LIBRARY OF PARLIAMENT

Canada. Parliament.
J Senate. Standing Committee
103 on Banking and Commerce,
H7 1968/69.
1968/69 Proceedings.
B3
A1
v.1

DATE | NAME - NOM

Date Loaned

CAT. NO. 1138

J
103
H7
1968/69
B3
A1
v.1

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 1

Complete Proceedings on Bill S-2,
intituled:
"An Act to amend the Publication of Statutes Act".

WEDNESDAY, SEPTEMBER 25th, 1968

WITNESS:

Department of Justice: J. W. Ryan, Director, Legislation Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28925—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, September 24th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill S-2, intituled: "An Act to amend the Publication of Statutes Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

28925—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, September 25th, 1968.

(1)

Pursuant to notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Upon motion, the Honourable Senator Hayden was unanimously elected *Chairman.*

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Bourget, Carter, Cook, Croll, Everett, Flynn, Gouin, Haig, Inman, Irvine, Laird, Lang, Macdonald (*Cape Breton*), Macnaughton, Martin, McDonald, Molson, Pearson, Welch and Willis—(24).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel. R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Law Clerk of Committees.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-2, "An Act to amend the Publication of Statutes Act", was read and considered.

The following witness was heard:

DEPARTMENT OF JUSTICE:

J. W. Ryan, Director, Legislation Section.

The Honourable Senator Molson moved that the words "in the most economical manner" on lines 14 & 15 of clause 1 be deleted.

The question being put, the Committee divided as follows:

YEAS—12 NAYS—3

Motion *carried.*

The Honourable Senator Willis moved that the Committee adjourn consideration of the said Bill.

Motion declared *carried.*

At 10.40 a.m. the Committee adjourned until 2.15 p.m. this day.

Pursuant to adjournment and notice the Committee *resumed* its consideration of Bill S-2.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Carter, Connolly (*Ottawa West*), Cook, Dessureault, Everett, Flynn, Gouin, Haig, Inman, Kinley, Macdonald (*Cape Breton*), McDonald, Molson, Smith (*Queens-Shelburne*), and Willis—(17).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.
R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

Mr. J. W. Ryan was again heard.

The Honourable Senator Macdonald (*Cape Breton*) moved the following amendment:

Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:

'(2) Copies of the volume or volumes *of the Acts* referred to in subsection (1) shall be printed by the Queen's Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to' "

The question being put, the motion was declared *carried.*

The Honourable Senator Molson moved the following amendment:

Strike out clause 2 and substitute therefor the following:

"2. Section 11 of the said Act is repealed and the following substituted therefor:

'11. The Statutes shall be printed in *the English* and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.' "

The question being put, the motion was declared *carried.*

On motion of the Honourable Senator Flynn it was *Resolved* to report the said Bill as amended.

At 2.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, September 25th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-2, intituled: "An Act to amend the Publication of Statutes Act", has in obedience to the order of reference of September 24th, 1968, examined the said Bill and now reports the same with the following amendments:

1. Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:

'(2) Copies of the volume or volumes of the Acts referred to in subsection (1) shall be printed by the Queen's Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to' "

2. Strike out clause 2 and substitute therefor the following:

"2. Section 11 of the said Act is repealed and the following substituted therefor:

'11. The Statutes shall be printed in the English and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.' "

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, September 25, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Publication of Statutes Act, met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, the first order of business is the selection of a chairman. May I have a motion?

Senator Martin: I would like to propose the name of Senator Hayden.

Senator Willis: I will second the motion.

The Clerk of the Committee: It has been moved by Senator Martin, and seconded by Senator Willis, that Senator Hayden be the chairman of the committee. Is it agreed?

Hon. Senators: Agreed.

Senator Macnaughton: It seems to me that the record should show that that motion is carried unanimously.

Senator Salter A. Hayden in the Chair.

The Chairman: Thank you very much.

We have one bill before us this morning, namely, Bill S-2, to amend the Publication of Statutes Act. We discussed a bill with this designation a year ago, but that bill did not pass the House of Commons before dissolution. This bill is in the same form, and we have before us the same witness this morning. The question is one as to whether we should print the record of these proceedings. My own feeling is that we should because the bill originates here, and in the other place they may be looking to see what was the evidence and the material before this committee.

Hon. Senators: Agreed.

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: So far as the bill itself is concerned, our witness is Mr. J. W. Ryan of the Department of Justice. Mr. Ryan, who is well known to us, appeared as a witness the last time. Mr Ryan's position is described technically as Director, Legislation Section, Department of Justice.

Mr. Ryan, the bill is not very long. Would you let us have the benefit of your explanation?

Mr. J. W. Ryan (Director, Legislation Section, Department of Justice): Mr. Chairman and honourable senators, the purpose of the bill is set out in the explanatory notes. As far as its purpose is concerned with respect to the amendment, it is relatively simple. Its purpose is to change two provisions of the Publication of Statutes Act, one of which can be read as requiring that the annual statutes be published separately in English and French volumes, although this, of course, is subject to argument. It is a matter of interpretation.

The second provision, and possibly the more important one, is that contained in section 11 of the Publication of Statutes Act in which since 1867 certain directions have been given to the printing bureaus, or the Queen's Printer. Perhaps I can read you the provision as it originally appeared in Chapter 1 of the Statutes of 1867, and then you will see to what I am referring. Section 11 of Chapter 1 of the Statutes of 1867 read:

> The Statutes shall be printed in royal octavo form on fine paper, in eleven point type, not more than four and three-quarter inches wide by eight and one-half inches deep, including marginal notes in seven point, such notes referring to the year and chapter of previous statutes,

whenever the text amends, repeals or changes the enactments of former years—

And then it goes on into the binding with gilt letters, which is not important.

By an amendment in 1925 the reference to ems and picas was changed to eleven point type and to paper of not more than four and three-quarter inches wide by eight and one-half inches deep, including marginal notes in seven point.

The purpose of this amendment is to permit flexibility in laying down these specifications so that the annual publication of the statutes can be in whatever form the revised statutes are in. That, I think, sums up the purpose of the amendment.

The Chairman: This bill repeals the original provision which spells out the size and type of print and everything else.

Mr. Ryan: That is correct.

The Chairman: And leaves it to be determined by regulation?

Mr. Ryan: That is correct, sir.

The Chairman: I shall start the discussion by saying that in the debate on second reading some question was raised as to the inclusion in section 1 of the bill of the words "in the most economical manner." Have you any comment to make on that? The idea was, I think, that we should assume that those charged with this job will do it in the best way, consistent with economy.

Mr. Ryan: With good management and economy.

The Chairman: Yes, with good management. There is just some question whether there is some reflection in the use of those words, or is it an excess of caution?

Senator Croll: Is that not the usual way in which the Government handles matters?

The Chairman: The Chair has no opinion on that. I take it, senator, that that is a rhetorical question? Are there any questions on that point? What is the view of the committee, or have you any views to express, Mr. Ryan?

Mr. Ryan: None on this particular point. I suppose it could be sent by air mail for speedier delivery when it might go by ordinary post more economically.

Senator Flynn: Do you see any problem if we were to delete these words? Would it create any problem for the department or any official?

Mr. Ryan: I would not see any problem in that, senator.

Senator Molson: Do provisions similar to these occur anywhere else?

The Chairman: Are you referring to the use of the expression "in the most economical manner?"

Senator Molson: Yes, is there a similar instruction in any other act?

Mr. Ryan: I will look to see.

The Chairman: Mr. Ryan is looking to see if he can find the origin of this expression.

Senator Willis: Mr. Chairman, would there be two volumes of each, one in French and one in English?

The Chairman: No, it would be in one volume. I have some information on that. There would be two columns on the page, one in English and one in French.

Senator Everett: If my memory serves me correctly Mr. Ryan, on the last occasion, gave his view on the problem of interpretation as between the French and English text. If that is germain to this bill I would like to hear it again.

Mr. Ryan: May I refer to the earlier question?

The Chairman: Yes.

Mr. Ryan: The particular phrase you are concerned about comes from the act of 1867. They may have been more suspicious than we are today.

The Chairman: They did not have a flying service then.

Senator Cook: They were more economically minded in 1867.

Senator Macdonald (Cape Breton): Would it not be better to cut out all of that and provide that the Queen's Printer shall, as soon after the close of each session as practicable, cause to be delivered the proper number of copies, instead of having all this business of delivering or sending by post or otherwise?

Mr. Ryan: It would be better if you keep in the reference to "send by post or otherwise," because "delivery" might require that he go out and hand it to everybody.

Senator Croll: Mr. Ryan, these words have been there since the statute first came into existence?

Mr. Ryan: That is right.

Senator Croll: You have had no trouble with them? We are merely carrying them forward in this present bill.

Mr. Ryan: That is the reason they are in there, senator. They were always in the act.

Senator Macnaughton: I would like to suggest another reason, namely, there are always public demands for free copies, and this would be semi-authorization to refuse free copies except to persons so entitled.

Senator Macdonald (Cape Breton): No, because the next subsection takes care of that.

The Chairman: Yes, the persons who are entitled are so designated.

Senator Aseltine: This is the year in which the statutes are to be revised. Do you know what the price will be?

Mr. Ryan: I have no idea at this time, senator. That is usually done by the Queen's Printer, and is based on cost.

Senator Martin: $9.50.

Senator Laing: Mr. Chairman, perhaps Mr. Ryan can give us an idea of when we might expect the new R.S.C.

The Chairman: Are you asking when they might be out?

Senator Laing: Yes.

The Chairman: Have you any information on that, Mr. Ryan?

Mr. Ryan: We had been hoping to have the R.S.C. at the printer's at this time, and perhaps late in this year have them out, but that does not look possible at the moment. The matter of this statute, of course, has caused a stall. There is also the fact which was just touched upon by Mr. Trudeau last year. The computerization of the revised statutes has caused a delay in preparing them, but on the whole it may be for the better, because the statutes may be more topical when they do come out, since with modern printing methods it may be possible to do away with supplements and bring the statutes up very closely to a session of Parliament.

Senator Martin: But, it is a fact that when the revised statutes come out they will be in bilingual form?

Mr. Ryan: Yes, that has been...

The Chairman: That was legislated on a couple of years ago, was it not?

Mr. Ryan: It was not legislated upon, but it was decided in 1967.

Senator Pearson: On the question of marginal notes, I find that when you have a bill which has two or three pages to it, the marginal notes in French are somewhat obscured when you fold the bill up. Would it not be possible to close the spaces up, putting the French marginal notes over on the outside along with the English? They both refer to the same paragraph. This would save space and keep it more or less clearer than in the way it is now.

The Chairman: In the copy which I have, I do not know how much attention was paid in the phrasing of the bill.

Senator Pearson: If you are concerned with the bills which we have in the house now, they show these marginal notes all right, but when it is bound you cannot see the marginal notes clearly in the French version.

The Chairman: How will that be taken care of in the actual printing, Mr. Ryan? If you look at the bill, you notice that the marginal space for French notes is quite ample.

Senator Pearson: It is quite all right, yes. Will it be as clear as that when the statute is bound?

Mr. Ryan: Have senators received copies of this document I have in my hand?

The Chairman: No, they have not been distributed.

Senator Pearson: When that is printed, will it be as clear as this?

The Chairman: We are distributing one right now which will show you how it will appear.

Senator Molson: Mr. Chairman, would you like a motion to the effect that you strike out the words "in the most economical manner"?

The Chairman: The Chair is here, if a motion is made properly, to put the motion to the meeting, regardless of what his wishes might be in the matter.

Senator Molson: Shall I rephrase my question? Would it be in order, Mr. Chairman, to move "that the words 'in the most economical manner' " be struck out?

The Chairman: Yes, it is in order.

Senator Carter: I will second the motion.

Senator Croll: Do I understand the motion to mean that we do not do this in the most

economical manner? Is that what the motion means?

Senator Carter: Not necessarily.

Senator Molson: If the phrase is in this bill it should be in practically every bill we get, or in a great many of them. It seems to me we are getting into a position—perhaps it is a survival—where we are giving directions as to the manner of dealing with things in the Government. It hardly seems necessary in the act itself.

The Chairman: What you mean is that this is something which should be administratively taken care of in good management.

Senator Molson: Yes, it should apply to all offices of the Government.

Senator Flynn: If it is there and if you do not find it in all of them, or provisions to the same effect, it may suggest that it means something special in this case, and could open the door to unfair criticism. It seems to me that this should not be there at all.

Senator McDonald: What would be the consequences if the wording were left in the bill and if it were found the statutes were not shipped out in the most economical method?

Senator Molson: That is the question.

The Chairman: I suppose the first thing would be that the Auditor General might make some comment in his annual report.

Senator Flynn: He could do so, even if the words were not there.

The Chairman: Are you ready for the question? We have a motion:

> To strike out in section 1, subsection (3), of the bill the words "in the most economical manner" where they occur.

Those in favour of the motion, will you please raise your right hands? Contrary?

The motion succeeds and section 1, subsection (3) of the bill is amended accordingly.

We still have the question raised by Senator Roebuck yesterday, that is, as to the size of the volume so that it would fit conveniently into existing library shelves. Have you a comment on that, Mr. Ryan?

Mr. Ryan: Yes, sir. The problem with the size of the volume is one of balancing two conveniences, the convenience of having as few volumes as possible in the total of the revised statutes, and the other convenience of having the size as small as possible. I believe that measurements as given in the Senate the other day were decided upon after reviewing the Queen's rules and regulations. The size of that volume, which was under 11 inches tall, was such that it would fit standard bookshelves and yet was convenient enough to hold in the hand. By using that style and size it would also permit a reduction at least by one volume of the total revised statutes.

The Chairman: You mean, as against the separate publications in English and French?

Mr. Ryan: No, as against another volume which is to get in the bilingual form. It is a matter of compressing. Perhaps I can give you a demonstration. Senator Macdonald (Cape Breton), I believe, made reference to the 1966-1967 statutes, about which one used to swear quite a bit if one had to lift them up. As a comparison, here are the Revised Statutes of Alberta, Volume 3 of 1965. As you can see there is a difference in size. There is a difference of about an inch and a half, and this obviously is the larger volume in number of pages, that is, the Annual Statutes of Canada, 1966-67. By my count, there are two more pages here, in the Statutes of Canada, than here, in the Statutes of Alberta, and there is an inch and a half in the difference.

The Chairman: So it is a matter of compressing the volume?

Mr. Ryan: And the paper.

Senator Aseltine: If they are made so large, I do not see how one could handle them at all.

Mr. Ryan: This, I might put it, is the second biggest annual volume of statutes in the history of the Government of Canada. The largest one was in 1934, which is even more awkward to handle.

The Chairman: Would you say, Mr. Ryan, applying the new procedures and practices in the publication of these statutes, how much this volume of 1966-67 of the annual statutes would be compressed?

Mr. Ryan: It would be compressed with the same number of pages.

The Chairman: With the same number of pages and extending it one inch.

Mr. Ryan: An inch or an inch and a quarter.

The Chairman: That deals with the question as to the bulk. The only other way you can reduce the bulk is by having less legisla-

tion, and I do not think you can look forward to that.

Senator Macdonald (Cape Breton): Or by having more volumes. I do not think it is necessary to put all the statutes in one volume. I mentioned yesterday also that if you look at section 10(2) and section 11(3) in the act, you will see they deal with the same business. Under section 10(2), the Queen's Printer is supposed to have the statutes bound in one volume, unless it is impractical or inconvenient so to do. In fact, they could be in a volume which would be large and be a monstrous thing.

The Chairman: What is the direction, Mr. Ryan, in connection with whether you print the annual statutes in one volume or in two?

Mr. Ryan: At the moment the practice has been that if you go into two sessions in one period, you have the volumes, Part I and Part II, sometimes, for the different sessions; but when you have one continuous session, the practice always has been, so far as I can see, to put the statutes in one volume. Logically, and easily, you could break the volume and make two, putting the private and local acts into one, even though they do not take up very much space. However, if you break the volume equally into two halves, you are faced with the problem of renumbering the chapters, which would mean having references to "Chapter 2 of Volume 2," and this would sometimes become overlooked and some people would look up the wrong volume. Or you could split it by chapter number and carry the numbers on in the second volume, but that sometimes makes it difficult to find the chapter when you are giving the reference. I might point out that this is a decision that is made by the Queen's Printer in the printer's office, and I suppose they have considered it impractical and inconvenient. They would have to split it up in some way, but up to now they have not done so.

The Chairman: Have you a question, Senator Everett?

Senator Everett: It seems to me to be inordinately inconvenient to have to deal with volumes of this size, even reduced to the size of the new statute, especially when the overall size of the book will be of this new size. Is there any reason why it should not be split, why we could not designate a thickness beyond which the Queen's Printer will not go, and have it split on a logical basis?

The Chairman: This is more than a mechanical problem. On your suggestion, it would be mechanically possible, when you get to so many pages, to start another volume. There may be some decision as to the references you would have to make in the second volume to the first.

Senator Everett: That is what I am trying to find out, as to where the difficulty arises.

The Chairman: I am wondering why they leave the judgment to the Queen's Printer. On the mechanical aspects, I can understand it; but in regard to anything more than mechanical, I wonder why the decision is left to the Queen's Printer. Why does the Department of Justice, with experience in the field of law, not step in and make that decision?

Mr. Ryan: It is because of this act, largely. This is the authorizing or amending act. Section 11(3), you will note, says that the statutes "of each session" shall be bound in one volume. In the provinces, this does not give too much trouble, as the sessions usually run for a period of three to six months. By that time, when they go to print, they know all their statutes and they can arrange them alphabetically. If two volumes are needed they can be put on an alphabetical basis, from A to L and from M to Z. But the Statutes of Canada for each session are put in in the order assented to. There is no alphabetical arrangement. There would be the problem of splitting, say, at section 50 and carrying on to section 120. But I would like to point out to you that statutes of this size are a rarity. As I say, the only one of the equivalent size to this since 1867 was 1934.

Senator Everett: Presumably, Mr. Ryan, we are dealing with the future and not with the past. While they may have been a rarity in the past, they may not be a rarity in the future. What I cannot understand is why, even though we print them in each session, we cannot print them alphabetically. If we did print them alphabetically, we could split them from A to L and M to Z, or whatever is a convenient split.

The Chairman: I do not think you need to be bound to the date of assent, because when you locate the bill the date of assent appears at the top of the bill anyway. An alphabetical arrangement would appear to be a good arrangement.

Senator Carter: Mr. Chairman, has the commission approved this particular size of

the new statute? I am referring to the size of these specimens which were sent around to us.

Mr. Ryan: Yes.

Senator Carter: These have been approved?

Mr. Ryan: Yes.

Senator Carter: Have any estimates been made as to differences in cost between this and the old format?

Mr. Ryan: Not on the revised statutes, because there are other factors in the revised statutes for which cost will be a first-time cost—for instance, a by-product of a magnetic tape for electronic data processing. But for the annual statutes an estimate has been made of the difference in cost based on 725 pages, which is more average than this large volume, I may point out. I can give you these figures, if you wish.

The Chairman: Yes.

Mr. Ryan: The present run for the English edition in the unilingual version is 5,800 copies, and for the French edition it is 2,000 copies, for a total of 7,800 copies. The cost of printing the English edition at 725 pages is about $18,578. The cost of printing the French edition at 725 pages is $10,074. The total cost, then, is $28,652. This comes to a cost per copy of $9.75.

You would have to double that, if you were getting the two versions, of course.

The quantities of the bilingual volume will remain the same, that is, 7,800 copies. The number of pages now in the English edition are 725 and the number of pages in the French edition are 725, for a total number of 1,450 pages. But the total number of pages in the English-French edition will be reduced by one-third owing to the extra characters that can be placed on the new page format, which is the one you have been looking at, and that is because of the wider page and the use of more standard type or print. A one-third reduction of 1,450 is approximately 483 pages. This figure subtracted from the total would establish the bilingual edition at 967 pages.

The bilingual format represents 967 pages, whereas the unilingual format used at present is 725 pages. Therefore, there will be an increase in pages brought about by the bilingual edition estimated at about 242 pages based on these figures. So it will be a slightly larger volume and it will cost approximately $11 per copy as compared to the $9.75 cost of the unilingual edition. This is an estimated increase of approximately $1.25 per copy, or approximately 15 per cent.

For anyone who will be requiring both language versions, there will be a substantial saving of approximately 44 per cent, since the new price will be only $11 instead of $19.50, that is, $9.75 plus $9.75.

The use of the two-column format will result in a saving, or a decrease in the cost, to the Government of the printing of the statutes, since with only one volume the total number of pages having to be printed will be reduced from 1,450 pages, that is, 725 in English plus 725 in French, to 967 pages. That is the best estimate we are able to obtain.

Senator Carter: Thank you.

Senator Everett: I am sorry to belabour the point, but I would like to ask Mr. Ryan if there is any reason why the revised Statutes cannot be printed in alphabetical order?

Mr. Ryan: There is one practical reason for not being able to do so, senator. I am sorry that I was not able to recall it when you asked your question before. The acts of Parliament are passed in a session beginning with the first one that gets royal assent and going on to the last one. With each one we immediately have to be able to assign a chapter number to it. We do not know what is going to get through the house in the rest of the session, however, so we cannot set up an alphabetical arrangement. We have to assign a chapter number as soon as a bill receives royal assent because people have to make reference to it. They phone in immediately to find out what is the chapter number of that bill of that session. Quite frequently we cannot tell them the years of the session until the session is over, but we can give them a chapter number and we do that on the basis of assent.

Senator Everett: If, then, Mr. Ryan, Parliament were to designate the maximum thickness of each revised statute, the division could be made on the basis of chapter numbers.

The Chairman: Chapter numbers are really the royal assent dates. That establishes the priority in number.

Senator Everett: Yes. What I am concerned about is purely the thickness of the book. I think probably the thickness is going to get greater and, really, the Queen's Printer here,

according to subsection (3) of section 11 is almost required, unless it becomes impossible, to print it in one volume, and it seems to me that the time has come to say that the volume shall not be over so many inches thick, or whatever measurement you use.

