Drayton Report on Dominion Trust Company

Vancouver, B. C.,
December 9th, 1914.

To the Creditors, Contributories and Shareholders,
Dominion Trust Company in Liquidation.

On October 27th, 1914, a petition for the winding-up of the Dominion Trust Company was presented, and an ex parte order for my appointment as Provisional Liquidator was made. My appointment gave me practically no powers except to take possession of the property, documents and securities of the Company. On November 9th, 1914, however, a winding-up order was granted by the Court under the Dominion Winding-up Act, and I was appointed Provisional Liquidator with limited powers. By that order I was authorized to employ, and did employ, the firm of Marwick, Mitchell, Peat & Co., Chartered Accountants, to make a complete investigation and report on the affairs of the Company. They immediately began their work here, and gave instructions to their various branches to take up the work at the branches of the Dominion Trust Company. The whole work is now well in hand. Owing to the large number of adjustments required in the books at the Head Office and Vancouver Branch, and to the limited time at their disposal, they have naturally been unable to prepare final figures as at October 26th, 1914, the date of the winding-up. I have, however, obtained an approximate statement of assets and liabilities which I present herewith.

As the ramifications of the Company were very large, and the persons and interests affected by the Company's failure very numerous and widespread, it has been necessary for me to attend personally to a great deal of the detail work, and impossible for me, therefore, to make a complete valuation of the Company's properties and securities, and give a full report as to the exact position of these. Many of their investments are outside of Vancouver, and it would require a few months to inspect them and get an absolutely correct valuation. However, as before my appointment I was more or less familiar with quite a number of their investments, I have been able, in the short time at my disposal, to approximate more or less closely the value of some of the more important of the properties and securities. This approximate valuation will be found in the statement submitted herewith.

The direct causes of the liquidation, so far as I have been able to ascertain, may be shortly stated as follows:—

1. The fact that in violation of its powers the Company received deposits and kept in hand little or no liquid assets with which to meet a possible run.

2. The fact that moneys in hand, both trust moneys and the Company's own moneys, were invested, not as required by the provisions of its charter, but in highly speculative assets and in the shares or bonds of highly speculative companies, where more and more advances were necessary to protect the Company's security.

3. The fact that moneys entrusted for investment were not kept separate, nor in a separate bank account, although the Company's charter required this to be done. At the date of liquidation the Company had under its control trust moneys amounting to between four and five million dollars. Part of this was always uninvested, and always carried in the Company's bank account mixed with its own money, and often, if not always, dealt with as if it were its own money.

4. The fact of the misappropriation of trust and other securities. This appears to have been a vain attempt to save the situation, and has been most noticeable during the few months prior to liquidation. The inability of the Company to hand over trust funds when demanded rendered the situation acute.

5. To sum up the situation, the Company seems to have done most things that a Trust Company should not do, and this Company had no power to do, and few things that a Trust Company should do.

Before dealing with the above causes in detail I would like to state that, in my opinion, the extraordinary conditions prevailing today on account of the war should not have contributed very materially to the downfall of the Company. Since August 1, 1914, practically no funds have been received from the Old Country for investment, so that the Company have had no means since that date to replenish their own bank account as they had done in the past. This naturally helped to make the situation acute, and in view of the fact that the situation was bound to grow worse so long as the Company was managed as it had been, the war was probably a blessing in disguise for the Dominion Trust Company.

Returning to th first cause of the liquidation, the taking of a large amount of deposits with no liquid assets, I would like to state that in my opinion the depositors have to a very large extent been victimized. The old Company, the Dominion Trust Company, Limited, which was incorporated by letters patent of the Province of British Columbia, subsequently confirmed and extended by Chapter 59 of the Statutes of 1908 of British Columbia, applied for and received a Dominion charter incorporating the Dominion Trust Company on April 1, 1912. This charter gave the new company power to acquire the business of the old company, and of the Dominion of Canada Trusts Company, conditional upon the assumption by the new Company of the obligations and liabilities of these companies. The charter gave no power to take deposits, and, in fact, stated that nothing in the Act should be construed to authorize the Company to engage in the business of banking. Its powers by the Dominion Charter were largely confined to those of receiving money in trust for investment on first mortgage on improved freehold property in Dominion, Provincial, Municipal or School Bonds, or in securities authorized by the terms of the trust. However, on March 1st, 1913, the Legislature of the Province of British Columbia passed an Act ratifying the agreement to take over the property and rights of the old company, and at the same time professing to give to the Company the power expressly refused to it by the Dominion Parliament, namely, the power to take deposits. On March 4th, 1914, the same Legislature repealed the last-named power.

