investigators/auditors to assess the likely CDIC exposure. The relevant provincial minister could, in the face of this evidence and the estimate of CDIC liability, maintain the institution as a going concern, provided that any further liabilities would be the sole responsibility of the relevant provincial government.

Now to the fourth and most controversial area—corporate governance. The Senate's 1986 report advocated a three-tiered approach to issues relating to self-dealing and, in particular, abuses thereof. The first tier was a selective ban on certain non-arms-length transactions (NALTs). This ban would vary by institution. For example, the *Trust Companies Act* already incorporates prohibitions against lending to any major shareholder.

The second tier incorporated the recommendation for a Business Conduct Review Committee (BCRC). The BCRC would be composed of "outside", "disinterested" or "independent" directors with guidelines to ensure that such directors are genuinely outside, disinterested or independent. The role of the BCRC would be to assess all NALTs and to approve only those which are consistent with market transactions in terms of price and conditions. Related-party transactions that are not approved by the BCRC could not proceed. The BCRC could have the right to retain independent counsel, auditors, evaluators and other professionals if and when the need arose.

The third tier was pre-clearance with the regulator for certain sorts of self-dealing transactions that in the normal course of events, might be approved but because of certain features or characteristics must receive regulatory pre-clearance. This is recommendation 38 in Appendix A and the recommendations relating to the first two tiers run from 25 to 37 and 39 to 42 respectively in the same Appendix.

Underlying this approach to corporate governance is the general requirement that at least 35 per cent of the voting shares of financial institutions must be publicly traded. The Committee was of the view that a public share ownership of 35 per cent was sufficient to ensure that professional financial analysts would monitor the operations of the firm and that this public scrutiny and awareness would provide an important further incentive for institutions to ensure that their BCRCs would function effectively and, indeed, would represent the interests of the public shareholders. The specific recommendations here appear as numbers 43 through 47 in Appendix A.

Observation, 48 in Appendix A notes that the Committee is satisfied that these procedures will ensure an effective supervisory and monitoring system with respect to consumer protection, institution soundness and system stability. It is this confidence that allowed the Committee to propose a rather aggressive system with respect to enhancing competition, to which we now turn.

C. Enhancing Competition

In approaching the issue of enhancing competition, the Committee embraced yet another principle. Specifically, when the regulatory or policy authorities are presented with innovative approaches to institutions or products, the presumption ought to be that these innovations are acceptable unless they can be demonstrated to run contrary to the public interest. Unfortunately, it is all too often the case that the innovators themselves are called upon, at considerable cost in terms of time and money, to demonstrate that their products or processes are in the public interest. This assigns a degree of optimality to the status quo that is clearly inappropriate in a fast-changing domestic and international financial environment. In other words, the overall policy framework for the financial system must encourage rather than inhibit innovation. Within this framework, namely that the financial system must encourage innovation, the Committee adopted a corollary principle: financial sector reform should work from, and where possible build upon, existing policy and institutional strengths.