Mr. Ryan: I am in a bit of a difficulty commenting on that, because I am outside my own area. There are others who could certainly speak with authority on that. Academically, it could be done on the basis of, for example, stopping at approximately 1,200 pages, but not ending in the middle of a chapter, and then starting another volume.

The Chairman: If you took all the extraneous items that are in the volume of the annual statutes, the private acts, for instance, and any other matters that are published in the annual volume, you would reduce it by some considerable quantity. There is precedence for doing that, because the divorce bills were published in a separate volume, were they not?

Mr. Ryan: I do not believe they were published at all, sir.

The Chairman: I mean going away back.

Mr. Ryan: Away back there was a division, yes, and the Local and Private Acts were published separetely. But they are getting smaller every year. For example, there are only about 109 pages here.

The Chairman: Is there anything further on that?

Senator Everett: I would like to make a motion on it, Mr. Chairman, but I certainly do not want to do so if it is going to in some way increase costs. You yourself, Mr. Ryan, say that you have had great difficulty picking the book up and working with it, and with a book that size I can certainly see why.

Senator Croll: Would it not be appropriate, Mr. Chairman, if instead of a motion being made—because you have made your point, senator—the matter were brought to the attention of the proper people so that they could look into it? In any event, senator, you will have another chance during the course of the session.

Senator Everett: That is true, except that subsection (3) of section 11 virtually directs the Queen's Printer to print this in one volume, if he can.

The Chairman: Subsection (3) of section 11 in the bill gives the authority to proceed in the manner you have suggested.

Senator Croll: If practicable and convenient.

The Chairman: One way of dealing with this, since there is broad enough authority to do what we think should be done, would be to pass the bill in this form on this particular heading and then, if the Queen's Printer comes along with a volume of this size, we might invite him to come here to tell us why and to demonstrate to us that it was the most practical and convenient way of doing it.

Senator Flynn: In this connection may I point out that sub-section (1) of section 2 as proposed would give the Governor in Council the right to settle this problem. It says "in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe..." This would solve the problem raised by Senator Everett. For one thing—and I suggest we should not go further than this—if the result is not satisfactory we can call some people before the Joint Committee on Printing.

Of course there still remains the problem raised by Senator Macdonald (Cape Breton) with regard to sub-section (3) of section 11, because section 10 of the present act has a second paragraph which reads as follows: "The two Parts shall be bound together in one volume, unless it is impracticable or inconvenient so to do, and in such case the Queen's Printer may authorize the Parts to be bound in two or more volumes." Now, that gives some general direction. They suggest that there should be more than one volume in some instances. Therefore I think that either this second sub-section of section 10 as it exists now should be deleted or sub-section (3) of section 11 as proposed should be deleted. As I see it, it is already covered. I might even suggest that both subsection (2) of section 10 as it is at present and subsection (3) of section 11 as proposed should be deleted.

The Chairman: Senator Flynn, what would happen if under subsection (1) of section 11 to which you are referring the Governor in Council enacted regulations providing for the manner of printing and the form of printing and stipulated certain conditions which in particular circumstances might lead to two volumes. Then if the Queen's Printer, knowing the effect of the regulations, comes along and decides that in those circumstances it is not practical and convenient to do it in two volumes and that it is more practical and convenient to do it in one, there you have a

conflict. You have his judgment and you have the regulations. What happens in those circumstances?

Senator Flynn: That is why I suggest deleting these two paragraphs. That would do away with this problem, because the regulations of the Governor in Council would settle the problem in all cases.

The Chairman: By that you mean to strike out subsection (2) of section 10 in the present act and subclause (3) of clause 11 in the legislation as proposed?

Senator Flynn: Yes.

The Chairman: Then you take away all discretion from the Queen's Printer.

Senator Flynn: Well, the practice may change from year to year and I don't think that legislation should go into that kind of detail.

The Chairman: What would the result be if there wasn't any regulation at the time?

Senator Flynn: Well, then, we will defeat the government if it does not meet its responsibilities.

The Chairman: Do you have any regulations now, Mr. Ryan?

Mr. Ryan: The Queen's Printer exercises his discretion and specifies what the format shall be.

Senator Flynn: The Governor in Council should consult the Queen's Printer before drawing up the regulations.

Senator Everett: Would it not be possible to say in addition to the language in subsection (3) that a volume shall not exceed so many pages?

The Chairman: Senator Flynn, instead of striking out subsection (3) of the bill, what would be the situation if you made it subject to subsection (1)? In that case the Queen's Printer will exercise his own judgment unless there is a regulation which forces him to do something else.

Senator Flynn: Well, it is a question of practice. It seems to me that we are going too far and I do not see the necessity for this paragraph at all. I would not want, for instance, to stipulate that a book should not be thicker than, say, four inches, because if it were one-eighth of an inch over that it would necessitate printing in two volumes where, in fact, I would want it to be printed in one volume.

The Chairman: My own feeling, for what it is worth, is that this is the manner in which they have been doing printing for a long time, and the Queen's Printer has been exercising his judgment in the printing, and apparently whatever may have been conveyed to him by the Department of Justice, there have been no regulations. I would be inclined to pass this in its present form, realizing that at any moment one of our committees, when there is any departure from good judgment as we consider it to be, can make an inquiry about it.

Senator Flynn: With all due respect you have just put your finger on a very important point. We are changing the practice by saying that the Governor in Council will prescribe by regulation the form and type and binding of the volumes. We are introducing a new principle in this bill by subsection (1) of section 11. Therefore we have to be logical and we should delete subsection (2) of section 10 of the existing act and subsection (3) of section 11 of the bill.

The Chairman: We have been assuming that subsection (3) is a direction to the Queen's Printer. It may be a limitation on the regulations by the Governor in Council.

Senator Flynn: This is so obvious that it seems to me to be absolutely superfluous. If the Governor in Council realizes that it can be bound in one volume, then it should be bound in one volume.

The Chairman: And then we get back to the old question.

Senator Macnaughton: Mr. Chairman, didn't you suggest a solution when you said that subsection (3) of section 11 could be made subject to regulation; in other words conferring authority on the Department of Justice to give instructions in this matter?

The Chairman: I would like to direct Senator Flynn's attention to this: that the introductory words to section 11 are "Subject to this section,..."

Senator Flynn: That also applies to subsection (2) with regard to the marginal note and the number of points.

The Chairman: And also to subsection (3).

Senator Flynn: Even if there is no subsection (3), "Subject to this section" will mean something.

The Chairman: But we are giving directions to the Governor in Council.

Senator Flynn: Yes, but in a very specific area relating to type.

The Chairman: And also in relation to what is practical and convenient.

Senator Macdonald (Cape Breton): Why not cut out all but the marginal notes too?

The Chairman: Then, senator, you might end up like the chap who wanted to save money on sending a telegram and finally ended up with nothing but the address.

Senator Flynn: Would the witness tell us if there is any problem in deleting both paragraphs?

Mr. Ryan: I would like to take a little time to consider this in greater depth than I can now. However, I would like to point out that the Department of Justice as such has very little to do, if anything, with the publication of the annual statutes. If we are involved it is by way of giving our proofreading and editorial services to the dummy copy, to make sure it corresponds with the official copy.

If you look at the Publication of Statutes Act, you will see that it states, under "Printing and Distribution of the Statutes":

> 9. The Clerk of the Parliaments shall furnish the Queen's Printer with a certified copy of every Act of the Parliament of Canada as soon as it has received Royal Assent.
>
> 10. (1) The Acts of the Parliament of Canada shall be printed in two separate Parts, . . .

So, it is the relationship between Parliament and the Queen's Printer, and, up to now, the Department of Justice, as such, has had very little to do with it.

I would be hesitant to concur with any removal of these provisions, because I do not know what the mischief was originally they were put in to protect against.

Senator Flynn: Could you inquire and give us an answer on behalf of the department, or on behalf of the Queen's Printer, say, this afternoon at a quarter to 3?

Senator Willis: Why not have the Queen's Printer appear before us, Mr. Chairman?

The Chairman: Frankly, there is some concern about dealing with this bill this week.

Senator Flynn: We could go through it this afternoon, before the Senate meets at 3 o'clock.

The Chairman: I suggest that we meet here at 2.30 for that purpose, and that we exhaust all other points now.

Senator Flynn: And our own counsel maybe could look into this too.

The Chairman: Yes. When we adjourn this morning, we will adjourn until 2.30.

There was one question left. Earlier this morning Senator Everett raised the question, which is not strictly on the bill, but it is something which was discussed the last time we had a meeting, and it was discussed in the Senate yesterday. That is the question of the relationship of the French and English versions, on the matter of interpretation. Have you a specific question, Senator Everett, or would you like Mr. Ryan to make a comment?

Senator Everett: You will recall that at the last hearing the then Minister of Justice told us the method by which the courts would interpret the statute in its new form. I do not recall what was said, and just to refresh my memory I would like to hear it repeated.

Mr. Ryan: Senator, I think the basic rule that the courts have applied is that both the English and French versions must be considered; neither can be ignored. Each is a separate and independent statute of equal authority, and one version may be used to interpret the other. Where doubt arises, that version will prevail which the court judges closest to Parliament's intention. I think that is *The King v. Dubois* (1935) Supreme Court Reports, p. 378. There are some other cases on the point.

The Chairman: The *Dubois* case was that of an employee driving a motor car. I think that he was out on behalf of the radio section of some department of Government, checking for radio interference and things of this kind. There was an accident and, therefore, an action for damages resulted. I think that the Exchequer Court, in the first instance, held that, following the language in the French text, the motor car was a public work, because that seemed to be the language. The Supreme Court of Canada decided, after looking at both the English and French versions, that the motor car was not a public work, but they did go on to find that the man, when operating the motor car, was not in the course of his employment in connection with or on a public work or a public service, and they referred to both statutes. They say there

must be a public work in existence, but certainly the motor car is not a public work. There must be a public work in existence, so you can have an action or employee in connection with that. That is what is meant by considering both texts. I do not think the Supreme Court of Canada decision goes further than that.

Mr. Ryan: No, there are, of course, a number of other decisions.

In a recent survey, which has been mimeographed but not yet published, by the Royal Commission on Bilingualism and Biculturalism, I think it is fair to say that, in fact, only the Supreme Court of Canada and the Quebec courts seem to consult both versions. A recent survey showed that the large majority of judges in provinces other than Quebec almost never consult the French version of statutes, and that the few who do are French-speaking. Even then, quite frequently they do not have them before them, though they may be available in the library.

Senator Carter: In this approved format, is the thickness and quality of paper exactly the same as in the original, as in the one we have been using all along?

Mr. Ryan: Not to the one they have been using all along, senator. To the best of my knowledge, that is thinner paper with a heavier density, and is very similar, as I understand it, to the paper used in this volume of the Revised Statutes of Alberta.

Senator Carter: It is of a comparable quality then?

Mr. Ryan: Yes, it is of a comparable quality.

The Chairman: If there are no other questions, we seem to have dealt with the provisions of the bill, and I suggest that we stand adjourned until 2.15 p.m., just to give us a little more time to consider the question Senator Flynn raised in connection with the effect on the authority given to the Governor in Council, and then the direction with respect to "practical and convenient" in the printing. Mr. Ryan will seek whatever information he can in the meantime—or to use his expression, he will "examine it in depth," and then we will hear him at 2.15.

The committee adjourned until 2.15 p.m.

Upon resuming at 2.15 p.m.

The Chairman: I call the meeting to order. We considered Bill S-2 this morning, and we adjourned until this time in order to see what a study in depth by Mr. Ryan in the meantime might produce in relation to section 10 of the Publication of Statutes Act, and particularly subsection (2) of section 10.

Section 1 of Bill S-2 proposes to strike out a portion of subsection (3) of section 10, and it can be seen what portion it is proposed be stricken out.

We were considering this morning the striking out also of subsection (2) of section 10, on the basis that clause 2 of the bill provides for the printing of the statutes in such manner as the Governor in Council may prescribe by regulation.

What we were saying was that if you give the Governor in Council the power by regulation to prescribe as to format, paper, and type you are giving him the power to provide by regulation for all the administrative work in connection with the printing and the publication of statutes. If we left subsection (2) of section 10 in then we might be creating a conflict, because there the authority seems to be given to the Queen's Printer. Therefore, we felt we would strike out subsection (2).

Hon. Mr. Connolly (Ottawa West): That is, subsection (2) of section 10?

The Chairman: I will read it to you. I should tell you first of all that subsection (1) provides:

> The Acts of the Parliament of Canada shall be printed in two separate Parts, the first of which shall contain such of the said Acts and such Orders in Council, proclamations and other documents, and such Acts of the Parliament of the United Kingdom, as the Governor in Council deems to be of a public and general nature or interest in Canada and directs to be inserted—

And then it continues

> —and the second Part shall contain the remaining acts of the session, and shall be printed after the first Part.

Pausing there for a moment I would say that it amused me a little to see that Part II shall be printed after Part I, because ordinarily one would think that Part II following Part I would naturally come after it in the printing without any legislative sanction as to the way to do it.

Senator Kinley: Do they not print the public acts first, and then the private acts?

The Chairman: Yes, that is what it means. Subsection (2), the subsection that we are proposing to strike out, reads:

> The two Parts shall be bound together in one volume, unless it is impracticable or inconvenient so to do, and in such case the Queen's Printer may authorize the Parts to be bound in two or more volumes.

If, under this bill, we give authority to the Governor in Council to determine by regulation the format, the paper, and the type, then we may be creating a conflict as between two authorities, and it will not be clear as to when the Queen's Printer acts and when the Governor in Council acts. We thought, since we are entering into a new phase of printing and publication, and are to some extent feeling our way in this, that we should give considerable power and considerable flexibility to the Governor in Council, and I think we can assume that if there is any place where one might expect to get good management and administration in the public interest it would be via the Governor in Council.

Senator Connolly (Ottawa West): Instead of having to come back to Parliament for this authority in respect of small things?

The Chairman: That is right.

Senator Kinley: They cannot change any of the Statutes.

The Chairman: No, this refers to just the printing.

Having heard those few remarks of mine, Mr. Ryan, have you any comments to make at this time?

Mr. Ryan: Only a very few, Mr. Chairman. In the time available I was not able to obtain any instructions, so I am in no position to put forward policy arguments, one way or the other. I might say on the suggestion that has just been made, that the only reservation I would have as a draftsman would be about the words "and shall be printed after the first Part". If that is a penetrating glimpse of the obvious then, of course, it is of no concern.

Senator Connolly (Ottawa West): That is a very good description.

The Chairman: You are to be commended for that phrasing.

Senator Connolly (Ottawa West): I imagine the Chairman wishes he had thought of saying it in that way.

Mr. Ryan: So far as I can see, the proposals you are putting forward here do not, in the least, affect the intent of the Government bill to accomplish the purpose intended of making it coincide with the Revised Statutes in format, paper, and binding. That is all I have to say regarding that.

The Chairman: This morning the committee directed an amendment to section 1 to strike out the words "in the most economical manner". It was felt that it was being a bit presumptuous in the first instance to give such a direction, and there was an amendment this morning striking that out.

Now, in view of the fact that we are proposing also to strike out subsection (2) of section 10 the amendment would read—since section 1 deals with an amendment to section 10, in any event it just means enlarging it somewhat. The amendment that is being proposed would be:

> Strike out clause 1 and substitute therefor the following:
>
> 1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:
>
> '(2) Copies of the volume or volumes of the Acts referred to in subsection (1) shall be printed by the Queen's Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to' "
>
> 2. Strike out clause 2 and substitute therefor the following—

And then we go on and enact as it appears in clause 1 of the bill except we take out the words "in the most economical manner". It is very intelligible in this form. Now, if there is a motion proposing—

Senator Flynn: I suggest that Senator John M. Macdonald should move that, because it meets with the objection he first raised.

The Chairman: Senator Macdonald, is it moved by you?

Senator Macdonald (Cape Breton): I move it.

Senator Inman: I will second the motion.

The Chairman: Is there any honourable senator who wishes to make a presentation on this motion? All those in favour?

Hon. Senators: Agreed.

The Chairman: You will notice that there are three subsections in clause 2 of the bill, and the first one is made subject to subsections (2) and (3), yet, if you forget for the moment those words "Subject to this section", you have a direction that the statutes shall be printed in the English and French languages in such form, on such paper, and in such type, and that they shall be bound in such manner as the Governor in Council may prescribe by regulation. If you go on and read subsections (2) and (3) you will see that some limitations are put on the action by regulation, because they stipulate the form in which the marginal notes shall be printed, and also provide that, if practicable and convenient, the Statutes shall be bound in one volume.

Now, certainly the view in the committee this morning was that these are matters that would be controlled by regulation in the power that you give the Governor in Council in the first subsection to deal with the printing in the English and French languages.

I would construe "such form" to extend not only to the format but also to the inclusion of the French and English languages on the same page, if that is a decision he wishes to make. It does not specifically provide for that form of printing here because it is a matter of regulation. I would say that whether you are going to print in one volume or more than one volume depends on how much legislation there is, and that is something which should be regulated by the Governor in Council. They should have more flexibility in dealing with that and it is up to them, in a proper situation, to justify the expenditure of money in doing the printing. For instance, we have a Printing Committee of the Senate.

Senator Flynn: It is a joint committee.

The Chairman: If that committee feels that the expenditures are in excess of what is practical in the circumstances, it can call the proper officials here and make inquiry. Why should we attempt to include in legislation administrative matters—and some of them pretty administrative details down the line? I think that is the subject matter of regulation, properly speaking. Usually, our complaint is the opposite, that by regulation they are trying to legislate. This time, I think they are putting these subsections 2 and 3, which might well be administrative matters, in the legislation, and we do not need it, because the authority is there, anyway.

Therefore, what is proposed is that section 2 would read as follows. We strike out section 2 as it appears in the bill and then say:

> 2. Section 11 of the said Act is repealed and the following substituted therefor:
>
> 11. The Statutes shall be printed in the English and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.

In other words, legislatively we have given them the authority in this direction. We have created the authority and the Governor in Council can regulate it by regulation. Is that the view of the committee? If so, I think somebody might move it.

Senator Molson: I so move.

Senator Connolly (Ottawa West): I wonder if Mr. Ryan has any comment to make on that?

Mr. Ryan: In subsection (2)—and this is just for information—also, apart from the seven-point type in the margin, there is a requirement to refer to the year and chapter of any previous enactment that the text amends, repeals or changes. That particular direction sometimes finds itself in rules, orders and regulations about the printing of bills and statutes of legislatures, because of the convenience involved, of members who are studying a bill, enabling them to be referred to the chapters and amending bills, particularly to the sections. For instance, when you are dealing with the Criminal Code, unless you find a marginal note of that kind, you will not know how many amendments there have been during the year. That is why I would draw it to your attention. One could live without it. If you have it in your rules, you know it will be done, but I do not know if it will be in them.

The Chairman: Neither do we, but I would expect that the regulation would be wisely drawn.

Mr. Ryan: Yes, but this has been over the years a protection of the legislative body and a convenience of the legislative body, rather than a convenience of the executive.

The Chairman: I would have thought it was for the convenience of those who might have to consult the statutes.

Mr. Ryan: Mr. Chairman, I am not arguing against it, I am just putting the point.

Senator Connolly (Ottawa West): There is certainly no question in the minds of the members of committee who are lawyers, with reference to the year and chapter of previous enactments being of great convenience. I apologize, as unfortunately I was not able to be here this morning. Might it be wise, rather than strike out all of subclause 2 of the bill, all of clause 2 of the bill, to strike out the second line and say that the marginal notes of the statutes shall refer to the year and chapter of any previous enactment that the text amends, repeals or changes.

The Chairman: What I assume is that the Governor in Council is called on to make regulations in connection with the printing of the English and French statutes, as to their form. If we stop at that for a moment, obviously he has to say in what form he shall convey the English and French on the same page. This is the decision which will be made by an order in council, because this section of the statute does not say anything about that. It does not say that they must be bilingual to the extent of French and English on the same page, so that is a decision he has to make.

Another decision he has to make is as to the content that is going to be put on each page, if it is convenient or if it is for the protection of those using it, even for practising lawyers or for Parliament, as well as Members of Parliament—that would be the form the regulation would prescribe.

Senator Connolly (Ottawa West): In other words, they have thought about it and it will be in the regulation, if it does not appear in the act.

The Chairman: Yes. Senator Molson has moved this amendment. I did not hear who seconded it.

Senator Connolly (Ottawa West): You do not need a seconder.

The Chairman: Those in favour? Contrary, if any? It is agreed.

Shall I report the bill as amended?

Hon. Senators: Agreed.

Senator Kinley: Mr. Chairman I suppose now that every member will be getting the statutes in French, we will all get one which is in French and English under the same cover. In every part of Canada will that be official, in every court in Canada?

The Chairman: Yes. It is now, in all federal courts.

Senator Kinley: Can you plead in either language in the courts in Canada?

The Chairman: In the federal courts.

Senator Kinley: What about the Exchequer Court?

The Chairman: That is a federal court.

Senator Kinley: And the French courts—the county courts?

The Chairman: No.

Senator Kinley: You could not plead in the county court?

The Chairman: No.

Senator Kinley: They are under the control of the province?

Senator Connolly (Ottawa West): You can use French in Quebec.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

Complete Proceedings on *Bill S-5*,
Intituled:
"An Act to amend the Supreme Court Act".

WEDNESDAY, OCTOBER 9th, 1968

WITNESS:
Department of Justice: D. H. Christie, Assistant Deputy Attorney General.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

***Complete Proceedings on Bill* S-8,**

intituled:

"An Act to amend the Supreme Court Act".

