

## APPENDIX "B"

MEMORANDUM ON THE CONSTITUTIONAL  
VALIDITY AND OTHER ASPECTS OF BILL C-5

## 1. CONSTITUTIONAL VALIDITY

It is alleged, albeit not strenuously, that Bill C-5 is an invasion of the provincial power to legislate on "Property and Civil Rights in the Province".

As pointed out by the Judicial Committee of the Privy Council in *Cushing vs. Dupuy*, (1880) 5 Appeal Cases 409 at page 415:

"It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying the ordinary rights of property, and other civil rights, nor without providing some mode of special procedure for the vesting, realization and distribution of the estate, and the settlement of the liabilities of the insolvent."

Judicial  
comment.

Bill C-5 utilizes a mode of special procedure that already has been twice approved of and used by Parliament. Section 52 of the *Bankruptcy Act* rewrites the law of contract in order to legally protect an author's equitable but not legal rights in a manuscript in the hands of a bankrupt publisher. Section 89 of the *Bank Act* gives a bank a first and preferential lien and claim on a loan under section 88: but section 88(5) provides that, if the debtor goes bankrupt, then the debtor's employees get a priority ahead of the bank's preferential lien to the extent of three months' wages. The method used in Bill C-5 and the *Bank Act's* section 88(5) are identical in principle. The debtor-creditor rights *inter partes* are defeasible in part upon a condition subsequent—the bankruptcy of the debtor.

Parlia-  
mentary  
precedent.

Bankruptcy  
Act, s. 52.

Bank Act  
ss. 88 & 89.

## 2. LEGAL PRACTICALITY

It is alleged that the Courts would be totally unfamiliar in dealing with those parts of the assets affected that are perishable, uncanned, etc. The Courts are not unused to this problem. The Ontario Supreme Court has a Rule similar to that of the Supreme Courts of other provinces:

"The Court may, at any time, order the sale, in such manner and on such terms as may seem just, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once."

Ontario  
Supreme  
Court Rule  
of Procedure  
No. 370.

Parliament itself has delegated similar powers in the *Fisheries Act*, 1960-61, c. 23, s. 10 to Department of Fisheries employees; and in the *Customs Act*, 1952 R.S., c.58 s. 157, to Port Collectors.

Parliamen-  
tary  
Precedents.

It is also alleged that Bill C-5 is legally too wide in including the producers of forest, quarry and mine, seas, lakes and rivers products as well as those of agriculture inasmuch as representatives of these other producers have not been represented at the committee hearings. These are the classes included in section 88 of the *Bank Act*; it would appear discriminatory for Bill C-5 to exclude any of them. None of these non-agricultural primary producers—with the possible exception of the B.C. fishermen, who are not likely to be affected, have strong organizations.

Inclusion  
of all  
primary  
producers.

## 3. FINANCIAL PRACTICALITY

It is suggested that the effect of Bill C-5 would be to tighten credit facilities available to processors and so affect adversely the

Tight  
money.