

## APPENDIX

## BRIEF FILED BY MR. ROGERS, SECRETARY OF THE CANADIAN BANKERS' ASSOCIATION

The Honourable ELIE BEAUREGARD, Chairman,  
and Members, of the Senate Standing Committee  
on Banking and Commerce:

## SENATE BILL A-5—AN ACT RESPECTING BANKRUPTCY

In the presentation of these observations concerning the above Bill, on behalf of the chartered banks of Canada, it is not intended to deal with the provisions of the Bill as they affect the public generally. Representations along particular lines have already been made to your Committee by various organizations so it is felt that we would be more helpful to the Committee and to the law officers of the Crown responsible for the drafting of the Bill if these comments and suggestions were confined as far as possible to the provisions of the Bill as they appear to affect the chartered banks in their ordinary course of business.

*Interpretation*

There are a number of provisions in the interpretation section of the Bill which, viewed in the light of their use in subsequent specific sections, give rise to objections which will be discussed in more detail under such sections. Brief reference only will therefore be given to certain paragraphs of the interpretation section.

## Section 2 (b)—“adequate valuable consideration”

While the definition corresponds quite closely to that of the present 65(2), its operation under the proposed shifting of the onus of proof in the proposed section 69(2) might be serious, as will be explained later.

## Section 2(o)—“creditor”

This definition goes beyond the present one to include a secured creditor although the latter term is separately defined in 2(ee). The inclusion of secured creditor in the definition of creditor would be confusing as will be apparent in the consideration of subsequent provisions.

## Section 2(jj)—“transactions”

It is appreciated that this new definition has been inserted in order to remove certain detailed phraseology from the present section 64 which commences “Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered . . .” A comparison of these words with the new definition indicates that “transaction” defined as proposed goes much further than the present provision and covers not only positive acts but includes instances of inaction, and even omission. It is difficult to anticipate the effects of so broad a definition. It would seem advisable to have a tighter definition at the outset, more in keeping with the provisions of the present statute.

## PART I

## ACTS OF BANKRUPTCY

## Section 3(d)—“other conveyance or transfer”

This includes any conveyance or transfer of property or charge thereon, which would have the effect of defrauding, delaying or defeating any creditor, and goes considerably further than (c), which would only include such transactions if they would be void under the Act as fraudulent preferences if a debtor