WEDNESDAY, OCTOBER 9th, 1968

WITNESS:

Department of Justice: D. H. Christie, Assistant Deputy Attorney General.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28927—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	
Connolly (*Ottawa West*)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (*Cape Breton*)	White
Everett	MacKenzie	Willis—(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 8th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Phillips (*Rigaud*), seconded by the Honourable Senator Robichaud, P.C., for second reading of the Bill S-8, intituled: "An Act to amend the Supreme Court Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Phillips (*Rigaud*) moved, seconded by the Honourable Senator Robichaud, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

28927—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, October 9th, 1968.
(2)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Fergusson, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macnaughton, Molson, Rattenbury, Smith (*Queens-Shelburne*), Thorvaldson, Walker, White and Willis.—(27)

Present, but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance:
E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 copies in English and 300 copies in French of these proceedings be printed.

Bill S-8, "An Act to amend the Supreme Court Act", was read and considered, clause-by-clause.

The following witness was heard:

Department of Justice:
D. H. Christie, Assistant Deputy Attorney General.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

ATTEST.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, October 9th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-8, intituled: "An Act to amend the Supreme Court Act", has in obedience to the order of reference of October 8th, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 9, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-8, to amend the Supreme Court Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we have one bill before us this morning, Bill S-8, which proposes certain amendments to the Supreme Court Act. Since we are dealing with this bill in the first instance, I suggest that we print the proceedings.

Upon motion, it was *Resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators we have with us Mr. D. H. Christie, Assistant Deputy Attorney General whom I judge most of you here know. Since the bill does not enunciate a particular principle but consists of a series of amendments, the most convenient way would be to go through it section by section and get from Mr. Christie whatever explanation is required.

Hon. Senators: Agreed.

The Chairman: Mr. Christie, would you deal with Section 1 of the Bill?

Mr. D. H. Christie, Assistant Deputy Attorney General, Department of Justice: Mr. Chairman and honourable senators, the first clause of this bill would amend section 36 of the Supreme Court Act. That is the section under which the general right of appeal to the Supreme Court is given. The limitation prescribed now is $10,000 and the right of appeal that is given now relates to questions of law and fact or mixed law and fact. The amendment would confine appeals under that section to questions of law alone.

The Chairman: That is the only change?

Mr. Christie: That is the change.

The Chairman: Does not "mixed law and fact" involve a question of law?

Mr. Christie: To a point, but they have the three categories that are commonly referred to—law, fact, and mixed law and fact.

The Chairman: But this does not say pure law in the sense of no intrusion of fact. Would the amendment still permit cases where fact is intertwined with law and the law is dependent on that? Has not mixed law and fact been held to involve questions of law when you are trying to justify the right of appeal?

Mr. Christie: I do not think so, senator. As a matter of fact, if you have a real mixture of fact with law and the right of appeal related to law alone, then there is no jurisdiction.

Senator Thorvaldson: Who makes the decision as to whether it is law alone or mixed law and fact, Mr. Christie?

Mr. Christie: If there is any dispute about it, it would be the court.

Senator Thorvaldson: The whole court or part of the court or one judge?

Mr. Christie: This section deals with appeals and not with applications for leave so it would be the court, it would be either five, seven or nine judges.

Senator Thorvaldson: So actually there would be an appeal that reaches the court and then the court makes a decision that this is a question of mixed law and fact and consequently will not deal with it? Would that be how it would work?

Mr. Christie: That would be it, but if justice required that the court deal with the case, they could grant leave, under section 41. Section 36 gives an appeal as of right.

Senator Kinley: As a layman, may I ask what is the distinction which decides whether it is a question of law or fact or mixed law and fact?

Senator Thorvaldson: That is the $64,000 question.

The Chairman: Certainly there is a fundamental difference as to fact. A question of fact would mean a decision, on the basis of evidence that has been adduced, as to the weight of that evidence. If you have witnesses going into the witness box who are testifying from different points of view, and you have a set of facts that is not all one way, how do you make a decision then?

Senator Kinley: It is intertwined as to what is fact and what is law?

The Chairman: There is a question of fact to determine, what is the foundation of the case in fact, forgetting all about the application of law.

Senator Kinley: Of course if the evidence is false evidence, there would be a matter of fact to determine?

The Chairman: Yes, and that would involve the right of the judge to say "I believe the witness" or "I do not believe the witness".

Senator Kinley: That would be a matter of fact?

The Chairman: Yes. Are there any other questions? Shall we carry this section?

Hon. Senators: Carried.

The Chairman: It is carried.

Mr. Christie: Under section 39 of the Supreme Court Act it is possible with leave of the provincial courts of appeal to go direct to the Supreme Court without the provincial appellate courts considering the case. The limit prescribed in section 39 at present is $2,000. When section 36 was amended in 1956 to up the figure to $10,000 in that section, as a matter of logic they should have moved the figure from $2,000 to $10,000 in section 39. Owing to an oversight it was not done at that time and this is picking up that oversight.

The Chairman: For instance, if I applied to a single judge in the Supreme Court of Ontario for a writ of habeas corpus and he refused it, do you mean that I could by-pass the Court of Appeal in Ontario and go directly with leave to the Supreme Court of Canada?

Mr. Christie: No, because the appeals in habeas corpus in criminal matters are dealt with under the Criminal Code specifically.

The Chairman: That is correct.

Mr. Christie: So you would have to go in accordance with section 691 of the Criminal Code as amended in 1965.

The Chairman: You would have to go to the Court of Appeal with leave in the province and, if they turned you down, then you would have an appeal as of right to the Supreme Court of Canada.

Mr. Christie: Yes.

Senator Carter: I understand that a person now with a suit involving an amount under $2,000 will not, if we pass this section, be able to proceed. The amount would have to be up to $10,000 before he could appeal. Is that right?

The Chairman: Unless it involves a question of law or unless he gets leave.

Senator Carter: If this is passed you will still be able to get leave for a lesser amount?

The Chairman: That is right.

Mr. Christie: Under section 41.

Senator Thorvaldson: In other words, in every case where jurisdiction is restricted the litigant is entitled to apply for leave. Would that be a correct statement, Mr. Christie?

Mr. Christie: Not in every case. The rights of appeal in criminal matters are generally prescribed under the Criminal Code, but for civil matters I think basically that is a correct proposition.

Senator Connolly (Ottawa West): Mr. Chairman, may I ask Mr. Christie if in the rules of the Supreme Court of the United States there is a comparable section governing a minimum amount of money?

The Chairman: A minimum in what sense.

Senator Connolly (Ottawa West): In the sense of $10,000.

The Chairman: We are establishing here in respect of *per saltum* appeals, a $10,000 minimum, but that has been in section 36 since 1956 or 1957. What we are saying here is that

you can appeal, if you get leave of the highest court, notwithstanding that the limit works against you.

Senator Connolly (Ottawa West): I realize that. What I am asking is whether there is such a minimum in the rules of the United States Supreme Court?

The Chairman: I do not know about that, but there is a minimum in the Supreme Court of Canada Act. That is the $10,000 limit.

Senator Flynn: Would you indicate the reasons for restricting the appeals as we are doing now?

The Chairman: I think that is a fair question.

Mr. Christie: Are you going back to section 36, senator?

Senator Flynn: I am concerned with both sections, 36 and 39.

Mr. Christie: Section 39 is really something that should have been picked up back in 1956. So far as section 36 goes, the basic reason for restricting the jurisdiction that now exists under that section is that there has been a tremendous increase in the workload of the court and it is considered that the court should concentrate on settling important questions of law rather than questions of fact. They do not want to get into a situation where, for example, in an automobile negligence case, there are several volumes of evidence and counsel appearing before the supreme Court are going over the evidence of the various witnesses because there is a jurisdiction on questions of fact. Basically it is for those reasons. Now, I have here a letter which I received from the Registrar of the Supreme Court the day before yesterday. He illustrates the terrific increase in the workload of the court. For example, in 1940 they heard 14 motions and 72 appeals. In 1953 they heard seven motions and 101 appeals. In 1962 they heard 104 motions and 121 appeals. In 1967 they heard 118 motions and 167 appeals.

Senator Flynn: These facts are important.

The Chairman: Yes, these limits are. But, actually, the statistics in the 60s, if they indicate anything, would indicate that the $10,000 limit on appeals has not been a bar to appeals, because the number of appeals has substantially increased. The only limit we are adding today is on *per saltum* appeals, and there have been many of those.

Senator Flynn: I think the important point is that, owing to the increase in the volume of work in the Supreme Court, we should suggest these amendments and restrictions.

The Chairman: Section 2 carries. Section 3 simply provides for a quorum of the court in different proceedings.

Mr. Christie: That is correct. Generally speaking, applications for leave to the Supreme Court are heard by three judges, but there are a number of statutes which provide that a single judge can hear an application for leave to appeal. Now, the application for leave can be extremely important because, if you are not successful, your access to the court is cut off. Thus, it is felt that at least three judges should hear all applications for leave, and that will be the effect of this amendment.

Senator Connolly (Ottawa West): I do not object to the principle for the reason that you gave to Senator Flynn in respect of restricting appeals, but once you establish a quorum of three for all applications for leave, you are then loading the court with quite a bit more work, are you not? At least you are loading the judges as a whole with more work because you require more of them to attend on these applications.

Mr. Christie: Yes. It will have that effect because where one judge could dispose of the matter before, three will now have to consider it.

I might say that there will be no difference where the Crown is appealing in a murder case. The quorum will continue to be five. There is no change in that.

Senator Thorvaldson: Mr. Chairman, may I ask a question? Mr. Christie gave some figures a little while ago in regard to the number of motions coming before the court. I take it that these applications for leave to appeal were included in what you referred to as motions?

Mr. Christie: Yes, that is correct.

Senator Thorvaldson: Thank you.

The Chairman: Carried.

Senator Kinley: Is there anything in this act with respect to a case of delayed judgment; that is, one that is unduly delayed by the court?

The Chairman: I think what you mean to ask is: if there is a lengthy delay in delivering a judgment, what are the rights of the litigants?

Senator Kinley: The trial goes on but the judge does not give his decision. Sometimes it is delayed for a very long time. Is there any recourse for the litigants?

The Chairman: At the level of the Supreme Court of Canada I think the answer must be no. I think we have some provisions in the lower courts.

Mr. Christie: Not that I am aware of, senator. As I understand it the only recourse that litigants have is to go to the Chief Justice of the court and hope that it will be dealt with as a matter of administration.

Senator Kinley: I know of judges who have died before delivering a judgment.

The Chairman: There are provisions in the Exchequer Court Act to cover that situation. Over the years I have been involved in a few such cases. You can either have a new trial or you can agree to have another judge take the transcript of the evidence, hear argument, and then give his judgment.

Senator Thorvaldson: But that is only in the Exchequer Court, is it not?

The Chairman: I know that it is in the Exchequer Court and I think it is in the Supreme Court of Ontario as well. I do not know about the other provincial courts.

Senator Thorvaldson: I know it is in the Exchequer Court because in one case I had to go through an extra week of trial. The judge died with only one hour to go in the trial.

The Chairman: You should not have been so hard on him.

Senator Flynn: While we are discussing section 44A it might be appropriate to ask the witness if the department has considered amending section 41, which presently gives complete discretion to the court to grant leave to appeal. Has the department considered whether some guidelines should be inserted there?

Mr. Christie: Arising out of what considerations, senator?

Senator Flynn: Well, the court having full discretion, the door is open to any decision, and that would seem to run contrary to the purpose or objectives sought by this act, namely, to restrict the number of appeals and diminish the work of the court.

Mr. Christie: Oh, no, it is not intended to in any way interfere with the discretion that the court has under section 41, because it is felt they should have a wide discretion because justice, in a particular case that cannot be now anticipated, might require review by the Supreme Court.

Senator Flynn: Have you any statistics showing the proportion of leaves which are granted out of the number of applications made?

Mr. Christie: I do not have those statistics. I could get them, no doubt.

Senator Flynn: Have you any idea what the number is?

Senator Walker: Mr. Chairman, I would like to point out that in the week of October 1 there were eight applications. One was granted, one was reserved, and the rest were dismissed. In the week of October 7 there were nine applications. Two were granted, three were reserved, and the rest were dismissed. In other words, they have cut down the applications very considerably.

The Chairman: You mean they have cut down the number of successful applications.

Senator Walker: Yes, where leave to appeal is granted.

Senator Croll: Do you know whether any consideration has been given to increasing the number of judges of the court?

Mr. Christie: I have no information on that at all, senator.

The Chairman: It would be a question of policy.

Senator Croll: I realize that, but I thought it was in the realm of discussion.

Senator Thorvaldson: Of course these amendments would minimize the need for increasing the size of the court. The whole purpose of these amendments is to reduce the volume of work.

The Chairman: If you look at the statistics, I am not at all sure that the limitations so far have done that.

Senator Thorvaldson: But that is what these are intended to do.

Senator Burchill: How is it possible for a single judge to hear an appeal? It says here "The proposed amendment will eliminate this redundancy and, in addition, would require that all applications for leave to appeal to the Supreme Court be heard and disposed of by the court rather than, as in some cases at present, by a single judge of the court."

Mr. Christie: That is not in the present act. That is under special acts.

Senator Burchill: Would the amendment wipe that out?

Mr. Christie: It wipes it out. Single judges do not hear appeals, but applications for leave to appeal.

The Chairman: Shall that section carry?

Hon. Senators: Carried.

The Chairman: Section 4 simply strikes out a heading. I am interested to know why you are doing that. It strikes out the heading preceding section 57 and sections 57 to 60 of the said act are repealed.

Mr. Christie: Because section 57 deals with habeas corpus in criminal matters, and we are doing away with that jurisdiction in the court, therefore the heading goes out with the provisions to which it relates since they are being repealed. You see the heading deals with habeas corpus and that habeas corpus jurisdiction will be removed if the act passes, and therefore the heading goes with the sections.

The Chairman: What you are saying is that if we didn't repeal the heading, the heading would remain in the statute even though the section disappeared.

Mr. Christie: I see your point there. I suppose that as a practical matter the heading would go anyway.

The Chairman: However, we are not doing any harm by passing this. Shall this carry?

Hon. Senators: Carried.

The Chairman: There is, however, one matter. By repealing section 57, you have thrown any consideration of habeas corpus which the Supreme Court of Canada might have to the appellate jurisdiction only.

Mr. Christie: That is correct.

The Chairman: Arising out of that there are a couple of things I thought I should bring to the attention of the committee. I am not againt confining the jurisdiction in the Supreme Court of Canada to appellate jurisdiction, but I did go through this matter some years ago when I was more active in the courts and there had been several convictions under sections of the Criminal Code. This person had been sentenced to a very substantial fine on each charge and also to a jail term. In due course and within the limitations provided by law, the Crown appealed the sentence only. In the meantime the appeal did not come on for hearing for almost a year or maybe longer and the man paid his fine and had served his time and was a free man walking around when the appeal was heard. The court of appeal increased the sentence. Notwithstanding the proposition that I put to them that once I have served my time under a sentence I have the equivalent of a pardon under the Royal Seal, they decided that the sentence was not the kind of sentence that took all jurisdiction and terminated the proceedings until the sentence had been finally established by the last authority that had the right to deal with it which was the court of appeal. Then the question was what to do and where do you raise the question since there is no right of appeal from sentence to the Supreme Court of Canada. The procedure decided on was an application to a single judge of the Supreme Court of Canada for a writ of habeas corpus which he refused and then the court of appeal of the Supreme Court of Canada also refused it. But in the light of what is being done now, at least the man had his day in court. If you remember a few years ago Mr. Matheson, a member of the Commons, was here with some amendments to the Criminal Code dealing with the question of shopping around from judge to judge in the hope that you might get one finally who would issue a writ. Under the law as it now stands I can go to a single judge in the Province of Ontario and apply for a writ and if he refuses I can appeal to the appellate court. If the appellate court refuses I can go as of right to the Supreme Court of Canada, but the anomaly in the situation I have laid out is this: that if after the court of appeal had given a decision against the argument that there was no jurisdiction in the court, you then went to a single judge of the Supreme Court of Ontario for a writ of habeas corpus, he would feel bound by the decision of the court of appeal and would

refuse. Then you would go to the appellate court which had already decided it and you would end up in the Supreme Court of Canada anyway.

I am wondering whether full thought has been given to the position where habeas corpus might be invoked in relation to jurisdiction to change our very sentences, and whether what we are doing makes it abundantly certain that the right exists in some form to get somewhere for a review of habeas corpus in these cases.

Mr. Christie: Well, as you point out, senator, the Supreme Court of Canada has no jurisdiction over sentences. It does now have a jurisdiction as a result of the 1965 amendments to the Criminal Code to deal with habeas corpus in criminal matters and it is considered that that jurisdiction vested in that court by that amendment of 1965 is a full jurisdiction to deal with habeas corpus matters, and it is considered that the original jurisdiction that is the concurrent jurisdiction that single judges of that court now have should in the light of these amendments be done away with.

The Chairman: What I am thinking of is this: Instead of having to go to a single judge and then to the court of appeal and so ending up in the only court where there can be a review, the Supreme Court of Canada, why should there not be a right of appeal directly to the Supreme Court of Canada from whatever court has made the decision regarding jurisdiction?

Mr. Christie: You mean there should be a right of appeal direct to the Supreme Court circumventing the provincial Appellate Court?

The Chairman: Yes, by the *per saultum appeals* provision.

Senator Thorvaldson: Has the jurisdiction of the Supreme Court in original habeas corpus matters been used at all in the last few years?

Mr. Christie: It has. I have had only one application myself, but I would say that it has been used not infrequently in recent years. There was quite a significant case two or three years ago which involved Dr. Schumacher from Saskatchewan. He invoked the original jurisdiction.

Senator Connolly (Ottawa West): Having tried elsewhere also.

Senator Thorvaldson: In other words he shopped around up to the Supreme Court.

Mr. Christie: As I recall it he did make a motion in Saskatchewan but he also came down to the Supreme Court.

The Chairman: Any other questions? I suppose the changes being made here are all for the same purpose, that is tightening up the procedures and trying to eliminate appeals where you are not really doing any injustice but merely preventing the court from being overloaded.

Mr. Christie: That is correct, sir.

The Chairman: We come now to clause 5. This is procedural, I take it?

Mr. Christie: Under section 63 of the Supreme Court Act, provision is made that, in the absence of some statutory provision or an applicable rule in the rules of the Supreme Court, proceedings in appeals shall be in conformity with the practice of the Judicial Committee of Her Majesty's Privy Council. The rules of the Judicial Committee are very general in nature and of little practical value as a source of supplementary rules of procedure. Under the proposed amendment, the supplementary rules, as they may be required, will be prescribed by the Chief Justice or the senior puisne judge present. As a matter of fact, in regard to the rules of the Judicial Committee, I imagine that the ordinary practitioner whould find it difficult to put his hand on a set of them.

The Chairman: This is another step in the improvement of our procedure, so that this happens within Canada. Is the clause carried?

Hon. Senators: Carried.

The Chairman: Clause 6?

Mr. Christie: Under the present act, the rules fail to specify the time within which notice of appeal shall be filed. It is considered desirable that they should specify the time to be 21 days from the time prescribed by section 66—which is the time for launching an appeal—or such extended time as the judge may, under special circumstances allow.

The second point is that—this deals with questions when security is deposited in cash—it is considered there should be no need to make application to approve the same, and when the security has been depos-

ited, all the parties to the action should be notified within 7 days. Again, these are technical procedural matters.

The Chairman: The various subsections deal with the lodging of security. Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Clause 7.

Mr. Christie: Clause 7 is another oversight that is being picked up. When section 71 of the Supreme Court Act was amended under section 66, it provided that when security has been deposited as required by section 66, any judge of the court may issue his fiat to the sheriff, to whom any execution on the judgment has issued, to stay the execution. We should have included in that section reference to section 70 as well as to section 66, because section 70 deals with the giving of security for the purpose of staying execution.

The Chairman: That was the purpose of it, and you wanted it to be effective?

Mr. Christie: Yes. We should have included section 70 in 1956.

The Chairman: Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: It is carried. Clause 8?

Mr. Christie: Under the present law, an appellant can discontinue his appeal by simply giving notice to the other side. For obvious reasons, it is proposed that the appellant should also give notice to the court, so that the court will have formal notice that the litigation is at an end.

The Chairman: That seems reasonable.

Senator Thorvaldson: I wonder how it would be if it were overlooked?

The Chairman: Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: It is carried. Clause 9?

Mr. Christie: Section 106 of the Supreme Court Act provides for the use of law stamps. The use of these stamps is considered unnecessary to any reasonable accountancy system. On the advice of the late Auditor General, Mr. Watson Seller, this amendment is proposed, to do away with this method.

The Chairman: Shall clause 9 carry?

Hon. Senators: Agreed.

The Chairman: Clause 10?

Mr. Christie: This is consequential on clauses 3 and 4.

The Chairman: Regarding the list of statutes which you have appended, heretofore you would have to go to these special acts in order to find what the rights were to get to the courts?

Mr. Christie: That is correct.

The Chairman: Now you are attaching them here?

Mr. Christie: We are leaving them in the special acts but we are amending them so that if you are making application for leave under a special act you have notice in the special act that it will be heard by three judges.

The Chairman: Clause 10 refers to the schedule, so it ties it up?

Mr. Christie: That is correct.

The Chairman: Shall clause 10 carry?

Hon. Senators: Agreed.

The Chairman: Clause 11 deals with the proclamation. Shall clause 11 carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

Complete Proceedings on

Bill S-4, intituled: "An Act respecting the banking business in [illegible]"

Bill S-10, intituled: "An Act to amend the Canada Act"

Bill S-6, intituled: "An Act respecting The Canada Trust Company"

Bill S-7, intituled: "An Act respecting The Huron and Erie Mortgage [illegible]"

WEDNESDAY, OCTOBER 30th, 1968

WITNESSES:

Department of Consumer and Corporate Affairs: The Hon. Pierre Elliott Trudeau, Minister; C. R. Irwin, Chief, Precious Metals Division.

Department of National Revenue: J. G. Hood, Q.C., Deputy Minister, Operations; A. E. Kind, Assistant, [illegible] Customs.