The next Act affecting this Company was the "Trust Companies Act," passed by the Province of British Columbia on March 4, 1914. This Act allowed companies doing a trust business eighteen months from the passing of the Act in which to comply with its provisions and to apply for registration thereunder. Its provisions regarding the management and investment of moneys received on deposit were very stringent. All moneys received on deposit had to be kept separate from the Company's own funds and in a separate department, and all investments of the moneys deposited had to be kept separate and distinct from the general business of the Company. The Act also required every trust company to have on hand as a reserve in lawful money of the Dominion of Canada at least twenty-five per cent. of all such deposits received by the Company which were withdrawable on demand. The Act also required that no company should carry on a trust business in the Province of British Columbia after July 1, 1914, unless it had deposited with the Minister of Finance and Agriculture a deposit of not less than $25,000.00 nor more than $200,000.00, as the Inspector of Trust Companies may from time to time require. In accordance with this provision, a bond of the Railway Passengers Assurance Company, dated May 29, 1914, for $200,000, and a bond of the London Guarantee and Accident Company, Limited, of London, England, dated April 30, 1913, for $50,000, were deposited with the Minister of Finance and Agriculture. No application, however, was made by the Company for registration under the Act, so that the provisions of the Act regarding the management of deposits did not apply.

The new Company issued a pass book to depositors, in the front of which was an agreement between the Company and the registered owner of the pass book, called "the depositor," wherein the Company acknowledged to have received from the depositor the sums entered therein in trust for investment on account of the depositor, some of the conditions mentioned being as follows:—

1. That the moneys were to be invested in or loaned upon such securities as the Trust Company should deem safe and advantageous, to be taken in the names of the Trust Company, but to be held by the Trust Company as trustee for the depositor.

2. That the Trust Company should guarantee the repayment of the above-mentioned sums upon demand, or upon fifteen days' notice at the option of the Trust Company, together with interest on the said sums at the rate of 4 per cent. per annum, etc.

It should be stated that there was earmarked by memorandum in the books of the Company a sufficient amount of securities to cover the balance of deposits and uninvested trust funds in the hands of the Company. In this earmarking, however, the specific securities supposed to be earmarked were not mentioned. In fact, when the Company's liabilities became pressing some of the securities, supposedly earmarked on the books for the deposits and uninvested trust funds, were hypothecated to the Royal Bank for advances. As I am advised by my solicitors that it is very doubtful whether this earmarking will stand, I have disregarded it altogether.

Under their Dominion Charter the Company were obliged to submit annually to the Minister of Finance a statement setting forth the assets and liabilities of the Company and the trust property held by it, made up to December 31st in each year. Under the Trust Companies' Regulation Act of British Columbia, 1911, the Company had to forward to the Minister of Finance quarterly a report setting out all the assets and liabilities of the Company and other statements giving details of certain of the items. Both the Dominion and the British Columbia Provincial Governments were, therefore, aware that this Company was carrying a large amount of deposits.

The Government has made a formal demand upon me as provisional liquidator to pay off the depositors, which, of course, it is impossible for me to do, and they are therefore calling upon the bonding company to pay them the sum of $200.000.00, the amount of the bond. I am informed that the bonding company disputes the liability, and there will possibly be a long-drawn-out lawsuit, probably going to the Privy Council. I have interviewed the Premier and Attorney-General of British Columbia, and have tried to make them see the situation in the same light as I do, viz., that as the Dominion and Provincial Governments knew that deposits should never have been taken, and as they were aware this was being violated I think they should reimburse all depositors with the exception of the directors of the Company. If the Governments do not do this, the question will arise as to whether the deposits taken on and after January 1, 1913, will have any standing at all.

