one who is used to the present arrangement of the statutes, to assimilate commentary on the text of, say, subparagraphs (a), (d), (e) and (f) of a subsection while wondering where subparagraphs (b) and (c) are and what bearing they have. In one place the authors, after setting out the text of a section of the Bank Act, make reference to a term included in the text and point out that it is defined in an earlier numbered section; however, in order to find the definition it was necessary to search twenty-five pages ahead where the earlier numbered section is reproduced. While there are cross-references to other sections of the book they do not provide complete coverage. With this approach it is essential that the index be thorough and detailed. Unfortunately, the proofs that I received did not contain the index so I do not know whether this is the case.

One further comment of a general nature is that at times the authors found it necessary to make a statement on a subject that they deal with in greater detail in a later section to which they cross-refer. These short general comments do not include the detail of the later section and are frequently not entirely accurate, so reference should always be had to the later section.

As a final comment the authors, when dealing with the interpretation of the Bank Act, refer to being conscious that material that appears in
such documents as White Papers, committee reports or discussion papers are not binding interpretations of legislation resulting from them or on which they comment. In this respect the authors did not follow their own good advice, as witness the numerous references to such papers and reports in relation to the Bank Act. In fact the book contains some quotations from speeches made by members of the staff of the Inspector General and references to articles published in newspapers. While such references and quotations indicate the considerable research leading up to the preparation of the book, as a general matter I consider that they add little to the book, other than to its length, as far as practitioners are concerned.

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