Department of Insurance: R. Humphrys, Superintendent.

Canada Trust Company and Huron and Erie Mortgage Corporation: E. D. L. Miller, Assistant General Manager.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 3

Complete Proceedings on

Bill S-4, intituled: "An Act respecting the marking of articles containing precious metals".

Bill S-10, intituled: "An Act to amend the Customs Act."

Bill S-6, intituled: "An Act respecting The Canada Trust Company".

Bill S-7, intituled: "An Act respecting The Huron and Erie Mortgage Corporation".

WEDNESDAY, OCTOBER 16th, 1968

WITNESSES:

Department of Consumer and Corporate Affairs: The Hon. Ron Basford, Minister; G. R. Lewis, Chief, Precious Metals Division.

Department of National Revenue: J. G. Howell, Assistant Deputy Minister, Operations; A. R. Hind, Assistant Deputy Minister, Customs.

Department of Insurance: R. Humphrys, Superintendent.

Canada Trust Company and Huron and Erie Mortgage Corporation: E. D. L. Miller, Assistant General Manager (Finance).

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28929—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 8th, 1968:

"With leave of the Senate,

The Honourable Senator Hasings moved, seconded by the Honourable Senator Prowse:

That the Order of the Senate of Thursday, 3rd October, 1968, referring the Bill S-10, intituled: "An Act to amend the Customs Act", to the Standing Committee on Finance be rescinded; and

That the said Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

"Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Croll, that the Bill S-4, intituled: "An Act respecting the markings of articles containing precious metals", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 9th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill S-6, intituled: "An Act respecting The Canada Trust Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

28929—1½

The Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

"Pursuant to the Order of the Day, the Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill S-7, intituled: "An Act respecting the Huron and Erie Mortgage Corporation", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill be referred to the Standing Committee on Banking and Commerce."

The question being put on the motion, it was—

Resolved in the affirmative.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, October 16th, 1968.
(3)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Benidickson, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Everett, Fergusson, Gouin, Haig, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macdonald (*Cape Breton*), MacKenzie, Macnaughton, McDonald Molson, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Thorvaldson, Walker and White.—(29)

Present, *but not of the Committee:* The Honourable Senators Hastings and Methot.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of this day's proceedings be printed.

Bill S-4, "Precious Metals Marking Act", was considered, clause-by-clause.

The following witnesses were heard:
Department of Consumer and Corporate Affairs:

The Honourable Ron Basford, Minister.

G. R. Lewis, Chief, Precious Metals Marking Division.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee proceeded to the next order of business.

10.15 a.m.

Bill S-10, "An Act to amend the Customs Act", was considered, clause-by-clause.

The following witnesses were heard:
Department of National Revenue:

J. G. Howell, Assistant Deputy Minister, Operations.

A. R. Hind, Assistant Deputy Minister, Customs.

Upon motion of the Honourable Senator Hastings, it was *Resolved* to amend clause 4, which amendment appears by reference to the Report of the Committee on the said Bill, which appears immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 10.45 a.m. the Committee proceeded to the next order of business.

10.45 a.m.

Bill S-6, "An Act respecting The Canada Trust Company" and Bill S-7, "An Act respecting The Huron and Erie Mortgage Corporation", were considered together.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Caanda Trust Company and Huron and Erie Mortgage Corporation:

E. D. L. Miller, Assistant General Manager, Finance.

Upon motion, it was Resolved to report the said Bills without amendment.

At 10.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-4, intituled: "An Act respecting the marking of articles containing precious metals", has in obedience to the order of reference of October 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-10, intituled: "An Act to amend the Customs Act", has in obedience to the order of reference of October 9th, 1968, examined the said Bill and now reports the same with the following amendment:

Page 2: Strike out clause 4 and substitute therefor the following:

"4. Section 93 of the said Act is repealed and the following substituted therefor:

'93. The collector or other proper officer may cause any package of goods described in a bill of entry to be opened and the contents thereof to be examined for the purpose of making an appraisal or in order to verify the information given in such entry.' "

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred Bill S-6, intituled: "An Act respecting The Canada Trust Company"; and Bill S-7, intituled: "An Act respecting The Huron and Erie Mortgage Corporation", has in obedience to the orders of reference of October 8th, 1968, examined the said Bills and now reports the same without amendment.

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 16, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-4, respecting the marking of articles containing precious metals, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have four bills, to deal with this morning. The bill which we propose to take first is Bill S-4, respecting the marking of articles containing precious metals. Since the bill originated in the Senate, I suggest that we print the proceedings.

> Upon motion, it was *Resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

Honourable senators, we have with us this morning the Minister of Consumer and Corporate Affairs, the Honourable Ron Basford, and Mr. G. R. Lewis, Chief, Precious Metals Division.

Senator Benidickson, you gave the explanation in the Senate. Have you anything you wish to add?

Senator Benidickson: No, Mr. Chairman, except that I received great help from the departmental witness, Mr. Lewis. I feel that the Senate is complimented to have the new minister with us this morning to explain the bill and to answer questions respecting it. I understand that this is one of his first bills. I think he introduced another in the House of Commons but it has not been completed perhaps as expeditiously as I hope this one will be.

The Chairman: Mr. Minister, you have leeway in your explanations. Perhaps you have some general statement you may wish to make and then we could get down to the details of the bill.

Hon. Ron Basford, Minister of Consumer and Corporate Affairs: Thank you very much, Mr. Chairman. Honourable senators, as Senator Benidickson has explained, this is the first bill that I have introduced, and I am honoured that it started in the Senate. I am pleased to have the opportunity to appear before honourable senators this morning.

I am accompanied by Mr. G. R. Lewis, Chief of the Precious Metals Marking Division of the Department. The purposes of the legislation were well outlined in the speeches on second reading by Senator Benidickson and Senator Thorvaldson. I have read those speeches and there is not very much I can add to the excellent presentation they made. I have Mr. Lewis with me this morning in case there are some questions from honourable senators.

This bill deals with the products of an important segment of the business community in Canada. The history of legislation governing the marking of precious metals articles in Canada goes back to 1908, when the Gold and Silver Marking Act was enacted. Since that time, the trade through the Canadian Jewellers' Association has co-operated with the federal Government in the enforcement of the legislation to bring order to the market place in the quality marking and advertising descriptions used in association with articles containing precious metals.

In this industry there are continual advances of a technological nature in manufacturing techniques and production methods, and corresponding improvements in quality control of materials and. processes. These have become more numerous in recent years and it has become difficult for legislation in its present form to keep abreast of them.

28929—2

With the increasingly heavy legislative programs in recent years, it has been most difficult to obtain an opportunity to lay this type of legislation before Parliament.

I think that the Canadian Jewellers' Association first asked for this legislation in 1959.

The intent of the bill is to update the Precious Metals Marketing Act, Chapter 215 of the Revised Statutes of Canada 1952 and to provide the mechanics for more easily meeting technological change. The present act governs the markings and advertising descriptions of articles composed of gold, silver, platinum and palladium and articles plated with gold or silver. The act embraces numerous operative sections of a technical nature, defining material content for various classes of articles. Since almost all required amendments to this act relate to manufacturing techniques, it is considered advisable that the act be reconstructed to retain the present basic provisions and place the operative technical sections in regulations made under the authority of the act. Such basic provisions to be retained in the act relate to general requirements respecting correct quality marking and identifying trade marks; offences, penalties, inspection procedure, and authority for the Governor in Council to make regulations. The authority being sought in this bill is to transfer to regulation all technical provisions of the present act, which include definitions of material content, assay tolerances, permissible quality marks and exemption of certain functional parts of articles from assay. This structure will provide the required flexibility to keep operative provisions up to date and provide consumers with meaningful descriptions and protection.

Honourable senators, as I have said, if there are questions, either Mr. Lewis or I will be happy to answer them.

Senator Pearson: Have there been any changes in the markings of precious metals?

Hon. Mr. Basford: With the addition of the two new metals, platinum and palladium, we thought it would be wise to have one mark for all four precious metals. Therefore, the marking will be as provided in the act. It will be a maple leaf surrounded by a "C", with an insignia indicating the type of metal it is.

The Chairman: Are there any other general questions?

Senator Thorvaldson: Mr. Chairman, the whole act has been re-enacted instead of the old one being amended. Ordinarily the old acts are amended throughout the years. Is there any special reason for a whole re-enactment at the present time. Perhaps Mr. Lewis could give the answer to that.

Hon. Mr. Basford: Subject to what Mr. Lewis says, really the reason is that the amendments are rather extensive and it is simply easier to rewrite the whole act.

Senator Thorvaldson: It is just because of the extensiveness of the amendments. The principles remain the same. That is what I was getting at.

Hon. Mr. Basford: Yes.

The Chairman: I think for purposes of reference later, where you have substantial amendments it is better to do a new bill.

Senator Benidickson: I believe I said in the Senate chamber that in essence we are allowing more powers to be operated by regulation than by statute under this bill.

The Chairman: Yes, except that it would appear in the bill, senator, that the regulations are really part of the administration and not anything substantive in nature, which is the true purpose of the regulation. I do not know whether you wanted the minister to say that. I sort of cut in there, but I take it you agree with that statement, Mr. Minister.

Hon. Mr. Basford: Yes. If one looks at the old act, one sees a good many legislative requirements which appear on manufacturing processes, and it is very difficult in a changing industry to have these in legislative form, if legislation is to keep up to date with the industry and serve industry as this act is designed to do.

The Chairman: Are there any other general questions? If not, we can deal with this bill section by section. So far as section 2 is concerned, the interpretation section, are there any material differences there, Mr. Lewis, in the definitions?

Mr. Lewis: Not of a material nature. Paragraph (b) is identical except for the last part of the sentence, "other than an article or a part thereof designated by the regulations". This is removed from the definition of the word "article". It is a new definition.

Another change relates to the use of the words "precious metals". There is one definition of precious metals rather than four

individual definitions. These are the substances of the changes in section 2.

The Chairman: Are there any questions on the definitions?

Senator Carter: I notice that a large part of the act is taken up with the duties and the responsibilities of an inspector, "inspector" being defined in paragraph (d):

> "inspector" means an inspector appointed or designated in accordance with section 6;

But when you come to section 6 it says:

> 6. The Minister may appoint or designate any person as an inspector for the purposes of this Act.

It does not give very much information about what kind of person should be an inspector or what his qualifications should be. I might say that that seems to be a standard procedure, because there are a number of acts that have the same feature; they give a definition like this one in (d) and then they tell you to go to another section, such as section 6 here, and you find that the person, the inspector in this case, is appointed or designated by the minister. There have been some complaints about that. I was just wondering why this is so. Is this just an administrative device? Could we not give more details about what kind of person should be made an inspector? This is apparently a very important job.

Hon. Mr. Basford: I will let Mr. Lewis describe the kind of people who are already acting as inspectors, but I think it would be rather unwise to write into legislation the Public Service requirements for an inspector. However, the duties, responsibilities and rights of inspectors are set out in the act.

Senator Carter: Yes?

Hon. Mr. Basford: And so are the areas that he can look at and the powers that he has. They are carefully set out.

Senator Carter: Under the present act these could be ignored, really. If a person were foolish enough to do so, he could ignore what is set out. There is nothing to compel an inspector to be able to discharge that function—

The Chairman: You mean to be able to read? Does not the Public Service Act have some bearing on this?

Hon. Mr. Basford: I think the inspectors are required to follow the act under which they are operating and being paid as inspectors.

The Chairman: I am thinking more of the appointment.

Mr. Lewis: The duties are clearly outlined for inspectors. The experience requirements of handling jewelry articles preferably at the manufacturing level are not less than four years in one grade of inspector, and not less than six years in another grade. So they are familiar with the metals with which they are working. This is clearly defined in the Public Service Commission statement of duties for this position.

Senator Benidickson: Mr. Chairman, my colleague Senator Everett asked me, because I sponsored the bill in the Senate, under what area and section of the B.N.A. Act the federal Government has jurisdiction in this field. I confessed to him that offhand I could not say, but I did say that we have had legislation of this kind since 1908. Could our legal counsel throw some light on this?

Hon. Mr. Basford: Our position is that it is founded on the criminal jurisdiction of the federal Government, an act to prevent deception and fraud in the sale of precious metals.

Senator Benidickson: Thank you.

Senator Thorvaldson: Coming back to section 6, Mr. Chairman, which says that "the Minister may appoint or designate any person as an inspector for the purposes of this Act", does that means that this person is outside the Public Service or that the minister may appoint anybody from Canada as an inspector without that person's being a member of the Public Service?

Hon. Mr. Basford: No, senator. Inspectors are members of the Public Service and are hired in the normal way. It does not require direction from the minister to actually appoint inspectors for purposes of this act, to give them powers of entry and inspection and powers to seize, et cetera. But they are not ministerial appointments. They are Public Service appointments.

Senator Thorvaldson: That is what I wanted. They are designated by you out of the Public Service.

Hon. Mr. Basford: That is right.

The Chairman: The Public Service, I suspect after consultation with the department, senator, would set up the specifications for the job and then in the appointment qualifications the people applying would have to conform to Public Service requirements.

Senator Thorvaldson: How many inspectors are there in Canada and are they appointed exclusively for purposes of administering this act?

Mr. Lewis: There are six inspectors across the country. Three are located in Montreal, two are located in Toronto and one is in Vancouver. Their work is not entirely devoted to this act. They also enforce similar regulations relating to material contents of other products as well.

Senator Thorvaldson: That answers my question.

The Chairman: Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 3? This is just the prohibition requirement.

Senator Pearson: Does the dealer reporting precious articles have to inspect each one as it comes in or does he make an initial inspection and then report?

Mr. Lewis: There is nothing laid down except that it is an offence to import anything illegally marked. We endeavour as much as humanly possible to inspect daily the major ports of entry in order that, if there is something in contravention of the act, the importer can be so advised before he completes the importation.

Senator Pearson: What happens if an article is imported that is legally marked in the country from which it comes but falls below the standards required by this act? What happens then?

Mr. Lewis: Then the marking would have to be corrected to meet the specifications.

Senator Pearson: It would have to be labelled according to Canadian standards.

Mr. Lewis: It would have to meet the specifications of material content established for Canada. If the quality of the silver were below 925/1,000 pure silver, then it could not be sold in Canada. If it was 800, a figure used in European countries, and the word "silver" on it, this would have to be removed because 800 quality is not recognized as silver in Canada.

Senator Carter: That is when it is brought in for resale, but a person could bring—

Mr. Lewis: It only applies to dealers.

Hon. Mr. Basford: I think we should point out to Senator Carter subsection 4 of section 4 which recognizes the United Kingdom hallmark.

Mr. Lewis: Yes.

Senator MacNaughton: Mr. Chairman, how is it possible to inspect the major ports of entry, with only six inspectors daily?

Mr. Lewis: It is difficult, but most of the importation is done by the larger wholesale firms and they are located mainly in Montreal and Toronto where the inspections are concentrated. There are very few importations of any magnitude through other ports.

Senator Benidickson: Perhaps not in magnitude, Mr. Lewis, but sometimes my wife, when we are out driving in the automobile, asks me to stop when she sees an antique sign. I find that some of these people are direct importers. To what extent are markings and things like that checked?

Mr. Lewis: We receive co-operation from the customs officials in drawing our attention to any commercial importation points that we may not be inspecting regularly. We then get the information or details as to the type of marking on the article on which we can base a decision for the customs appraisers. It should be refused and held until we take the matter up directly with the importer.

The Chairman: Do you mean to say that the customs officials will hold for your approval what appears to be commercial importation?

Mr. Lewis: If the importation is obviously a violation, such as the mark 10 carat, and if it lacks the required registered trademark, the article is then considered incorrectly marked and may be held at that point of entry until we have discussed the violation with the importer.

Senator Benidickson: Does this come back to the jurisdiction under the criminal section of the B.N.A. Act?

Mr. Lewis: Yes. Marking is not mandatory; it is voluntary. If the article is marked, then it must adhere to the requirements as laid down in the act, but, as I say, it is not a mandatory marking bill.

Senator Thorvaldson: What do you mean by, it is not a mandatory marking bill? In other words, do you mean than an antique dealer can import metals from any country whether or not those metals are marked by that country and sell them without any markings on them? Is that what you mean?

Mr. Lewis: When I say that the markings are not mandatory, I mean that articles may be sold in Canada without any claim of quality being stamped on them, regardless of whether they are imports, domestic production or antiques. In other words, there is no compulsion that the articles be marked in the first place. If an article is marked, then it must be marked in accordance with the requirements set down in various sections.

Senator Thorvaldson: If it is marked in the country of origin—

Mr. Lewis: If it is marked in the country of origin, then the marking must be in accordance with the requirements.

Senator Thorvaldson: Is that what you mean?

The Chairman: If it is marked in the country of origin but does not comply with Canadian standards then it cannot be brought in and disposed of in Canada without the marking being changed to conform.

Senator Thorvaldson: But, at the same time, there is no prohibition against bringing in unmarked articles.

Mr. Lewis: Yes.

The Chairman: Is Section 3 carried?

Hon. Senators: Carried.

Senator Benidickson: Can we follow that up, taking the mark of 18 carat gold? Is there pretty well an international standard which applies throughout all countries in the world whereby that marking is accepted, or are there some countries where a certain carat of gold marking standard is not satisfactory to Canada?

Mr. Lewis: The marking itself "18 carat" means the same thing throughout the world. It is equivalent to the marking in the form of decimals. Take the example of 18 carat in Europe which may be stamped .750. The 18 carat means 18/24ths of pure gold or three quarters, and the .750 is three quarters. This is a universal type of marking, but it would probably arise if there were more liberal tolerances in the assay of articles, but the marking itself would be universal.

Senator Benidickson: Am I correct, Mr. Chairman and Mr. Lewis, as to my conception of this act that I presented to the Senate, that everything is voluntary on the part of those who present articles of precious metals, but that if they do present them they then must subscribe to your rules and regulations, but that somebody could present an article of any of these four precious metals without marking "let the buyer be aware"? Is that what you mean?

Hon. Mr. Basford: Yes, that is right, senator, and if he marks it in any way then it must be marked in accordance with this act. The practice is for Canadian jewellers to look for the mark, so there is a strong economic incentive for people to mark and, consequently, to mark in accordance with this act.

Senator Benidickson: They mark in accordance with the act, then the customer has some assurance of the liability.

Hon. Mr. Basford: That is right.

Senator Everett: If it has a foreign marking on it, it must then be marked with a Canadian mark in order to be retailed in Canada.

Mr. Lewis: No. If it is a British hallmark or a mark of another country which is in accordance with subsection 4, this truly and correctly indicates the quality of the precious metal.

Senator Everett: Do we accept other countries' markings in that case?

The Chairman: Only if they conform to our marking as to quality.

Senator Everett: If they are below our standards, does that mark have to be expunged?

Mr. Lewis: If it happened that it was below our standards that would be true, but I think all countries, if my memory serves me correctly, do conform in the matter of tolerances, which is where the problem would arise. However, lower quality than what we have in Canada is not recognized in any country, so this problem has not arisen. When we

say we recognize the mark of a foreign country, this is where the mark is applied by the government, not by the individual manufacturer in the foreign country. The articles are actually assayed and tested by the government departments and the mark is applied by them.

The Chairman: We come to that in section 4, which deals with quality, and the question we have been discussing with regard to the application of those trademarks of other countries which may appear on precious metals and still conform with our standards. Are there any further questions on section 4? Is the section carried?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 5? It seems pretty straight forward. Is this section carried?

Hon. Senators: Carried.

The Chairman: On section 6, we already dealt with that at the beginning, Senator Carter, so I take it we can carry that one.

Hon. Senators: Carried.

The Chairman: Then we come to section 7. Sections 7 and 8 refer to the duties and authority of the inspectors in carrying out their job. Are there any questions on those sections?

Senator Kinley: Are there any inspectors now?

The Chairman: There are six.

Senator Kinley: Do they anticipate having more inspectors?

Mr. Lewis: Not at this time, senator.

Senator Kinley: Section 6 says:

> The Minister may appoint or designate any person as an inspector for the purposes of this act.

Is not that in the act now?

The Chairman: This is a new act, not an amending bill.

Senator Kinley: Were there inspectors under the old act?

The Chairman: This will repeal the old act. Section 8 defines the duties and so on. Shall these sections carry?

Hon. Senators: Carried.

The Chairman: We come now to section 9 dealing with the regulations. Are there any questions on that? It deals with a recital of the items in respect of which regulations can be enacted and to that extent it is of an administrative character. Shall it carry?

Hon. Senators: Carried.

The Chairman: Section 10 deals with offences and punishment. Any questions?

Senator Carter: Are there any differences here from the old act? Are there any new requirements?

Hon. Mr. Basford: The penalty under section 2 used to be $25 minimum and $100 maximum. This is changed, as you will see, in the last few words of section 10 to a fine not exceeding $500.

Senator Benidickson: On this point, we had a discussion about a new format for presentation of bills. We have the French and English in two columns on the left. If there was a change in a bill, say an increase in penalty with regard to an offence, didn't we formerly have on the right hand side of the bill an explanation of the old and new form. What has happened to change this?

The Chairman: We had it on all amending bills. But this is a new bill.

Senator Walker: Mr. Chairman, under section 10 I see a penalty not exceeding $500. Supposing they found 10 articles at a time, does that mean $500 applying to each article if the magistrate so wished?

Hon. Mr. Basford: It would apply to each offence.

Senator Walker: So that if there were 10 articles involved it could be $5,000?

The Chairman: Up to $5,000.

Senator Thorvaldson: Conversely there might be a case where an importer imports, say, a million dollars worth of a certain article which would involve only one effence, and his fine, if found guilty, would be only $500.

Mr. Lewis: I believe each article would be regarded as a separate offence. This is the intent of the legislation, and by removing the minimum fine, if there were a dozen articles involved, you may get a conviction on the dozen offences. Depending upon the circumstances, the court could then impose the fine on one or two and suspend sentence on the

balance, but the conviction would automatically cause forfeiture of the articles.

