

## APPENDIX "A"

Supplementary submission of the Canadian Bankers' Association to the Standing Committee on Banking and Commerce of the House of Commons, Ottawa, Respecting Bill C-5—An Act to Amend the Bankruptcy Act

*Statistics*

When we appeared before the Committee on July 26th last, the banks were asked to submit statistics on their lending under Section 86 and Section 88 of the Bank Act to processors who purchase from primary producers. For this information the Exhibit attached shows the banks' experience during the period 1960/62 inclusive.

One of the problems in collecting these statistics was to determine who was a "producer". This definition problem can best be illustrated by indicating the kind of question which arises in the following industries:

- (a) Is a fishing company which owns its own trawlers and processes its own fish a producer or a processor?
- (b) Is a lumber company which cuts sufficient timber from its own limits for, say, 70% of its requirements, a producer or a processor?
- (c) Are steel and aluminum companies which are vertically integrated from the mine to the final production of metal producers or processors?

The important point is that the financing of the purchases from the above types of companies might be affected by Bill C-5 if the companies were ruled to be producers. To gather our statistics we kept in mind that the purpose of Bill C-5 is to protect those in the front line of primary resource production. Nevertheless, in practice there are cases where we found it impossible to make a clear distinction between producer and processor.

The wide variety of "processing" industries borrowing under Section 86 and Section 88 of the Bank Act will be noted from the statistics herewith which also indicate the general importance of this form of security in extending bank credit.

*Credit Information*

In the course of our preparing to give further evidence before the Committee, we were of course conscious of the fact—and our legal advisers have emphasized the point—that a bank is under a legal duty arising out of its relationship with its customers to maintain secrecy with respect to the affairs of each customer and that it is not permissible therefore for a bank to disclose details of the financial position of a customer of the bank—as in the case of a request by a producer for particulars about the affairs of a processor—unless that customer specifically authorizes disclosure of Balance Sheet figures.

*Loss of Identity of Products*

Some members of the Committee enquired about the legal aspects of the loss of identity of products in the hands of a processor or dealer as in the McClean Grain case referred to by Mr. K. A. Standing in the brief he presented on behalf of the Ontario Soya Bean Growers' Marketing Board.

The fact that a primary producer's products may lose their identity when delivered to an elevator or to a processor is only of importance when a question arises as to whether the products were delivered under a contract of sale or under a contract of bailment. If, as is generally the case, the contract between the producer and the processor or, say, an elevator operator is one of sale, title to the products will normally pass to the processor on delivery and it will make no difference whether the products do or do not lose their identity on delivery. If, however, it is not clear whether the contract is one of sale or one