Passing now to the second cause of the liquidation, the investment by the Company in highly speculative assets and in the shares and bonds of highly speculative companies, I would mention the following accounts, and the interest of the Company in each:—

Name.	Approximate Int.
British Canadian Securities, Ltd.	$1,231,704.72
Western Canada City Properties, Ltd.	339.232.34
Alvo von Alvensleben, Ltd.	528,483.19
Syndicate No. 8—W. R. Arnold	392,664.35
Central Okanagan Lands, Ltd.—Columbia Valley Orchards, Ltd.—Seymour Arm Estates, Ltd.	870,959.56
Vancouver Industrial Sites, Ltd.	46,719.59
Grand Total	$3,409,763.75

In addition to the above amounts, there are large contingent liabilities; for example, Alvo von Alvensleben, $514,421.68.

In my opinion not one of the above loans or advances were such as should have been made by a trust company. In addition to these investments many of the above companies also received substantial advances from the B. C. Securities, Ltd. All of the accounts had small beginnings, but further advances were required from time to time to protect the Company's security, and at the present time the finances of nearly all of these companies are in very bad shape.

The investment in the B. C. Securities is made up as follows:—

Stock which is now valueless (being all the shares of the Company except 17 shares held by the directors)	$ 248,300.00
Debentures, security for which in my opinion is valueless, and for which the Company will rank as ordinary creditors in the liquidation of the B. C. Securities, Ltd.	640,000.00
Advances for which no security is held	343,404.72
	$1,231,704.72

The Company will rank as ordinary creditors for the debentures and advances, amounting to $983,-404.72, which may only pay between ten to twenty cents on the dollar. Many of the other companies are in bad financial condition, and will require careful handling if the Company's security is to be protected. Under present conditions it is impossible to realize anything from such securities, and while they may be of some value ultimately, I have put no value on them in the statement now submitted.

As many of these securities have only what I term "think equities," their value depends largely on whether the first charges can be protected, and there will also arise the question in a great many cases whether, even if they can be protected, it would be wise for the liquidator to do so. To give one example: The Company owns a property where there is a first mortgage of $50,000.00 on the whole of it. A client sent to the Company $50.000 to place on first mortgage, which sum was placed on this property, but the first mortgage was not paid off. The client has therefore a second mortgage of $50,000.00, making a total of $100,000.00 prior claims against part of this property. The Company have also started to erect upon part of this property a building which now is only partly finished, and upon which there are mechanics' liens of about $7,000.00. It requires about $13,000 to finish the building, yet this property was carried on the Company's books as an asset of $30,000.00. It is very doubtful, in my opinion, whether the Company have any asset at all in this property.

The third cause of liquidation stated above was the absence of a separate trust account for trust moneys in the hands of the Company which were uninvested. At the date of the death of the late managing director there were in the hands of the Company uninvested trust funds and clients' and agency moneys amounting to over $1,000,000.00. This figure does not include deposits, which at that date also amounted to over $900,000.00. In this connection it is noteworthy that the first item of business at meetings of the advisory committee of directors always was the receipt of a report by the secretary showing the bank balances. No mention is made in the minutes, however, of the balance of uninvested trust funds on hand. It is therefore evident that trust and clients' funds were used for the purposes of the Company, and I think it is safe to state that in recent years these moneys were used to keep the subsidiary and allied companies alive. It is impossible to go very fully into this phase of the situation with the incomplete information which I have at hand, but this feature will be fully brought out in the report of the auditors.

The fourth cause of the present position was stated to be the misappropriation of trust funds and securities and the inability of the Company to hand over trust funds when demanded. In addition to the trust funds mentioned above as uninvested, the Company has made a large number of investments on behalf of clients which are contrary to their specific instructions. In the event of loss the Company will be responsible, and I expect claims against the Company arising in this way will amount to a considerable figure. The Company have also disregarded the fact that securities were earmarked or held in trust, and have either hypothecated or sold them to other parties. This is a feature that cannot be fully discussed until the auditors have completed their investigation, but I may say meantime that cases of this