Senator Thorvaldson: The magistrate then would have quite a problem on his hands as to penalty if there were a thousand or ten thousand articles involved.

Senator Kinley: Is there any international commitment involved with regard to the liability of importers for precious metals such as silver, gold and platinum coming into this country? If I buy a silver set in England and it is marked sterling and the inspector comes and finds that it isn't, who is responsible?

The Chairman: But you are not a dealer, and this act only applies to dealers. So far as you are concerned the ordinary standard would prevail—let the buyer beware.

Senator Kinley: But what do you do in the case of the sale of an estate of a person who has a lot of this?

The Chairman: Well, now you are raising a different question and we may not have all the answers here. If the estate employed a dealer to dispose of these articles, some question might arise.

Senator Kinley: But he would be the person responsible.

The Chairman: If he gets an agent to sell it he is not liable, but if he sells it himself he is. Shall this section carry?

Hon. Senators: Carried.

The Chairman: I should point out that in that section there is a time limit on instituting prosecutions in the last subparagraph. The time limit is a year from the date on which the subject matter of the complaint arose.

Section 11 deals with the disposition of articles upon conviction. Any questions?

Senator Gouin: What is meant by the reference to the Fisheries Act in subsection 3?

Hon. Mr. Basford: Section 64A of the Fisheries Act, and this is the explanation I have from the Department of Justice, carefully spells out the rights where the Crown has seized something that has been forfeited of a person other than the person who is responsible for the offence, and who has an interest in the forfeited article, but who is not, as I say, involved in the violation of the statute. The result is that there is a reference to the Fisheries Act so that these rights of the non-offending person are carefully spelled out, and the department has brought them now into this act. What is needed is a Crown Forfeiture Act which would spell out these rights applicable to all Crown Forfeitures.

Senator Desruisseaux: So that if the Fisheries Act were amended, we would have to amend this act too?

The Chairman: No, we would be subject to it in whatever form it was, and if the section still remained the same and retained the same designation, 64A, then we would be subject to it in that designation. If they repealed that and enacted another with the same number, then of course you would have a question as to the rights of non-offending parties.

Hon. Mr. Basford: I understand the Department of Justice keeps a careful track in cases where sections of one act impinge upon those of another.

Senator Macnaughton: The same situation would apply to the Trade Marks Act which I understand the minister proposes to amend at a later stage. Any changes in the Trade Marks Act would automatically be involved here too. There is a section here that refers to the subject of the Trade Marks Act, as amended in the future.

Hon. Mr. Basford: The trade mark must be registered under the Trade Marks Act. If we were completely to repeal the Trade Marks Act, which is a rather unlikely possibility, then, of course, there would be no requirement for registration. As long as there is a Trade Marks Act, which I would suspect would be for some time to come, the mark under this act would have to be registered under the Trade Marks Act.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 12 deals with the "Certificate of 'Master or assayer." This is again in the usual form, I take it?

Hon. Mr. Basford: Yes. There is no change from the previous act.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 13 provides the transitional, repeal and coming into force provisions. This is where you have a repeal of

the present act, Senator Kinley, provided for. Shall this carry?

Hon. Senators: Carried.

The Chairman: And then section 14, the date of coming into force. Carried?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Carried.

The Chairman: Thank you, Mr. Minister.

Hon. Mr. Basford: Thank you very much, Mr. Chairman and honourable senators.

Whereupon the committee concluded its consideration of the bill and proceded to the next order of business.

Ottawa, Wednesday, October 16, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-10, an Act to amend the Customs Act, gave consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

We have before us for consideration *now* Bill S-10, an act to amend the Customs Act.

The witnesses are: Mr. A. R. Hind, Assistant Deputy Minister, Customs Mr. J. G. Howell, Assistant Deputy Minister, Operations; Mr. Andre Senecal, Director, Port Administration; and Mr. Robert Fraser, Customs Appraiser.

Senator Hastings, you gave an explanation of this bill in the Senate. Is there anything you would like to add?

Senator Hastings: No, Mr. Chairman, I have nothing to add, except to state that the purpose of the bill is to up-date and improve the procedures of the Customs, and to give legislative authority, as recommended by the Public Accounts Committee in the other place and as concurred in by the Auditor General.

I do have an amendment to propose, as we proceed.

The Chairman: Are you going to carry the ball on this, Mr. Howell?

Mr. J. G. Howell, Assistant Deputy Minister, Operations, Department of National Revenue: I will, Mr. Chairman.

The Chairman: If there is a general statement that you would like to make first, this is the time for it.

Mr. Howell: Mr. Chairman, I have no general statement prepared, but I may say that the amendments contained in this bill, S-10, were largely brought about by procedures which the department adopted to enhance its operations and which, ultimately, the Auditor General felt should be covered by legislation.

Practically all the matters were discussed in the Public Accounts Committee of the Commons, where it was recommended that the practice be followed which we were following, but that our act be amended and brought up-to-date. This is the reason for this particular bill, S-10, at the present time.

Shall I deal with the sections, Mr. Chairman?

The Chairman: Yes, we will start with section 1, if you will give an explanation. Then you can introduce your amendment at the appropriate time, Senator Hastings.

Mr. Howell: In section 1 we have left out the last paragraph of section 23(2), where we were required to destroy goods which could not be sold for duties and taxes and other purposes. It was always the feeling of the department that this was a waste of good property and that we should, if we could, sell the goods by public auction to get the duty and taxes out of it. This was fully agreed to, and the bill has been amended to provide that we do not have to destroy and we can sell by public auction or public tender.

The Chairman: Still dealing with section 1, is this the section concerning which you have an amendment, Senator Hastings?

Senator Hastings: I would like to know why we say in section 1 "duly entered within one month". This is the only place in the act where the term is measured in months rather than days. All the others are days—thirty,

sixty, ninety days; and in this particular clause you say "one month".

Mr. Howell: I am not quite sure I know the explanation, but I think it is on the basis that we are talking about warehouses, and the warehouse rent is usually based on one month and not a number of days. I think this is probably the reason it is used there.

Senator Hastings: If we are going to be consistent, should we not say "thirty days"?

Mr. Howell: It has always read like this, but we can change it. We spoke to our lawyers about this point and they said, "It has always been one month.' 'If goods go into warehouse on the 28th of the month, they are there until the next 28th. If you put them in on the 5th, they are there until the 5th of the next month.

Senator Hastings: But the length of the months varies—28, 30, 31 days. When you refer to days 17 times in other places in the act, it would be consistent to refer to "30 days" in this clause.

The Chairman: The difference is that in the subsection you are referring to you are talking about "not duly entered within one month"—that is, into warehouse.

In section 2 they talk about "within thirty days," but this is not in relation to the entering into warehouse. It is the time limit you have after entry or landing of any goods. It applies to different circumstances, so consistency would not necessarily be a virtue there.

Senator Thorvaldson: Supposing the goods come into warehouse on February 28 and they are there for one month, until March 28; but if you come in on March 1, it is a 31-day month.

Mr. Howell: Yes.

Senator Kinley: It seems to me the only difference is the destruction of goods. The amendment does not provide for destruction of goods. The law used to be that they would be destroyed. What action do you take now when you make the sale yourself?

Mr. Howell: We sell the goods.

Senator Kinley: But do you give the importer anything that is left?

Mr. Howell: Yes.

Senator Kinley: Otherwise, under the old act, you destroyed the goods.

Mr. Howell: Yes, the law said to destroy the goods, but we actually did not; we sold them for duties and taxes.

Senator Carter: What do you do with beer now, do you sell it or does it still go down the drain?

Mr. Howell: No, we cannot sell alcoholic beverages.

Senator Thorvaldson: I think that is a terrible waste.

Mr. Howell: Under the Importation of Alcoholic Liquors Act, passed in 1928 after a long series of very unfortunate circumstances along the Canadian-American border, this act stated that none but liquor commissions may import liquor into Canada, either from outside of Canada or inside Canada.

Senator Thorvaldson: I think we should get sensible and do some revising of those provisions.

The Chairman: The only difficulty you have is that you have one purchasing authority in each province that is very anxious that as much revenue as possible should be produced from that purchaser. To make assurance doubly sure, they have no competing purchaser

Senator Thorvaldson: But the fact is that these circumstances create very big waste, economic waste, which as sensible people we should not tolerate in this country any more—whether it concerns alcoholic beverages or any other kind of confiscation of goods seized under any act whatsoever.

The Chairman: If, instead of destroying them you distributed them to, say, some of the welfare agencies, you can imagine the howl that would be raised—not necessarily by the residents, but by those charged with the administration of welfare.

Mr. Howell: The liquor boards cannot very well buy this liquor from us because this may be a brand they have never purchased and do not carry; it might be of a different strength, different stock, different flavour, and consequently, they do not put it on their shelves.

Senator Macnaughton: May I point out that we have the jurisdiction on the Hill to open up a depository.

The Chairman: That is not covered by the bill before us. Are there any other questions on section 1 of the bill? Does section 1 carry?

Hon. Senators: Carried.

The Chairman: Have you any comment on section 2 of the bill, Mr. Howell?

Mr. Howell: I think this is the same as the other one.

The Chairman: Yes. Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 3? This is simply giving the importer an opportunity to get out of trouble, is it not?

Mr. Howell: This is just the same as the other one except that it applies to goods in the warehouse, and not goods imported.

Senator Thorvaldson: Mr. Chairman, I should like to go back to section 2, if I may. I observe that the period is 30 days there.

The Chairman: Yes, I pointed that out a while ago. The period of a month is in relation to entry into warehouse, and it is a well understood period in respect of the occupation of premises. Thirty days is simply a time limit within which certain things may happen. I do not think there is any relationship, or need be any relationship, in the language.

Senator Kinley: Is there any chance here of the importers not having to go through all this business?

Mr. Howell: He may bid at public auction, or by public tender.

Senator Kinley: For instance, after you advertise a sale and go through all this paraphernalia that you have here, can you say to him, "Look, these goods are here. What will you give them?"

The Chairman: No.

Mr. Howell: He had his opportunity when he imported of paying the duties and taxes.

Senator Kinley: It says:

> The purpose of this amendment is to remove the obligation to destroy goods abandoned in accordance with this section that cannot be sold for a sum sufficient to pay duties and charges thereon. The amendment set out in clause 10 is related to this amendment.

I thought that that meant he could come in and buy the goods.

The Chairman: Only at public auction. He competes with everybody else.

Senator Kinley: Suppose nobody else bids.

The Chairman: Well, he can bid. Does section 3 carry?

Hon. Senators: Carried.

The Chairman: Section 4?

Senator Hastings: Section 4 was inserted to provide more flexibility in inspection at customs. However, it is the opinion of the legal counsel that we have tied our hands by using the phrase "in the presence of the importer thereof or his agent", because this would make it inoperative at the moment. I propose, therefore, that this clause be amended by striking out the words "in the presence of the importer thereof or his agent".

The Chairman: What is the effect of that?

Senator Hastings: Would you care to answer that question, Mr. Howell?

The Chairman: In practice, how do you do it?

Mr. Howell: In practice we do not require the presence of the importer or his agent to open goods.

The Chairman: What procedures for the protection of your own people do you employ in connection with the opening of goods if the owner or importer is not there?

Mr. Howell: We do not say that by law a person should be there. What we say is that we would prefer him to be there. He is usually there, but usually goods are opened in a warehouse or a postal branch where there is a large number of employees, and more than one person opening a package, and there is another appraising the contents. Therefore, you do have more than one person present.

The Chairman: Would it slow down the process if instead of "in the presence of" we said "on notice to"?

Mr. Howell: The importer has to have notice of goods arriving in order to be able to present his entry. That is when the entry is presented.

The Chairman: And this refers to opening for the purpose of examination?

Mr. Howell: Yes.

The Chairman: Yes, I see.

Mr. Howell: You will notice that we struck it out old section 93 because it had relation only to the entry of goods where there was a suspicion of fraud. Actually, I do not think we have ever had a case of fraud here, and even if we did suspect fraud we would be obliged for our own protection to call the importer in. I do not think it is necessary to have those words in here. We did not notice the problem until a few days ago, but this would force us to require the importer to be present every time we opened a package, and this would stop our operations.

The Chairman: What is the view of the committee? Is the committee prepared to amend this section by striking out those words?

Senator Thorvaldson: I think Mr. Howell can speak to that better than any other person here. He probably was speaking to it, but I did not hear what he said. However, it seems to me that you create for yourselves a great administrative problem by putting in those words. What happens if the importer says he will not go? Probably you were referring to that.

Mr. Howell: Yes, I was referring to that, because the release of goods would come to a standstill if we had to wait for the arrival of the importer or his agent.

Senator Thorvaldson: He may never come.

Mr. Howell: That is right, he may never come.

Senator Carter: Is this a new section What did you do previously?

Mr. Howell: Look at section 95(1) on the right hand page. It is one package in ten, do you see?

Senator Carter: So you had the right to open in one in ten, whether he was present or not?

Mr. Howell: That is right.

Senator Carter: How did this provision with respect to having a person present arise?

Mr. Howell: Are you referring to the words "in the presence of", and so on?

Senator Carter: Yes.

Mr. Howell: Actually they came out of section 93.

Senator Carter: I see.

Mr. Howell: There was a little mixup there.

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: So, we will amend the new section 93 by striking out the words "in the presence of the importer thereof or his agent".

Senator Thorvaldson: I take it that the department wants that?

The Chairman: The department supports the amendment.

Section 5: This is simply the repeal of sections 95 to 97 of the act. These were specific provisions in connection with examinations, and they are no longer necessary. Is that correct, Mr. Howell?

Mr. Howell: These sections had reference to an examining warehouse. We no longer send goods to a central warehouse, because we examine goods on the spot in the warehouse at which they arrive in Canada, whether they arrive by steamship, railway, highway, or air. We do not bring goods into a central point.

The Chairman: Section 6, at the top of page 3, deals with refund for alleged inferiority or deficiency. This has to do with sales tax, does it not?

Mr. Howell: No, sir.

The Chairman: Has this also to do with customs entry?

Mr. Howell: Yes.

The Chairman: If you are looking for uniformity, Senator Hastings, I would point out that you have a period of ninety days here.

Senator Hastings: But it is still stated in days.

Mr. Howell: I will call on Mr. Hind, the Assistant Deputy Minister, Customs, because this is in his area.

Mr. A. R. Hind (Assistant Deputy Minister, Customs, Department of National Revenue): Mr. Chairman, this has the effect of extending to 90 days, from the existing 30 days, the period of time in which an importer can report to the collector any shortage of goods or any deficiency in quality of the goods. Heretofore it has been 30 days, although I should say that there is in existence now an order in council which increases the period

from 30 days to 90 days. However, it was felt that rather than having to lean on an order in council for this authority we should have it in the act.

The Chairman: This is a relieving provision, and is of benefit to the importer?

Mr. Hind: Yes.

The Chairman: And it is consistent with your practice?

Mr. Hind: Yes.

The Chairman: Does section 6 carry?

Hon. Senators: Carried.

Senator Isnor: It covers quantity as well as quality?

Mr. Hind: Yes, sir.

The Chairman: Have you any comment on section 7, Mr. Howell?

Mr. Howell: This again comes under Customs.

The Chairman: Mr. Hind?

Mr. Hind: This is a new section which will give the department authority to continue to act as it has been acting for many, many years in the past. In the Customs Tariff rates of duty can vary depending upon the person importing the goods, or the use to which the goods are put. As an example, a university or a hospital is permitted to bring in certain named goods at a lower rate of duty than the average individual would pay. Past practice has been that when an importer has imports goods for stock and does not know to whom the goods will be sold, he pays the rate of duty as required under the law. If subsequently he sells the goods for an exempt use or to an exempt individual, in the past we have entertained refund claims. In other words, we require the importer to pay only the rate of duty that would have been payable had the final purchaser been the importer of record. The Auditor General felt that we had been honouring these refund claims without proper authority. As a result we are now suggesting an amendment to the Customs Act which will give us authority to continue our past practice.

The Chairman: Shall section 7 carry?

Hon. Senators: Carried.

The Chairman: We pass to section 8.

Mr. Hind: This again is a change which has been made as a result of a comment by the Auditor General. It relates primarily to airlines. Traditionally vehicles have been exempted from the payment of duty and tax when they engage in international traffic. We have a problem, however, when dealing with airlines, some of which operate domestically in addition to operating internationally. When they operate domestically both duty and tax have to be paid.

Our problem is to determine the proper amount to refund in respect of the time the aircraft is operating internationally as opposed to domestically. In the past our practice has been to work on an estimated basis, based on a formula which very largely takes into account the number of miles flown by the aircraft internationally as opposed to the number of miles flown domestically. This new section is for the purpose of enabling us to continue to operate as we have in the past.

Senator Laird: I see this is subject to the consent of the party involved. Supposing that party does not consent, what happens?

Mr. Hind: I must say that we have not run into problems of this nature in the past. In establishing the formula we normally sit down with the airlines and have a meeting of the minds in establishing the formula approach.

Senator Laird: Supposing the airline does not consent, do you then arbitrarily apply your own formula? Have you power to do that?

Mr. Howell: Actually we would charge full duty and tax; you apply the tariff.

The Chairman: Shall section 8 carry?

Hon. Senators: Carried.

The Chairman: We now pass to section 9.

Mr. Hind: Section 9 represents a tidying up operation. It gives the importer 90 days in which to bring to the attention of the local collector any misdescription of goods on the invoice. At present the period is 30 days and it is felt that in today's way of doing business 30 days are not quite sufficient. It has been suggested that we make the period 90 days, which is in keeping with what we are doing in respect of the shortages of goods and the inferiority in quality, which we have examined in section 6. This again is by way of relief to the importer.

Senator Hastings: I have the brief of the Canadian Chamber of Commerce regarding a 90-day reappraisal period, saying that the importer is confined to 90 days while the minister has two years in which to reappraise.

Mr. Hind: That is in another section of the Customs Act.

Senator Hastings: This refers to section 43. Would you care to comment on that?

Mr. Hind: Section 43 does indeed give the importer 90 days in which to contest a ruling of the department, be it on value or on rate of duty. It is true that there are subsections in the same section which give a dominion customs appraiser two years in which to make a re-determination of the value or classification. There are a number of reasons why we feel we should not extend the period to the importer beyond 90 days.

If we are looking, for example, at a claim for inferiority in quality it is almost essential that this be brought to the attention of the customs authorities as soon as possible because physical examination of the goods is required, or if there is a shortage claimed customs officers must examine the importation to see if the shortage exists. We feel we can do this within a 90-day period, but if we leave it for two years it will make it almost impossible for us to determine whether there is an inferiority in quality of the goods or a shortage of quantity of goods imported.

Senator Hastings: I appreciate having 90 days with respect to shortage or quality, but on reappraisal you also confine them to 90 days while your minister has two years in which to reappraise.

Mr. Hind: As a matter of practice, the minister, the deputy minister and the dominion customs appraisers do not go back beyond the 90 days even though the two-year period is there. In addition, we lean upon this two-year period in order that the deputy minister may act in relief of an importer. In other words, while under section 43 the importer is restricted to 90 days in which to claim overpayment, if it is found that there was a ruling in existence which backs up the submission by the importer and the importer did not come to us within a 90-days period, the deputy minister can, will and does use the two-year period in which to pay the refund claim.

Senator Hastings: To reappraise?

Mr. Hind: Yes, sir.

Senator Isnor: You would have very, very few of these cases.

Mr. Hind: We have a fair number of such cases.

The Chairman: Shall section 9 carry?

Hon Senators: Carried.

The Chairman: We now come to section 10, which deald with sales by public auction or tender. The only additional words appear to be "by public tender".

Senator Carter: I think Mr. Howell answered this question in reply to Senator Kinley earlier but I am not sure. Can the person who forfeited goods buy them back under tender?

Mr. Howell: If we were the highest bidder on a tender, yes.

Senator Carter: If he had forfeited them because they were illegal?

Mr. Howell: It would not necessarily be because they were illegal. He might have abandoned them in the warehouse, or he might not have been able to pay for the goods at the time and get them out of bond.

Senator Carter: This would not apply to goods forfeited because they were illegal?

Mr. Howell: Illegally imported because they were smuggled?

Senator Carter: Yes.

Mr. Howell: If they were smuggled they would be sold by auction, yes.

The Chairman: Shall section 10 carry?

Hon. Senators: Carried.

The Chairman: Section 11 is simply procedural. Are there any questions? Shall the section carry?

Hon. Senators: Carried.

The Chairman: Section 12. Have you any comment on that, Mr Hind?

Mr. Hind: This amendment is consequential on the amendments of some previous sections, under clauses 4 and 5 of the bill, where the words "examining warehouse" were eliminated. This amendment to section 216 is a consequence of that.

The Chairman: It is safeguarding the position.

Senator Kinley: Who has the lawful authority in regard to the practice in the Customs? It is the officer who makes the submissions to the department?

The Chairman: Under an earlier section which we were dealing with, the Customs officer opens the package, when he is given the right to examine.

Senator Kinley: On the question of the lawful authority, it says "any person who, without lawful authority". The person who has lawful authority is the customs officer?

The Chairman: Yes. Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill, and proceeded to the next order of business.

Ottawa, Wednesday, October 16, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, respecting the Canada Trust Company and Bill S-7, respecting the Huron and Erie Mortgage Corporation, gave consideration to the bills.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, since these bills originate in the Senate, we should report the proceedings.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, since these two companies are related, I suggest that in our consideration of them, in the verbatim reporting, and in our Report to the Senate, we deal with the two bills together. Is that agreed?

Hon. Senators: Agreed.

The Chairman: We have with us this morning Mr. R. Humphrys, Superintendent of Insurance. Mr. Humphrys, in accordance with the usual practice, would you give us an explanation as to what these bills propose?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, these two bills are, in a sense, companion bills. The Canada Trust Company is very well known, one of our major trust companies; and The Huron and Erie Mortgage Corporation is a very large mortgage loan company.

