be considered suspect unless qualified, and therefore the commission must be regulated.

The clauses to amend the Combines Investigation Act could create several new offences, including bid rigging. The practice is defined as either an agreement to refrain from bidding in response to calls or the submission of bids or tenders arrived at by collusion, and the prohibition against the practice will extend to services as well as physical articles. The proposed revision to the act is expected to make it easier to prosecute in cases involving bid rigging because it relieves the Crown from having to prove that the practice lessens competition unduly, as is currently required. Generally, proof of undueness has rested upon showing that the participating firms had substantial market control. However, cases of bid rigging that come to the attention of the Director of Investigation and Research sometimes involve only local firms with a small share of the construction market. Because of the requirement of proving that rigging of construction bids would have an undue effect upon competition, successful prosecutions of these practices have been thwarted.

The bill's proposal to remove this hindrance to bid rigging prosecutions by making the practice per se an offence flows from a recommendation of the Economic Council of Canada in its interim report on competition policy. It recommended that section 32 of the Combines Investigation Act be revised and suggested that bid rigging is a practice that could surely be prohibited without any qualification whatsoever. The construction industry agrees that bid rigging per se must be prohibited, but the terminology referring to collusion, conspires, combines, etc., all used in the same sense, must be clarified. An honest agreement or arrangement between builders with the owner's knowledge could mistakenly be considered a breach. If the owner or customer initiates or is aware of agreements between contractors, this should not be prohibited.

The bill now makes so-called bid rigging an offence. The Canadian Construction Association has stressed that the application of this provision to the contracting sector of the industry would go beyond the required prohibition and could adversely affect competitive tendering procedures. The vast bulk of construction work is carried out on the basis of competitive tenders submitted by prime and subtrade contractors. This involves the allocation of expensive resources for each individual tender call inasmuch as there is no homogeneity in construction and design, location, topography, weather and supply conditions all affect the bid amount.

Tenders are based on plans and specifications which on many projects are extremely complex and may require special explanation to enable bidders to tender competitively and equitably. Pre-tender conferences are very often convened by the owner or his consultant designers to clarify many aspects of the project. In some instances, agreements between the owner or his agent on the one hand and the tenderers on the other are necessitated by the complexity of a particular tender call. Such agreements should in no way be considered as being either price fixing or bid rigging, but could be construed as coming within the intent of section 32.2.

In connection with bid rigging, I feel it might be just as well at this moment to give two very specific situations which under the present act could quite easily lead to the prosecution of the participants. I am going to use instances in the cities of Toronto and Montreal, and I do not want that be construed as the expression of an anti-west sentiment. When tenders were called in respect of the new Toronto city hall—I guess it could still be termed new—the construction industry considered that the conditions imposed by the city were grossly unfair and could lead to all kinds of abuses by the owner, the city of Toronto. After meeting together, the group of tenderers agreed among themselves, with the full knowledge of the construction industry, to include in their tenders a qualifying clause. It is interesting to note that when these tenders were opened it was found that one general contractor had decided not to include the qualifying clause. His was not the lowest bid; nevertheless, the city of Toronto awarded this contract to the contractor who did not qualify his tender. The contractor lost a small fortune in the construction of the Toronto city hall and the company is now bankrupt.

The other instance, in what I like to term as my file of the city of Montreal concerns, relates to Expo '67. At the beginning of this mammoth construction program representatives of the construction industry met and discussed the terms and conditions under which the contractors would be obliged to bid for work on the Expo site. The terms and conditions were considered unacceptable to the industry and could only lead to disastrous consequences, either financial or, what would be even worse, the failure to complete construction on time ready for the opening. As a result, all members of the Montreal Construction Association in unity agreed that there would be a qualifying clause in their tenders.

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They all used the same wording which, I submit, under the legislation as it is before us today could very easily have led to prosecution. When the tenders were opened, there was no choice; there was unity in the industry. All tenders included a qualifying clause. The result was that the purchaser, the corporation of Expo '67, recognized that it was not going to be able to proceed in the fashion that it intended; it had to take a more reasonable approach to the construction industry. I think I can say without fear of contradiction that the result was a fantastic success in that the contractors were able to complete that huge undertaking on time, and most of them with a reasonable profit margin.

The bill before us also states that a company can be forced to deal on usual trade terms. The construction association suggests that there is really no such usual arrangement in the industry and that the question of reputation, financial status and payment practices all pertain.

Referring to allowances, discounts, etc., this brings us to the question of the buyer's over-all reputation, financial status, volume of business and the like. No businessman should be forced to do business with all would-be customers. Financial institutions are permitted to grant favourable interest rates on comparative risks. The construction industry should be afforded the same privileges and permitted to evaluate customers. Again, the Canadian Con-