

to require the cabinet to validate a decision of the Civil Service Commission to amend the establishment in branch x, of division y, of department z by substituting a position of one classification for that of another. The making of regulations, on the other hand, is certainly within the field of the Governor in Council, as are appointments to offices, the ratifying of terms of agreements with other governments, etc. It is not necessary to go over the whole list. It is proffered simply to suggest that in the revision of the statutes it may be in the interests of parliament to have existing directions to the Governor in Council reconsidered.

4. *Foreign Exchange Control Act*: The statute provides that "under the control and direction" of the Minister of Finance, a board shall operate and manage the Exchange Fund Account, which is, by the Act, a "special account in the name of the Minister of Finance." The board consists of the Governor of the Bank of Canada and five senior civil servants. The Bank of Canada serves the board without remuneration. Authorized dealers are, by section 17, remunerated for their services out of the exchange fund account. Any other costs of administering the Act are, by section 13, to be paid out of moneys provided by parliament. Section 5 declares that the then existing exchange fund account "is continued."

The fiscal year of the board is the calendar year. It commenced operations on January 1, 1947, with a net deficit in the exchange account of \$28,807,124.67, representing the net outstanding loss arising out of the return to par of the Canadian dollar in relation to the U.S. dollar. Replying on section 7(1) of the Act, which reads:

The minister may make advances to the exchange fund account out of unappropriated moneys in the consolidated revenue fund on such terms and conditions as the Governor in Council may prescribe.

the Governor in Council approved, in January, 1947, advances of \$1,275,000,000 at an interest rate of $\frac{5}{8}$ ths per centum per annum. On December 31, 1947, after payment of interest charges of \$5,100,000, the board had net earnings of over \$10,800,000. Before certifying the annual statement, I suggested to the chairman that he secure an opinion from the Deputy Minister of Justice whose reply sets out the points I raised. It reads:

At the suggestion of the Auditor General, you have referred to me for an expression of opinion two questions relating to the operation of the exchange fund account. The first of these is as follows:

(1) Is the interest charge for advances by the consolidated revenue fund to the exchange fund account a proper charge?

Section 7 of the Foreign Exchange Control Act authorizes the minister to make "advances" to the exchange fund account out of unappropriated monies "on such terms and conditions as the Governor in Council may prescribe." One of the terms and conditions prescribed is that amounts advanced in the exchange fund account "shall bear interest at the rate of $\frac{5}{8}$ ths per centum per annum". Mr. Sellar points out quite accurately that ordinarily a relationship of creditor and debtor is a condition precedent to the creation of an interests liability. It is quite true that the minister in his capacity as Receiver General cannot, strictly speaking, stand in the relationship of creditor towards himself in his capacity as minister having control and direction of the exchange fund account. Nevertheless, parliament has by section 7 authorized the minister to "make advances to the exchange fund account," thus establishing a statutory fiction that the relationship of debtor and creditor does exist. The employment of the word "advances" effects this result; otherwise, section 7 must be regarded as a nullity.