The two companies are associated with the Canada Trust Company as a wholly-owned subsidiary of the Huron and Erie Mortgage Corporation. The two companies operate together and have the same operating staff and share the same offices. The boards of directors are not identical but there is considerable overlapping.

The purpose of these bills is merely to increase the authorized capital stock of each company. The department has no objection to that. In fact, it is necessary, as a company grows in size, to increase the capital, in order to maintain an adequate safety margin for the deposits.

The Chairman: That is, as between deposits and capital?

Mr. Humphrys: This company has grown to the size where it needs to increase its capital in order to provide this safety margin for expected future growth. That is the purpose of this proposed amendment, and there are scarcely any further comments I can make at the moment.

Senator Kinley: Could Mr. Humphrys say whether any banks have control of the shares of the Canada Trust Company or of the Huron and Erie Mortgage Corporation?

Mr. Humphrys: No, all the shares of the Trust Company are owned by the Huron and Erie Mortgage Corporation.

Senator Kinley: Sometimes trust companies split things up to bring themselves within the law with regard to bank ownership. That is not apparent here?

Mr. Humphrys: No, there are no shares of the Canada Trust Company in any hands except those in the parent company, the Huron and Erie Mortgage Corporation, and the qualifying shares owned by directors.

Senator Kinley: The Canada Trust Company has had its name for a long time?

Mr. Humphrys: Yes, since the turn of the century, since 1901.

Senator Kinley: In terms of events, regarding trust funds now, the names are rather similar between one and another?

Mr. Humphrys: Indeed, there might be an argument today, if they were seeking those names.

Senator Macnaugthon: In essence, the company is doing so well it needs more capital?

The Chairman: It is that simple, yes. There is a relationship between deposits and the paid-up capital.

Senator Macnaughton: I understand that these companies are independent of any bank control?

Mr. Humphrys: Yes.

Senator Kinley: In the case of the Mortgage Company, is it attached to the banks at all?

Mr. Humphrys: No. The control of the Mortgage Company does not rest in any single shareholder. Some banks may have shares in a mortgage company.

Senator Leonard: Is it contemplated that the situation will still continue with respect to additional shares, that they will be held by the Huron and Erie Mortgage Corporation for the Canada Trust Company?

Mr. Humphrys: That is my understanding.

Senator Leonard: The borrowing power, under the general terms of the act, is only affected through the increase in capital of the Huron and Erie Mortgage Corporation?

Mr. Humphrys: That is so. The law requires that the two companies be consolidated for testing of borrowing power.

Senator Isnor: I am wondering regarding the number of shares and the amount. They state $20 per share. Am I wrong in that, that later on they will come back and ask for another re-appraisal, to $10 a share, to make it more uniform with the market?

Mr. Humphrys: This bill will establish the par value of the shares at $2 each, so this will subdivide the shares as compared with the present par value.

Senator Haig: What is the market value of the shares at the present time?

Mr. Humphrys: The market value of the Huron and Erie shares is around the $14 level. It has been between $14 and $15.

Senator Carter: Do these two companies operate independently?

Mr. Humphrys: No, senator. They operate as associated companies. They are under the same management staff.

Senator Carter: How do they proceed for income tax? Do they pay income tax as one company or as two companies?

Mr. Humphrys: As two companies.

The Chairman: If there are no other questions, shall I report the bill without amendment?

Hon. Senators: Agreed.

The Committee then adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 4

Complete Proceedings on

Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company"; and

Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada".

WEDNESDAY, OCTOBER 23rd, 1968

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

British Northwestern Insurance Company: James K. Hugessen, Counsel.

Aetna Casualty Company of Canada: J. H. C. Clarry, Q.C., Counsel. G. E. Rhine, Vice-President, Field Administration Department, Aetna Casualty and Surety Company, Hartford, Connecticut.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28991—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnanughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 1st, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Molson moved, seconded by the Honourable Senator Smith (*Queens-Shelburne*), that the Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Molson moved, seconded by the Honourable Senator Smith (*Queens-Shelburne*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 16th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

28991—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, October 23rd, 1968.
(4)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien (*Bedford*), Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Everett, Fergusson, Gouin, Hays, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macnaughton, McDonald, Molson, Smith (*Queens-Shelburne*), Thorvaldson and Willis—(23).

Upon motion, the Honourable Senator Leonard was elected *Acting Chairman.*

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of this day's proceedings be printed.

Bill S-9, "An Act respecting British Northwestern Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

British Northwestern Insurance Company:

James K. Hugessen, Counsel.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.45 a.m. the Committee proceeded to the next order of business.

Bill S-11, "An Act to incorporate Aetna Casualty Company of Canada", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Aetna Casualty Company of Canada:

J. H. C. Clarry, Q.C., Counsel.

G. E. Rhine, Vice-President, Field Administration Department, Aetna Casualty and Surety Company, Hartford, Connecticut.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, October 23rd, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada", has in obedience to the order of reference of October 16th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

WEDNESDAY, October 23rd, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company", has in obedience to the order of reference of October 1st, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 23, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-9, respecting British Northwestern Insurance Company met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, in the absence of the chairman is it your pleasure to elect an acting chairman?

Senator McDonald: I move that Senator Leonard be acting chairman.

The Clerk of the Committee: Is it agreed that Senator Leonard be acting chairman?

Hon. Senators: Agreed.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us today two bills that originate in the Senate. Do we have the usual motion for the printing of 800 copies in English and 300 copies in French of our proceedings?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: The first item on our agenda is Bill S-9, respecting British Northwestern Insurance Company. This bill was sponsored by Senator Molson, and there are witnesses present from the company in the persons of Mr. R. D. Allan, Secretary Treasurer; Mr. I. B. Hurst, Underwriting Manager, and Mr. James K. Hugessen, Counsel. Also present is Mr. R. Humphrys, Superintendent of Insurance.

Do you wish to speak to the bill, Senator Molson?

Senator Molson: I do not think so, Mr. Chairman. As the representatives of the company are here, I think it would be better if they proceed.

The Acting Chairman: Shall we follow the usual practice of asking Mr. Humphrys to come forward as a witness?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Humphrys, would you tell the committee your views on the bill?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill, as has been explained, is to change the name of the British Northwestern Insurance Company, and to increase its capital.

This company is a federally incorporated company transacting fire and casualty business in Canada. It is a subsidiary of the Eagle Star Insurance Company, a British Company of world-wide renown and a company that is very old and very large.

The change of name is desired on the part of the parent company to identify its subsidiary more closely with this group. It also indicates a desire on the part of the owners of the company to consolidate their Canadian operations, and to direct more of their Canadian activities through this Canadian company.

The parent company, the Eagle Star Insurance Company, also does insurance in Canada. It is registered under the Canadian and British Insurance Companies Act, and it has operated under its own name and through its subsidiary, and also formerly through two other subsidiaries. It intends, however, to concentrate its efforts more through this particular company, and wishes the change of name, as I say, to identify the company more closely with this group.

The request for an increase in capital is part of this program since if the volume of business written by this company increases it will from time to time need to increase the capital in order to provide the necessary safety margin for the policyholders.

Senator Croll: Is there not a company named the Eagle Star Insurance Company now?

Mr. Humphrys: Yes, it is a British company, the parent of this company.

The Acting-Chairman: Are there any other questions of Mr. Humphrys? Mr. Hugessen do you or the officers of the company wish to add anything to what Mr. Humphrys has said?

James K. Hugessen, Counsel, British Northwestern Insurance Company: Unless there are any questions that you or any of the senators wish to put, I cannot improve on what Mr. Humphrys has said.

The Chairman: Does anybody wish to ask any further questions of Mr. Humphrys or of Mr. Hugessen?

Senator Croll: Do I understand that the Eagle Star takes over this company, Mr. Humphrys?

Mr. Humphrys: The Eagle Star now owns all the capital stock of this company. The Eagle Star writes policies in its own name and this company writes policies now in its present name, the British Northwestern. In the future they will tend to write most of their business in Canada through this company which, if this bill is approved, will be called the Eagle Star Insurance Company of Canada, so that both companies will continue to be active in Canada, but the main emphasis will be through the Canadian company.

Senator Croll: Is there not a British company that does business in Canada?

Mr. Humphrys: Yes. I think there may be some tendency to direct business that was formerly written by policies issued by the parent company so that it will now be written through this company.

Senator Kinley: The ownership still remains?

Mr. Humphrys: Yes. It is fairly common for parents and subsidiaries to be active in the foreign casualty insurance field. There are many examples where there is a parent company with many subsidiaries. There were three subsidiaries in this group, all actively selling business in Canada. Two of them have been closed out as far as business in force is concerned. They are still intending to operate through this company, which will be a Canadian company. They will keep the parent company in Canada also, principally I believe for the purposes of general insurance.

Senator Burchill: Where is the head office of the company?

Mr. Humphrys: In Toronto.

Senator Kinley: How are the directors elected?

Mr. Humphrys: The directors are elected by the shareholders.

Senator Kinley: Does the stock reside in England?

Mr. Humphrys: The stock is owned by the parent company but a shareholder is entitled to attend the annual meeting and vote its stock; consequently it votes the directors.

Senator Macnaughton: You have no objection to the bill, Mr. Humphrys?

Mr. Humphrys: No.

Senator Croll: I have no objection to the bill either, but I do not quite understand just what they are attempting to do.

The Acting Chairman: It might have been a little simpler if they had started out without having had the British Northwestern in the first place and simply incorporated a Canadian company called by the same name as the parent company in England. This is really what they are doing.

Senator Croll: I realize that. If I have insurance with the British Northwestern Insurance Company now will I continue my policy with the British Northwestern Company or do they transfer me over to Eagle Star?

Mr. Humphrys: You will continue your policy with this company and in all respects your policy will be valid and unchanged, but the name of the company is being changed so that when your policy is renewed you would get a new policy which would carry the name of Eagle Star of Canada, but it is the same corporation, the same corporate entity with the same liabilities.

Senator Thorvaldson: Really it is just a change of name. That is all that is involved in this bill.

Mr. Humphrys: Exactly.

Senator Thorvaldson: Plus the increasing of the capitalization.

The Acting Chairman: The usual protective clauses are included with respect to existing policyholders.

Senator Carter: I imagine the par value of the shares given of $40 is a nominal value. What is the real market value of the shares today?

Mr. Humphrys: It would not be possible to say exactly, because since all the shares are owned by the parent company there is not a market value for them. If they went out to offer some of the market I am not sure how much they would get.

Senator Croll: In any event, they would be worth less today than they were last night.

Mr. Humphrys: This is a foreign casualty insurance company, not life.

Senator McDonald: Are the directors of the British Northwestern Insurance Company Canadian or British?

Mr. Humphrys: The law requires that the majority of the directors of a Canadian company become Canadian citizens resident in Canada, and that is the case here. There are some directors who are resident in Britain; there are two directors who are not resident in Canada.

Senator McDonald: I presume the directors of the new company will be the same directors as are acting for the British Northwestern?

Mr. Humphrys: Yes, although it is not correct to refer to this as a new company. It is the same company with a change of name; nothing else is changed.

Senator Macnaughton: Really the purpose is to phase out the name British Northwestern and eventually write all new policies in or transfer them into the new name of Eagle Star.

Mr. Humphrys: Yes.

Senator Thorvaldson: I do not know that that is accurate.

Mr. Humphrys: Not actually phasing out. It is a change.

Senator Thorvaldson: It is merely a change of name. All you are doing is phasing out the name, which is done immediately upon this act getting Royal Assent.

The Acting Chairman: Are there any other questions?

Senator Burchill: I move that we report the bill without amendment.

The Acting Chairman: Is it agreed that we report the bill without amendment? Is that your pleasure?

Hon. Senators: Yes.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

The Acting Chairman: We pass to Bill S-11, an act to incorporate Aetna Casualty Company of Canada. Mr. Humphrys will also be a witness on this bill. Senator Cook was the sponsor but I do not see him here. I have the list of witnesses from the company itself: we have Mr. John H. C. Clarry, Q.C., Counsel; Mr. Geo. E. Rhine, Field Administration Department, Hartford, Connecticut; Mr. John C. Graham, Counsel, Aetna Casualty and Surety Company of Hartford; Mr. John J. Choate, General Manager, Canadian Office, Aetna Casualty and Surety Company, Toronto and Mr. Ronald Belfoi, Parlaimentary Agent.

It is your pleasure to have Mr. Humphrys speak to this bill in our usual way?

Hon. Senators: Agreed.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman, honourable senators, this bill is for the purpose of incorporating a new insurance company with power to transact all classes of insurance except life insurance. If incorporated the company would be owned by the Aetna Casualty and Surety Company, a United States Company that has been authorized to transact insurance in Canada over many years.

The purpose of forming this company is to direct the Canadian business of the Aetna Casualty and Surety Company through a Canadian subsidiary rather than continue to transact its business on solely a branch basis, as has been the case in the past.

Foreign companies can come into Canada and become registered under the insurance companies acts and transact business here on a branch basis if their financial condition is sound. This is a very common method of doing business in Canada. Many of them, however, form or purchase Canadian incorporated companies and do business in Canada through the Canadian subsidiary. The desire here is to form a new Canadian company and direct the Canadian business of this group through the Canadian subsidiary.

Although the parent company, the Aetna Casualty and Surety Company, has been registered in Canada for many years, it has not been very active on the Canadian scene. If this company is formed I believe they will use it to conduct business in a more vigorous way in Canada through the subsidiary. The bill is in a standard form for incorporating companies for this purpose. The authorized capital is $5 million. The company will be required to have at least $500,000 paid in cash and at least $500,000 in surplus paid before it can commence business. I think, however, the company will probably capitalize the new subsidiary at a higher level than that, if my understanding is correct.

Senator Croll: Mr. Humphrys, there was a bill introduced in the other place, was there not, with respect to this company last year?

Mr. Humphrys: Yes, senator, a bill to incorporate this company has been before Parliament on more than one occasion.

Senator Croll: But not here?

Mr. Humphrys: Yes, it has been passed by the Senate on at least two previous occasions.

Senator Croll: The same bill?

Mr. Humphrys: Yes, the same bill.

Senator Thorvaldson: Mr. Humphrys, is there any association between the American company and the Aetna Life Insurance Company?

Mr. Humphrys: Yes, senator.

Senator Thorvaldson: Is it wholly owned?

Mr. Humphrys: Perhaps I could call on Mr. Clarry.

Mr. John H. C. Clarry, Q. C., Counsel, Toronto, Ontario: The Aetna Life and Casualty Company is the parent company of the Aetna Life Insurance Company of Hartford and of the Aetna Casualty and Surety Company of Hartford.

Mr. Humphrys: It has been a holding company which owns both the Aetna Life Insurance Company and the Aetna Casualty and Surety Company, and this company will be owned by the Aetna Casualty.

Senator Thorvaldson: So it is the whole Aetna empire on this continent?

Mr. Humphrys: Yes.

Senator Thorvaldson: I take it that $500,000 is the minimum capital required in regard to these companies in Canada.

Mr. Humphrys: Yes, senator. We think that no company should be formed or start business until it has at last $500,000 paid and $500,000 in surplus—at least $1 million in cash. The way events are trending in modern times, I am not sure that that should not be increased. I believe that, if this company is formed, in actual fact there will be a larger capitalization to start with.

Senator Thorvaldson: May I also ask, do those amounts apply also in regard to, say, United States companies that decide to do business under licence in Canada? In other words, are they required to have on deposit a million dollars here in Canada?

Mr. Humphrys: It would depend on the classes of insurance the company wished to transact. If it wanted to transact all classes of insurance, they would have to have $1 million initial deposit, to start with, and, subsequently, they would have to keep assets in Canada under our control at all times at least equal to their liabilities in Canada.

Senator Croll: Mr. Humphrys, my recollection is that when this bill went to the other place on two occasions, as you now remind me, the objection taken there was foreign ownership, is that correct?

Mr. Humphrys: Yes, this point was raised quite strongly in the debate. There were also views expressed about the formation of insurance companies generally. But, as I recall, there were these two points.

Senator Croll: I thought the paramount objection was the one dealing with foreign ownership. That is my recollection.

Mr. Humphrys: Yes.

Senator Everett: Mr. Humphrys, does a newly incorporated insurance company have to file with you its re-insurance arrangements prior to incorporation?

Mr. Humphrys: They are not formally required, but as part of our examination and inspection procedure we always determine what re-insurance arrangements the company has, and we are always concerned to determine the maximum amount that the company retains for its own risk in comparison with its size and capitalization.

Senator Everett: Could you tell me, on the basis of half a million dollars capitalization and half a million dollars surplus, how much is the initial risk of this company?

Mr. Humphrys: I do not know what its specific plans are. I think that would wait until the company was formed, and a company of that size would not, I think, retain for its own risk more than a maximum amount of perhaps $10,000 to $15,000 on any one risk.

Senator Everett: If, indeed, they could not come to an arrangement of $10,000 or $15,000 and entered into an arrangement of $50,000, would you require additional capital and surplus and additional deposits?

Mr. Humphrys: Yes, senator, we would be very much concerned if a company of this size retained for its own risk an amount of up to $50,000. I think it would be too much. So, we would attempt to have it enter into appropriate re-insurance arrangements, and if they could not, we would insist that they not write policies of that size. Another alternative, as you suggest, would be to increase the capital and surplus to a point where it could take on risks of that size without undue risk.

Senator Everett: But, in approving this sort of capitalization, we can reasonably expect that it will re-insure over, roughly, $10,000 to $15,000?

Mr. Humphrys: Yes.

Senator Everett: Do you have any idea where they would be making their re-insurance arrangements? Would they be with a Canadian re-insurance carrier or with the parent company?

Mr. Humphrys: I should think it likely that a good deal of the re-insurance arrangements would be with the parent company, but other arrangements might go in the general market, depending on where they can get favourable treaties and arrangements for this type of business. I have not received from them any specific plan on re-insurance, since the company is not yet formed, but I would not think the pattern would differ very much from the pattern they are now following with respect to their business in Canada on a branch basis.

Senator Everett: This is, of course, a subsidiary of a very large American company.

Mr. Humphrys: Yes.

Senator Everett: If a new company came to you and it was not in that position, and asked for incorporation on a similar basis, would you be more interested in its re-insurance arrangements than you are in the case of this company?

Mr. Humphrys: Yes. We would want to know very definitely the type of business it intended to do, and how it intended to develop its activities, all with a view to determining whether the initial funds were going to be sufficient to protect policyholders and enable it to develop its business in any significant way, because we would take the view that there is not any use starting off with inadequate capital and surplus and running into a problem immediately.

Senator Everett: So, because this is or will be a subsidiary of an American carrier, you are less rigorous in your examination?

Mr. Humphrys: I would not like to say we are less rigorous. I think we take into account the fact it is a subsidiary of a very large and strong company, a company we have known and have supervised and worked with over a period of 50 years, or more, in its activities in Canada. These are factors that enter into the consideration but, nevertheless, in our supervision of a company we would expect this company, as an individual corporation, always to be in a position where it offers adequate protection for its policyholders, so we are never in a position where we are dependent upon money coming from the parent to help it meet its liabilities. So, we want to be in a position, at any time, if this company were cut off from its parent or sold, in which it would still be a viable enterprise and still have adequate capital and surplus to protect its policyholders.

Senator Macnaughton: Mr. Humphrys has referred to $1 million being subscribed before doing business, and yet in clause 4 it mentions $500,000. Am I right in assuming that this is purely the technical drafting of the bill?

Mr. Humphrys: The first refers to subscription and the second to paid. An amount of $1 million would have to be subscribed, and at least $500,000 paid; and if they stuck to the minimum, it could leave the other $500,000 as callable on the shareholders but, in actual practice, I believe they would pay up the initial subscription.

Senator Kinley: With regard to these American companies they place a guarantee

with the Government. Is it $1 million they must put up for the Government as a guarantee?

Mr. Humphrys: The company must make a deposit with the Government in amounts that depend upon the classes of insurance for which it would be registered. It would not have to deposit as much as $1 million.

Senator Kinley: There is no obligation for them to have Canadian stockholders?

Mr. Humphrys: No.

Senator Kinley: Insurance is all international, anyway. We have large insurance companies, especially life insurance companies, operating in other countries. There is an international freedom about insurance is there not?

Mr. Humphrys: Yes, senator, there is a great deal of insurance transacted internationally.

Senator Kinley: I know that British insurance companies in Canada have special privileges under our insurance act.

Mr. Humphrys: I would not say that they have any special privileges, senator.

Senator Kinley: They do not have to comply with some conditions of the Canadian insurance act, do they? I am thinking of Lloyds, for instance.

Mr. Humphrys: Lloyds is not subject to the federal act, that is correct, sir, but incorporated companies are.

Senator Thorvaldson: Why is Lloyds not subject to the federal act, or is that too long a story?

Mr. Humphrys: Well, it is a long story.

Senator Thorvaldson: Very well; do not bother.

Senator Willis: I move that the bill be reported.

The Acting Chairman: I think some other honourable senators still have questions. We were dealing with Senator Thorvaldson's question.

Senator Thorvaldson: My question, Mr. Chairman, requires a long answer, and I will get it from Mr. Humphrys later.

The Acting Chairman: Have you anything to add, Mr. Clarry?

Mr. Clarry: I have nothing to add, Mr. Chairman, but I will be glad to try to answer any questions.

The Acting Chairman: Can you indicate to the committee what capital you do intend to put up?

Mr. Clarry: Yes; $1 million described as capital, and $2 million as surplus, for a total of $3 million.

The Acting Chairman: That is, before the company commences business?

Mr. Clarry: Yes.

Senator Croll: Mr. Clarry, following on that question, have you an idea of how many shareholders this company has in Canada?

Mr. Clarry: The life and casualty company—I do not know whether Mr. Rhine has that information.

