

primary producers and the community. No disinterested expert opinion was produced to so testify: nor to discredit the specific testimony of the witnesses who supported the Bill that, on the balance of public convenience and inconvenience, the present state of the law produces a greater adverse effect on the individual and on the community.

Credit  
investigation  
of  
processors  
by  
producers.

It was suggested that the primary producers should set up their own investigation service. The publication of credit investigation results, unless carefully controlled and restricted, can give rise to civil litigation damaging to the publisher. The wide publication that the primary producers would have to give to such information negatives the idea of such a practice; in this regard, the producers are in a different position entirely from the banks and processors. Furthermore, some primary producers—under provincial laws—have no option as to whom they can sell. It was also suggested that the provinces might conduct such investigations and advise the primary producers of the credit ratings of the processors. This would be a reprehensible practice on the part of any government and it is unlikely any provincial government would accede to such an invasion of the private citizen's right to privacy.

#### 4. ALTERNATIVES SUGGESTED

Provincial  
action.  
Ultra  
vires.

It was suggested that provincial legislation would be preferable.

1) The answer is that provincial legislation to cover this particular grievance, in the manner that Bill C-5 does, would probably be *ultra vires* of a province as infringing the federal government's jurisdiction over "Bankruptcy and Insolvency."

Impracticality.

2) Such legislation, if constitutionally possible, would have to be approved and adopted by 10 provincial legislatures and the federal government for the Territories. Efforts to obtain such unanimity on other subjects by the Committee on Uniformity of Legislation have, at best, taken years—and, at worst, have not been successful.

Private  
arrangement  
between  
producers  
and  
processors.

It was further suggested that a private arrangement between processors and primary producers might be negotiated to remedy the grievance.

The only remedy equal to the coverage given by Bill C-5 would be for the processors, by insurance or otherwise, to cover possible losses by primary producers. No commitment by the processors has been made to any degree in that direction. And, in any event, if put into effect it could be revoked at the will of the processors. Bill C-5, when enacted, can only be repealed by Parliament. And, when other creditors have their rights on a bankruptcy protected by the provisions of the *Bankruptcy Act*, there is no reason why the primary producers should be dependent upon a private agreement outside the protection of the *Bankruptcy Act*.

The primary producer is presently a banker—without security—for the processor: at the same time he provides the security for the banker's loan to the processor. The effect of Bill C-5 is to give the primary producer the security of his own product on a bankruptcy without undue diminution of the bank's security or of the rights of other creditors.

Respectfully submitted by  
Eugene Whelan on behalf of the  
Primary Producers of Canada.