Mr. George E. Rhine, Field Administration Department, Hartford, Connecticut: Mr. Chairman and honourable senators, there are something in excess of 300 shareholders.

Senator Croll: How many shareholders has the company altogether?

Mr. Rhine: Perhaps 25,000.

Senator Everett: I assume that the newly incorporated company is taking over existing business.

Mr. Clarry: Yes, that is correct.

Senator Everett: Can you tell me the premium volume of that business?

Mr. Clarry: As Mr. Humphrys has indicated, the Aetna Casualty and Surety Company is operating in Canada now, and it has increased its operations over the last few years. Mr. Choate, who is with us, is General Manager of the Canadian operation. This Canadian operation will be transferred to the new corporation when it is incorporated, and I guess we hope it will grow.

Senator Everett: That only partially answers my question. I asked you if you knew the annual premium volume that is being written now.

Mr. Clarry: Perhaps Mr. Rhine or Mr. Choate can answer that.

Mr. Rhine: Mr. Chairman and honourable senators, our statement filed last year showed

premiums of slightly over $4 million, as I recall.

Mr. Humphrys: Yes, $4.4 million.

Senator Everett: On how much of that business did you enjoy an underwriting profit?

Mr. Rhine: We did last year, sir. Mr. Humphrys has the figures before him, and perhaps he can answer that exactly.

Mr. Humphrys: The underwriting profits shown in the statement for the year 1967 were $785,000.

Senator Kinley: After income tax?

Senator Everett: On a premium income of $4 million?

Mr. Humphrys: Yes, and that was before tax.

The Acting Chairman: Are there any other questions?

Senator Thorvaldson: Yes, Mr. Chairman. I think we might as well get a complete answer to Senator Croll's question. What he was wanting to know was what proportion of the share capital of the parent company which, I take it, is Aetna Casualty, is owned in Canada.

Mr. Clarry: Senator, it would be a little difficult to give a precise figure but, as Mr. Rhine has indicated, there are approximately 300 shareholders, so it would be a relatively small proportion.

Senator Thorvaldson: But that is meaningless. They might each own one share.

Mr. Clarry: I do not think we have the precise relationship with regard to the number of shares.

Senator Thorvaldson: I am talking about the percentage of money.

Mr. Clarry: That is, of the shareholdings in the parent company?

Senator Thorvaldson: Yes.

Mr. Rhine: I understand your question, but I am afraid I cannot answer it. You are asking how many dollars of value is represented by these some 300 shareholders. Is that not what you are asking?

Senator Thorvaldson: Yes, what I am wanting is the percentge of Canadian ownership in this company. I ask that question because I think it is something you will meet in the other house, and I am trying to help you a little bit. It is also, I think, something we should know, since the other house has made an issue of this very point.

Mr. Rhine: It is a figure we shall have to determine.

Senator Croll: Do you mean to say that you were not asked that question during the two sessions you had before the other house?

Mr. Clarry: That is right, that question was not asked.

Senator Croll: Then you can see the use of the Senate. It can be relied upon to come up with something new.

Mr. Humphrys: I think it is fair to say that the proportion of Canadian ownership in the parent company—that is, Aetna Casualty Insurance, which is a very large United States Company—is extremely small. One might say it is almost negligible.

Senator Croll: I was going to suggest that it is infinitesimal.

Mr. Humphrys: This company would be a subsidiary of that company, and consequently no shares of this company would be on the Canadian market.

Senator Everett: Could Mr. Clarry tell us what classes of business the company has been writing—the general classes?

Mr. Clarry: Perhaps it would be easier if you asked Mr. Rhine or Mr. Humphrys, because they may have the precise figures.

The Acting Chairman: Mr. Humphrys, would you answer Senator Everett's question?

Mr. Humphrys: The total direct premiums amounted to a little over $4 million. Of that amount close to $1 million was automobile insurance. There was $720,000 of premiums in fire insurance; $165,000 in personal property insurance; $148,000 in real property insurance; and about $700,000 in guaranty business—that is, fidelity, surety risks—and another $300,000 in employers' liability.

Senator Croll: You may not have these figures, Mr. Humphrys, but I understood Mr. Rhine to say that on a premium income of $4.4 million there was a profit of some $780,000. Is that broken down with respect to how much is for casualty and how much is for other parts of the insurance business in the

same way, showing the different profits under different headings?

Mr. Humphrys: No, we could not give that breakdown precisely, senator, because the expenses of the company have not been analyzed in detail by classes of insurance.

Senator Croll: You do not require that information?

Mr. Humphrys: No. We do get some information on the ratio of claims to premiums by classes of insurance, which we can give, but that does not necessarily give the profit from each class since to get the profit one would have to analyze the expenses and allocate them by classes of insurance as well.

Senator Croll: What I am concerned about is this. Is there anything in these reports to indicate that the automobile insurance is a losing business?

Mr. Humphrys: Well, I can indicate, for example, that in the field of automobile liability coverage in 1967 the claims amounted to 75 per cent of the premiums, which I think is likely to produce a net loss because the expenses of operation would not likely be under 25 per cent. So, I think they would have a net loss position in respect of automobile liability.

On the other automobile insurance—that is, property damage; damage to the automobile in collision, and that type of insurance—the loss ratio was 63 per cent, and they might possibly have broken even on that.

Senator Croll: Where did the profit come from?

Mr. Humphrys: The profit would come from the other lines—guarantee business, fire business, which are major lines as well.

Senator Croll: What is the guarantee business?

Mr. Humphrys: Fidelity and surety.

Senator Everett: Is it a requirement of the act that investments be made in Canadian securities or does the company have the right to invest in certain foreign securities?

Mr. Humphrys: As a foreign casualty company it is not restricted to Canadian securities. It is required to maintain assets in Canada to cover its liabilities in Canada, but under the law it is not required to maintain those assets in Canadian securities. As a matter of practice we in the department get companies to maintain Canadian securities to cover Canadian liabilities because we think it is not a good thing to have assets in one currency against liabilities in another.

Senator Everett: I agree with that. I suppose up to now there would be no way of telling where they had their investments?

Mr. Humphrys: I gave you an answer in relation to a Canadian company. So far as the Aetna Casualty and Surety Company and its business in Canada is concerned, it is required to cover its liabilities in Canada with securities deposited here, and they must all be in Canadian securities. They have the right under law to deposit securities of their own government, but in practice their deposits have all been in Canadian securities.

Senator Everett: Are they free to deposit where they like under the terms of the act?

Mr. Humphrys: As a foreign company they are required to keep assets in Canada to cover their liabilities in Canada, and those assets must be in Canadian securities.

Senator Everett: By "liabilities" do you mean reserve for claims?

Mr. Humphrys: I mean all the liabilities in Canada—the unearned premiums, outstanding claims, all liabilities. As a Canadian company they would not be restricted to investing only in Canadian securities; they could invest in other securities, but in practice Canadian companies do not exercise that right to the extent of buying foreign currency securities to match Canadian liabilities. There is a degree of freedom there because traditionally Canadian companies have done a great deal of business outside Canada, particularly in the life field, and the way must be open to them to buy foreign securities to cover their liabilities.

Senator Thorvaldson: Some while ago I saw a statement that the underwriting profit of this company had been some $700,000 out of premiums written of $4.4 million. I presume

that would be for 1967. I feel that in fairness to this and other insurance companies it should be said that in the last three years prior to this year it is my understanding that these companies had a very, very rough time, as I think these gentlemen recognize; consequently, I did not want to have this on the record without reference to the fact that last year may have been a pretty good year in the insurance business, but it came after very rough years when I know many of these companies had underwriting losses rather than underwriting profits. Perhaps Mr. Humphrys would like to confirm or deny that.

The Acting Chairman: Do you wish to make a comment on that, Mr. Humphrys?

Mr. Humphrys: I think that is generally true. Looking at the situation as a whole, this company the Aetna Casualty and Surety Company, has had reasonable success. Its underwriting profits in 1966 were $675,000, but in 1965 they were $177,000. It should be noted, looking at the American company as a whole, in the year 1967 they reported an underwriting loss of $20 million.

Senator Thorvaldson: An underwriting loss?

Mr. Humphrys: Yes, over their entire operation. They made a profit in Canada, but taking the total of the company they did not make an underwriting profit.

Senator Kinley: This is a casualty company. It is a little different from the ordinary insurance company. I see listed aircraft insurance, automobile insurance, earthquake insurance. All these deal with situations in which people are hurt. What will medicare do to you? How do you view medicare?

Mr. Rhine: This proposed company would not write any form of medical insurance; that is accident insurance or sickness insurance. Those forms of insurance are generally written in life insurance companies or companies formed for the special purpose of writing sickness and accident insurance, group health and so on.

Senator Kinley: In automobile insurance you deal with personal problems, so in that way you get in contact with persons?

Mr. Rhine: Yes.

Senator Kinley: They will all be covered by medicare. Do you face that situation? As I see it in aircraft insurance every policy I have seen is with Omaha Nebraska. When you go to American flying fields you find the same thing, so they must be doing a big business in Canada. Are they a Canadian company?

Mr. Rhine: I do not know whether they have a Canadian affiliate or subsidiary, but they are a large writer of individual aviation accident insurance.

Senator Kinley: How did you compare it with the company in Saskatchewan? This insurance is a government proposition. Are their policies cheaper or more advantageous than the average policy issued by the private company or are they poorer?

Mr. Rhine: I am afraid I cannot answer that question. I am not sufficiently familiar with the details. I do not know whether Mr. Humphrys is or not.

Senator Kinley: It is the only province of Canada that has such an insurance I think.

Mr. Rhine: That is my understanding, yes, sir.

Senator Macnaughton: Perhaps your counsel could answer.

Mr. Clarry: I think honourable senators must draw their own conclusions on that.

Senator Kinley: Do you rebate premiums on merit? For instance, do you give back any of the premiums?

Mr. Rhine: We do on workmen's compensation in the United States, in certain states where this is permitted, based upon the loss experience of the assured. If it is satisfactory they will receive some return.

Senator Kinley: There is no government action on compensation in the United States; it is state insurance?

Mr. Rhine: It is entirely a state matter, yes.

The Acting Chairman: I am just looking at some figures which Mr. Humphrys has and I see that this company had more premium income in Saskatchewan than in Nova Scotia.

Senator Kinley: My interest goes a little further than that.

The Acting Chairman: Are there any other questions? Shall we deal with it clause by clause or have the usual motion to report the bill without amendment.

Senator Croll: I move that we report the bill without amendment.

The Chairman: Is that your pleasure?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

Complete Proceedings on

Bill C-111, intituled: "An Act to amend the Farm Improvement Loans Act"; and

Bill C-113, intituled: "An Act to amend the Prairie Grain Advance Payments Act".

WEDNESDAY, NOVEMBER 6th, 1968

WITNESSES:

Department of Finance: A. R. Hollbach, Government Finance Division.
Department of Trade and Commerce: R. M. Esdale, Chief, Grain Division.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28993—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, October 31st, 1968:

"With leave of the Senate,

The Honourable Senator Fournier (*Madawaska-Restigouche*) resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Beaubien (*Provencher*), for the second reading of the Bill C-111, intituled: "An Act to amend the Farm Improvement Loans Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 30th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill C-113, intituled: "An Act to amend the Prairie Grain Advance Payments Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

28993—1½

Extract from the Minutes of the Proceedings of the Senate, Thursday, October 10th, 1968:

"The Honourable Senator Carter moved, seconded by the Honourable Senator MacKenzie:

That the Standing Committee on Banking and Commerce be authorized to inquire into and report upon existing legislation regarding the census and statistics and upon the administration of such legislation and recommend any changes in such legislation and administration required to establish and develop the census and statistics as a vital and efficient aid to the good government of Canada and the advancement of private business in the public interest.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 6th, 1968.
(5)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Beaubien (*Bedford*), Benidickson, Burchill, Carter, Croll, Fergusson, Gélinas, Haig, Hays, Inman, Isnor, Kinley, Laird, MacKenzie, Macnaughton, Molson, Paterson, Smith (*Queens-Shelburne*), and Willis. (22)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill C-111, "An Act to amend the Farm Improvement Loans Act", was considered.

The following witness was heard:

Department of Finance:

A. R. Hollbach, Government Finance Division.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.30 a.m. the Committee proceeded to the next order of business.

Bill C-113, "An Act to amend the Prairie Grain Advance Payments Act", was considered.

The following witness was heard:

Department of Trade and Commerce:

R. M. Esdale, Chief, Grain Division.

Upon motion, it was *Resolved* to report the said Bill without amendment.

After discussion, and upon motion of the Honourable Senator Smith (*Queens-Shelburne*) it was *Resolved* to establish a Steering Committee composed of the Honourable Senators Hayden (*Chairman*), Bourget, Carter, Molson, Thorvaldson and Walker to determine the procedure to be followed with respect to Senator Carter's motion regarding the Census and Statistics which was referred to the Committee on Thursday, October 10th, 1968.

At 10.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, November 6th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-111, intituled: "An Act to amend the Farm Improvement Loans Act", has in obedience to the order of reference of October 31st, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

WEDNESDAY, November 6th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-113, intituled: "An Act to amend the Prairie Grain Advance Payments Act", has in obedience to the order of reference of October 30th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 6, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-111, to amend the Farm Improvement Loans Act met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we have two bills before us this morning. It is the wish of the committee that we print today's proceedings.

Upon motion, it was resolved that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: The first bill is Bill C-111 to amend the Farm Improvement Loans Act. We have Mr. A. R. Hollbach, who is from the Government Finance Division, Department of Finance.

This bill was very well explained during the course of second reading in the Senate and possibly if Mr. Hollbach gave a short explanation, we could look at it section by section.

Hon. Senators: Agreed.

Mr. A. R. Hollbach, Government Finance Division, Department of Finance: Mr. Chairman and honourable senators, the purpose of this bill can be summarized quite briefly by saying that it serves to reactivate a measure in the farm credit field which has proven quite successful over nearly a quarter of a century, a success which of course ceased a few months ago when the then current lending period expired.

The amendments included in the bill can be perhaps divided into two groups, one designed merely to reactivate this measure and the other designed for the purpose of improving the scope of the act in order better to enable the facilities to serve the farming community.

In the first group there are two amendments, one being the addition of the new guarantee period. The reason for this amendment arises from the fact that the Government guarantee has always been authorized for three-year periods. The last period expired on June 30, and the amendment now before you would add a new guaranteed period, retroactive to July 1, 1968, so that any loans made by chartered banks since the expiry of the old period and before the passage of the bill would be covered by the guarantee, provided of course they have been made under the other provisions of the act as they stood before amendment.

The other provision in this first category concerns the rate of interest. Even before the act formally expired, banks had been increasingly reluctant to make loans under the act, because of the statutory maximum rate of 5 per cent. The proposed amendments would revoke the statutory 5 per cent rate and substitute therefor authority to have the rate prescribed by order in council. As has been indicated by the Minister of Agriculture—who has handled this measure—it is the Government's intention to prescribe a rate by formula, so that a fair and adjustable rate would be prevailing automatically from time to time without a decision by cabinet being required each time.

The other group of amendments is designed to expand the scope of lending activity under this act.

The principal feature here is the addition of land as an eligible loan purpose, where the purchase of land would be an addition to an existing farming enterprise. The rationale here is that this should not merely replace the type of previous lending activity that is now carried on by the Farm Credit Corporation. In many many instances, farmers have an opportunity to buy a relatively small parcel of land, perhaps adjacent to the land they

already own; and in the past some have been finding they had to go to the Farm Credit Corporation, because mortgage credit was involved, without really requiring the kind of technical expertise that the Farm Credit Corporation normally brings to bear in financing the creation of large and new farm units.

An hon. Senator: Probably delay, too.

Mr. Hollbach: The Farm Credit Corporation procedures are perhaps somewhat more rigorous than those of chartered banks lending under the Farm Improvement Loans Act, because of the nature of the mortgage lending business. It is hoped, although it is difficult to foretell, that a not insignificant amount of lending will take place under these new procedures, which would I think help many farmers in treating the more or less incidental purchase of a relatively small parcel of land largely on the same basis as they are now able to handle the purchase of a piece of equipment or a loan for another farm improvement purpose. The act will also bring in for the first time credit unions and mortgage loan companies. As an encouragement to relatively small unit lenders, particularly like credit unions, a change is proposed in the limit on the guarantee provision which was contained in the act as it applies to an individual lender. So far the guarantee of the Government to an individual lender was against loss in an amount equal to 10 per cent of the volume of loans made by that lender during the given lending period. In other words, if Canada's largest chartered bank, say, lent $100 million during a three-year period, then this chartered bank was guaranteed against a loss up to $10 million, that is, up to 10 per cent of the $100 million. And subject to this $100 million being reached, all claims of that bank were paid in full. But since claims would be substantially below 10 per cent for the large volume lenders, in practice all claims were paid in full. But this would not be the case for smaller lenders, particularly rural credit unions. For example, the credit union movement is very strong and well developed out in Saskatchewan. There may be relatively small credit unions who want to participate and who do not have the operational base to make a really large volume of loans in order to spread the risk actuarially. If only one such credit union made only one loan during the three-year period, say $25,000, it would have been guaranteed, under the old formula, only up to 10 per cent of that amount, that is, up to $2,500. But if it had incurred a total loss on that loan it would have been at risk, in effect, for 90 per cent of the total loan amount. Therefore, the provisions in this act prescribe that the new guarantee will be up to 90 per cent of loans made up to $125,000, that is, five loans at the new maximum of $25,000; 50 per cent of the next $125,000; and 10 per cent of anything over and above $250,000.

The thought here is that this will encourage the small unit lenders like credit unions to participate more readily under this scheme.

Finally—and I have already briefly mentioned this—the maximum loan amount has been raised from $15,000 to $25,000 so as to enable a farmer to borrow for the purchase of land without thereby pre-empting his ability to borrow also under the act, say, for the purchase of equipment.

In connection with the purchase of land I should have mentioned that one other change proposed here is that the maximum repayment period, if the loan is made for the purchase of land, would be extended to 15 years. The maximum repayment period now contained in the act is 10 years; that will be retained for all loan purposes other than the purchase of land.

I think that is all I have to say, Mr. Chairman.

The Chairman: Senator Aseltine.

Senator Aseltine: The chief objection to this bill when it was dealt with in the Senate and in the other place had to do with the amendments to paragraphs (d) to (g) of subsection (1) of section 3. The interest rate in the act as it stands now has been 5 per cent. Is that correct?

Mr. Hollbach: That is correct.

Senator Aseltine: This amendment deals with that section and leaves the rate wide open to be set by regulation by the Governor in Council. Is that correct?

Mr. Hollbach: That is correct.

Senator Aseltine: Well, that is the main objection I have to this act. I do not like that. I do not think we should do that. I think we should, if possible, have the rate appear in the act itself. I would like to know if there is any formula for arriving at this act. I would also like to know if the banks have been consulted with regard to the rate or if any of these new, what we call "near banks", trust

companies, loan companies, insurance companies, credit unions and others have been consulted in this connection, whether they are interested or not.

The Chairman: Your first question, then, is whether there is any formula for determining what this available rate shall be.

Senator Aseltine: Yes.

The Chairman: What could you say to that, Mr. Hollbach?

Mr. Hollbach: There is, so far as I know, no formula as yet. There have been informal consultations at the official level, but the final decision really cannot be made until the bill has been sanctioned by the Parliament, and then the final decision is up to ministers. We as officials have no further contribution to make.

The Chairman: It seems to me that the final decision goes further than that. After all, if you are going to borrow money from the bank, the banks have something to say as to what the rate of interest will be. When they did not have anything to say about the rate in this act, interest rates got much higher than that provided in the statute and it was difficult to get loans.

Senator Kinley: What is the guarantee for the farmer? How do you insure that he will get the benefit from the guarantee? The Government is going to guarantee 10 per cent in order to protect the bank. But what guarantee is there for the farmer?

The Chairman: So far as the individual who is in default?

Senator Kinley: I was much interested in what one of our senators said about the Maritime provinces. It was suggested that they must be pretty low because they do not borrow under this act. They borrow so little. I think that is commendable, because I like to see a farmer without a mortgage on his farm. That is the kind of farmer we like in the Maritimes. But the farmers are small in the Maritimes. What they require is not very much. Banks like to deal in the Maritimes. Their loans are safer, and they want this business. I know, because they will not lend that money at 5 per cent, but will lend all the money you want without the guarantee. So what good is this guarantee to the little farmer?

Senator Aseltine: Do you not think we should deal with the interest matter first, Mr. Chairman?

The Chairman: This is a supplementary question. We will deal with your question first, Senator Aseltine.

Mr. Hollbach: Actually, Mr. Chairman, it seems that the two points raised here are quite intimately linked together and can be treated together. We are concerned not only with the cost of credit but with the mere availability of credit for farmers. Moreover, with a measure of this type, we are really more concerned with the small farmer than with the very large farmer. There are many large farming operations highly successful on a commercial scale out west which require hundreds of thousands of dollars of credit for equipment alone, and they, of course, would not be covered. This plan here has traditionally been of particular help to the small farmer.

I think that is expressed in the fact that even when the maximum loan amount was $15,000 the average loan was only $2,500.

To the small farmer the question of availability of credit can be even more important than the question of the cost. The small farmer who does not have a very well established credit rating may get credit from a machinery dealer, for example, for the purchase of equipment at a rate very substantially above what he would be able to borrow under the benefits of this legislation.

Here I can only speculate. I have no facts. Banks operating outside the Farm Improvement Loans Act will of course make loans to better known and more efficient farmers with unquestionable credit rating at whatever going rate they charge. When the smaller farmer applies for a loan, if his credit rating is not so well established, it is he who may have difficulty borrowing at the banks' customary rate reserved for the banks' prime customers. He may have to either pay more to a bank or go to a finance company or a machinery dealer for credit and he will probably pay quite a bit more. When this act is being reinstated, then, the small farmer will again have access to this type of credit because the risk factor is then removed for the bank. The bank can make credit. The bank will continue to apply credit judgment, in that the bank, even under the guarantee, is not expected to make a loan where it knows there is no hope of repayment. This would not be a kindness to the farmer.

With the elimination of the risk factor, the primary beneficiary is the small farmer, and, so far as the level of the rate is concerned, the facts simply are these: that this operates through private lenders, particularly now with the inclusion of credit unions, and private lenders have a certain cost on their own liabilities and they have to put out their funds in a way that will assure them a reasonable return.

The banks have in effect stopped making loans at 5 per cent and there is no reason to believe that they will resume lending under this act at 5 per cent. What exactly the rate will be, I am unable to say. As I mentioned a moment ago, no decision has yet been taken, but it is reasonable to expect that, because of the presence of the Government guarantee, under such a guarantee program the rate is likely to be somewhat lower than what a farmer would have to pay on his own credit rating, although it will be higher than 5 per cent. Just where it will be, I do not know, but all I can say is that even if the interest cost is somewhat higher to many farmers, the fact that this kind of credit will again be available is likely to offset the disadvantage of having a somewhat higher cost of carrying that credit.

Senator Aseltine: There is no formula?

Mr. Hollbach: The Government has stated its intention to decide on a formula as explained by the Minister of Agriculture.

Senator Aseltine: Well, I am not satisfied with the statement.

The Chairman: Well, Senator Aseltine, all the witness can do is give the information. If it does not satisfy you, you have to decide and use your own judgment as to what you will do. The witness is giving all the information he can.

Senator Aseltine: Another question I asked is whether or not there has been any consultation with the banks or credit unions regarding the approximate rate.

Mr. Hollbach: Mr. Chairman, I mentioned that there had been discussions at the official level between officials and bank officials, but that this group of course is in no position to arrive at any definitive conclusions. The final decision is up to the minister. While I said a moment ago there is no formula, I think I should emphasize that no specific formula has as yet been formally agreed to, at least to my knowledge, but the Government has stated its intention that it will establish a formula which will determine the rate automatically over a period of time, so that once set up on a fair and equitable basis it can be left and the rate would adjust itself automatically to changing monetary conditions.

Senator Hays: Isn't it reasonable that any formula that the Government would be able to come up with would be a sort of Common-sense formula? The $15,000 figure was completely antiquated. Interest rates had changed over the years. They just could not use the act. You couldn't expect the institutions to subsidize the farmer; it was never a subsidized loan. They were borrowing money at 3½ or 4 per cent and there was a ceiling. Now the act indicates that in dealing with anyone who wishes to borrow money, if in its wisdom the institution lending the money feels the farmer has the assets, it gives the lender an opportunity to have a guarantee on his loan at the prime rate. This would be all you could expect, and it would be expected that any formula would be at the prime rate. If a certain institution is lending at 6¾ per cent, it would be that rate rather than 7½ per cent.

The Chairman: If a formula is arrived at which is not realistic at the moment there just won't be any loans.

Senator Molson: I think Senator Hays has really put the question I was going to ask in a different way. To bring it into perspective, is it not true to say that when this act originally came into force this program was very successful and a great many loans were made at a rate of interest which was reasonable to farmers and to the lending institutions, but that has now completely dried up. There has been no money available at these rates. The whole purpose here is to bring this loan program back into some relationship to interest rates today. It is something like the N.H.A. loans. They went out of kilter and money dried up for those, but the adjustments made there permitted them to come back in. There is every reason to suppose that these lending institutions will come back into this business quite successfully and on a large scale. Is this not correct?

Mr. Hollbach: Yes, sir, that is correct.

Senator Benidickson: I have three points. The first is that we have been told, and I have accepted it, that it was an unrealistic

rate. The volume of loans has dried up, but I don't think anybody has provided us with some statistics which would show over the last five years, which is when we got into this expensive money period—I don't think anybody has shown us statistics to show the rate of reduction in volume of lending under this act.

The Chairman: Can we see first of all if the witness has the answer to that?

Mr. Hollbach: The volume did not drop off significantly until late in 1967. In 1964, $150 million was lent. This jumped to nearly $203 million in 1965 and then it increased to only $212 million in 1966. It was still an absolute increase, but a relatively smaller increase, and it dropped slightly to $203 million in 1967 although presumably the credit needs of farmers continued to grow. Most of this decrease came towards the end of 1967.

Senator Croll: But what about the numbers as well as the amounts? Give us the numbers of loans.

Mr. Hollbach: For the corresponding loan volumes as referred to in 1964 there were some 80,600 loans and the sum involved was $150 million. In 1965 there was 91,000 loans, and in 1966 it dropped off to 85,000 loans and it dropped still further then to 78,000 loans. In other words the average loan amount increased, which would seem to suggest that some of the larger farmers continued to be served while some of the smaller farmers were starting to be cut out of the program. The figures for the current year—I don't have the exact numbers with me, but in the first quarter of 1968 it was about 25 per cent of the volume of lending for the first quarter of 1967. That is January through March 1968, and then the figures for April to June—there were just a few million lent. By then it had dropped off to insignificant proportions, and it was less than 10 per cent of the normal rate of lending that would have prevailed in other circumstances.

Senator Benidickson: My second question is this: I think it was Senator Aseltine who gave us the figures with respect to the distribution of these rates geographically, and I was impressed and I think Senator Kinley, who sits close to me, was also impressed that the utilization was largely in western Canada. The eastern farmer does not seem to take advantage, or at least he has not done so in the past, of even this very reasonable and attractive rate of 5 per cent.

The Chairman: Do you want confirmation from the witness?

Senator Benidickson: I wonder if the witness could explain why the eastern farmer doesn't see the merit of this credit at such a low rate of interest that has prevailed over the years. I understand the position in Quebec. They have their own lending system.

Mr. Hollback: I was thinking of the Maritimes in particular. A really good answer to this question goes beyond my competence, because I suspect it would really have to be answered in terms of the agricultural productivity of the various regions of Canada. One thing that I think is important in connection with your question, senator, is that credit only follows the capability to use credit. In other words, where you have a region with highly buoyant agricultural conditions, a large number of good-sized farms with high earnings potential and a high potential to take on and service credit, they are likely to utilize existing credit facilities. In other words, a credit facility tends to be something passive, that is used if the impetus for the use of credit really comes from more general economic conditions of the farming enterprise. I am not really competent to judge the viability of the average Maritime farming enterprise versus the average Prairie farming enterprise. Just from my general background knowledge, I understand that many Maritime farmers do not have as profitable an operation as many western farmers and that therefore their ability to use credit is also impaired and that is reflected in these figures. Does that answer give what you desire?

Senator Benidickson: I have heard it said that for some businessmen to make money it is necessary for them to borrow money to get bigger. I wondered if it is not to the advantage of eastern farmers to make more by means of the provisions of this act in order to become larger and more efficient.

Mr. Hollbach: It goes ahead of what you said senator—the availability of markets for the ready absorption of production.

Senator Benidickson: The third question I had in mind was this. You had already explained this, that the volume dropped very considerably in 1966 and 1967 and dried up noticeably in 1968. I know that interest rates perhaps have been at a peak in 1968, but they were still pretty high—the prime rate that was referred to by Senator Haig was pretty high—in 1966-67. Have you any figures as to

what the prime rate would be currently, to the best risk, a businessman borrowing money from the bank?

The Chairman: You, mean, borrowing without using this particular statute, or borrowing under this statute?

Senator Benidickson: The bank varies its cost of interest in accordance with the security and the wealth and the financial position of the borrower and what is called a prime rate, the lowest rate, the rate that is given to the borrower that they think is in the best position.

Senator Hays: The one who does not need it.

Senator Benidickson: What is the primary rate that the banks recognize?

The Chairman: For those ones who have to be solicited?

Senator Benidickson: What would it be in 1966 at a particular time, and 1967 at a particular time?

Mr. Hollbach: Before I answer this question I have to make one qualification. It is easy for me to answer questions on rates of interest that are published in some authoritative source like Bank of Canada Statistics. The banks prime rate is not published, to my knowledge, in any official source.

Senator Benidickson: It gets into the newspapers.

Mr. Hollbach: That is right, it gets into the newspapers, and the reason why I am mentioning this is because my knowledge of what the bank rate purports to be is based on what I myself read in the newspapers. I have no other more authoritative source as to what the prime rate is. I understand that it is currently at 6¾ per cent.

The Chairman: That is what the papers said.

Mr. Hollbach: It had been at one stage 7¼ just recently, earlier this year, and prior to that for fairly extended periods of time it had been from 5¾ to 6 per cent.

Senator Benidickson: In the period of 1966-67?

Senator Kinley: Is it agreed by the banks that that would be it?

The Chairman: No, no, it has nothing to do with the banks.

Senator Kinley: They are going to have the same problems with the Farm Loans Act. The Farm Loans Act is 5 per cent.

The Chairman: Let us deal with this one first.

Senator Kinley: We are dealing with the principle. I think that giving it to the banks to do it is a splendid idea, but the rate was so low that the banks did not want it. If they gave out the money they got no profit. There is a feature of insurance by a co-operative that makes them insure the loan. If you borrow from a co-operative, I am told you must take out an insurance policy, and they have a charge for that. Some of the farmers say that they benefit from that only if they die, because in that case the loan is satisfied.

Senator Croll: If I recall correctly, you said that the average loan was $2,500?

Mr. Hollbach: Yes, actually in 1966-67 it was $2,600.

Senator Croll: Why then do you increase the amount?

Mr. Hollbach: This was to give the benefit of the new loan purpose to those farmers who may already be borrowing up to the old limit for other farm improvement purposes. In other words, under the act as it now stands, a farmer may borrow, say, up to $10,000 for equipment, up to $5,000 for clearing and breaking, perhaps for a farm electric system, and then if his farming operation is sufficiently large and he can carry additional mortgage credit, for purchasing an additional parcel of land he would have to go to a mortgage lender and probably to the Farm Credit Corporation in order to get credit for that. The increase in the ceiling merely serves to enable that farmer to buy land up to an additional $10,000 if he borrowed the maximum $15,000 for all the other purposes, or vice versa.

The Chairman: The limit on each type is $15,000, the maximum on the combination is $25,000.

Senator Croll: The purpose of my question was to see the thinking of the Government, that the purpose was an attempt to bring him under one umbrella and extend as much credit as possible, and the Government is not likely at the same time to do that and make them pay prohibitive interest rates. I thought

that was the thinking of the Government and I thought that the witness might say it but he did not say it, so I have to say it.

The Chairman: If it is not the thinking, it will not work.

Senator Croll: What was the incidence of loss, if any, over a period of some years?

Mr. Hollbach: The losses have been about one-fifth of one per cent. They are running currently about one-fifth of one per cent.

Senator Croll: Are they out of line at all with previous years?

Mr. Hollbach: They have been fairly constant. There have been minor variations, but they have been fairly constant between one-tenth of one per cent and one-fifth of one per cent.

Senator Croll: That is of no significance, really.

Mr. Hollbach: That is right.

Senator Carter: I think the witness said there was some 78,000 or 80,000 loans made a year. Is there any breakdown as to how many of these loans are made by different types of institutions? How many by chartered banks and how many by credit unions, for example, and is there any breakdown between the banks to show that some banks are more inclined to make this type of loan than others?

Mr. Hollbach: Yes, sir. The banks were the only lenders, and still are today. There are, therefore, no statistics available for credit unions. This will be a new experience for credit unions and it may take two or three years to get a feel for the extent to which credit unions will participate in this scheme.

So far as the banks are concerned, there is information available on that. I am looking at the total figures of lending since inception, that is, over the last 24 years. The Canadian Imperial Bank of Commerce lent $666 million. The Royal Bank of Canada lent $580 million. The Bank of Montreal lent $410 million. The Bank of Nova Scotia lent $201 million. The Toronto Dominion Bank lent $187 million, and the smaller banks lent close to $110 million.

Senator Carter: I was thinking that might have some bearing on the question raised by Senator Benidickson as to why the loans seem to be concentrated in the west and why the people in the east do not seem to take much advantage of the legislation. We have similar legislation for fishermen, and that legislation is no good for Newfoundland fishermen at all, because there is no accessibility to banks. There are only one or two banks interested in making this type of loan and they are not accessible to the fishermen. The same thing might apply to farmers in the eastern part of Canada.

I have two other questions, Mr. Chairman. When a farmer wants to negotiate a loan, is he entirely on his own as between himself and the bank manager? Or is there any Government agency to help and to advise him or negotiate for him?

Mr. Hollbach: If he wishes advice he certainly is free to consult the Farm Credit Corporation. I am sure that the Farm Credit Corporation, which has many experts in agricultural operations, would be glad to assist an individual farmer with advice, even though they may not be asked to make him a mortgage loan. In fact, I understand that the Chairman of the Farm Credit Corporation is most anxious to expand this kind of credit advisory service for the benefit of farmers. In other words, a farmer who wishes to borrow only from the chartered banks or from his credit union under this act, but who feels he needs expert advice in order to best utilize this credit, no doubt will be able to get expert advice from the Farm Credit Corporation.

Senator Carter: In the case of credit unions they usually charge one per cent per month. That used to be the rate. It may have gone up. If a farmer negotiates a loan at 12 per cent a year, or one per cent a month, does that rate have to be approved by the Governor in Council or is it just entirely up to an agreement between the farmer and the credit union?

Mr. Hollbach: What the Government formula will do is establish a ceiling. It will be, as before, one of the conditions of the guarantee that the rate of interest charged by the lender under the loan contract will not exceed that ceiling. It could be below the ceiling. This will apply in all fairness to all lenders, chartered banks as well as credit unions.

In other words, whatever the rate may be, a credit union wishing to make a farm improvement loan to a member could not charge more than this prescribed ceiling rate.

Senator Hays: Do you have any statistics on the amount of loans under this act in western Canada? My experience has been that if a farmer wanted $35,000, then under the old act the banker would say, "All right, we will let you have $35,000. You will get $15,000 under the Farm Improvement Loans Act at a certain rate. Then you have the next $10,000 at a second rate and the last $10,000 at a third rate." I suppose he does his arithmetic and brings out an average rate. Do you have any statistics on the amount of farm improvement loans that are used as a sort of duplicate in that way?

The Chairman: You mean the farmer borrows on his own credit without the aid of the guarantee?

Senator Hays: Yes. He uses the two together. The banker sits down and says, "Well, I will let you have $15,000 on the farm improvement loan. On your bonds I will let you have another $10,000 and on your livestock another $10,000."

The Chairman: Except that I understand that when a farmer goes in to borrow under this statute he has to disclose all his liabilities.

Senator Hays: He does in any event.

The Chairman: So what he will be lent in this particular transaction will be gauged on what his liabilities are?

Senator Hays: Mr. Chairman, I have borrowed lots of money from the banks, and any time that I sat down before the banker this is the way he determined how much he was going to let me have. It was on the basis of my securities. They generally start off with the farm improvement loan. "I will let you have $15,000 on this. On your bonds so much," and so on.

Mr. Hollbach: Mr. Chairman, I have only the statistics by province under the Farm Improvement Loans Act. Therefore, I cannot give you figures for other loans to farmers without the guarantee. This information is available from the Bank of Canada only for the country as a whole. In other words, I could, by way of example, give you the breakdown by province of loans made under the Farm Improvement Loans Act.

Senator Hays: You do not have any information in connection with my question?

Mr. Hollbach: Only for Canada as a whole. For instance, in December of 1967 there were outstanding on the books of the chartered banks $433 million worth of farm improvement loans and $590 million of all other loans to farmers. Now, most of this, presumably, would be for working capital. Most of this would be short term financing.

Senator Hays: There may be a combination of both.

Mr. Hollbach: That is right. There will be some term credit in there outside of the guarantee. So far as the breakdown of farm improvement loans lending is concerned, here are some indicative figures. In 1967, of the $204 million lent that year in total, and I am reading them now in the order of magnitude, the largest portion, $65 million, was lent in Alberta. $59 million was lent in Saskatchewan, $43 million in Ontario, $24 million in Manitoba, close to $8 million in British Columbia, $2.2 million in Prince Edward Island, $1.1 million in Nova Scotia, and also $1.1 million in Quebec. But as one honourable senator has indicated earlier this is simply due to the fact that in Quebec they have their own farm improvement loan scheme. Then it is $980,000 in New Brunswick.

Senator Benidickson: Mr. Chairman, until now there has been a distinct separation with respect to the purposes of the Farm Improvement Loans Act and the Farm Credit Act. This has been the case up until recently. It was not possible to use the Farm Improvement Loans Act for the purchase of land. But now either act can be used under certain circumstances for the purchase of land.

The Chairman: Yes, with limitations on the dollar amount.

Senator Benidickson: Yes, the maximum is different. In the Farm Credit Act it is different from the $15,000 in this act. Now has the Farm Credit Act a fixed rate of interest for the maximum?

Mr. Hollbach: It did, senator, until the amendment was introduced. It has, I believe, passed the house and is now being submitted to the Senate for consideration. It would do exactly the same thing as this legislation. Under the Farm Credit Act the rate of interest on the first $20,000 for an unsupervised and $27,500 for a supervised farm loan was set at 5 per cent and by one of the amendments that was recently by the House of Commons this was revoked and substituted

therefor language similar to what appears in here—that the rate is to be established by order in council.

Senator Benidickson: Until the last revision of the Bank Act, it is my understanding that commercial banks could not take mortgages with respect to land.

The Chairman: Except with the N.H.A.

Senator Benidickson: I believe they can now.

Mr. Hollbach: They did not have general authority to make mortgage loans.

Senator Benidickson: Do you contemplate that if borrowing is undertaken under these amendments for the purpose of land purchase the banks will as a matter of course take land mortgages as does the F.C.C.?

Mr. Hollbach: Yes, sir.

Senator Burchill: Is it anticipated in establishing the formula for the rate that any amount would be put in as a commission for the Government as a guarantee?

Mr. Hollbach: No, this would have to be authorized by legislation and that is not provided for in the legislation.

The Chairman: Are you ready for the question?

Senator Aseltine: I have another question. Still referring to this rate of interest, loans which were made for farm improvements on the one hand and loans can be made on the other hand to purchase small areas of real estate—farm land. Now will there be a rate for farm improvements and another rate for the farm purchase or the purchase of farm lands? It seems to me that the rate in connection with the purchase of farm lands might be different because there would be a longer time to pay it back than if it were just a straight improvement farm loan.

The Chairman: May I point out that all the amendments say that the rate shall be at the prescribed rate, and therefore I would presume that would mean any loan made under this amending bill before us would be at a rate to be prescribed by order in council.

Senator Aseltine: It doesn't say rates?

The Chairman: Rate.

Mr. Hollbach: I should say this, although no decision has been made on this, it may be of interest to honourable senators to know that the Minister of Agriculture has indicated that this might be a possibility—that there might be one rate for land purchase loans with a maximum term to maturity of 15 years, and another rate for other purposes. But as I indicated earlier I am not aware of any final decision having been made on any one rate or the question of one or two rates.

Senator Aseltine: That is what I was trying to get at. I understand further in view of the fact that you have stated that the going rate of banks now for ordinary loans is $6\frac{3}{4}$ per cent, that the rate of interest under this act when it is set won't be less than that.

The Chairman: I don't think the witness said that.

Mr. Hollbach: This must be a misunderstanding. I wouldn't want to comment at all on what the likely level is going to be.

Senator Kinley: Under the statute and under the Small Loans Act the rate was 5 per cent, and the bank rate was 7 per cent, and that was a saving, and the guarantee was cut 2 per cent. Before the Bank Act the rate was 7 per cent.

The Chairman: I think it was 6 per cent.

Senator Kinley: Anyway, that means there was a one per cent difference between the two. But this whole thing is going to depend on the competition between the banks, and I think there is good competition now. I think that is all right, but we know that this 5 per cent placed a value on the guarantee.

The Chairman: Any other questions?

Senator Carter: I want to ask about the guarantee to the principal. In the case of recovery, if a lender lost, say, $400,000 would he be covered for only 10 per cent of the total amount, or would he get 90 per cent of the first $25,000, 50 per cent on the next $125,000, and 10 per cent of the remainder, or would he be covered for the whole thing?

The Chairman: Dealing with $450,000, it says "ten per cent of that part of the aggregate principal amount of the guaranteed farm improvement loans made by it during that period that exceeds two hundred and fifty thousand dollars." They do have an escalation or de-escalation depending how you look at it.

Senator Carter: I can understand the case of a small lender, but the big lender—does he get the same benefit that goes to the small lender?

The Chairman: He gets 90 per cent of the first $125,000. In each case it says "of that part".

Senator Carter: And it applies to every part.

The Chairman: Are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

The Chairman: The next bill we have to deal with is C-113, to amend the Prairie Grain Advance Payments Act. The same printing resolution is in effect.

The Chairman: Our witnesses are from the Department of Trade and Commerce: Mr. R. M. Esdale, Chief of the Grain Division; Mr. W. J. O'Connor, Assistant Chief, and Mr. N. O'Connell of the Grain Division.

Mr. Esdale, would you make a short statement as to the features of this bill that are being accomplished and then we will be open for questions.

Mr. R. M. Esdale, Chief, Grain Division, Department of Trade and Commerce: Mr. Chairman and honourable senators, the intent of this bill generally is to increase the cash resources of farmers in western Canada during times of elevator congestion when they are unable to deliver their grain. This is a general problem we know of. This is when the western farmer receives his income. Therefore, when there is congestion, he has problems in meeting his obligations. The intent of the act is to improve this position, and the amendments, stated very briefly, are that the maximum advance will be increased from $3,000 to $6,000.

Secondly, in establishing this, the arithmetic involved in establishing the rate per bushel has been increased in the case of wheat from 50 cents to $1, in the case of oats from 20 cents to 40 cents, and in the case of barley from 35 cents to 70 cents.

Senator Hays: The rates have been doubled up?

Mr. Esdale: Yes, sir.

The Chairman: And the opposite part of that is the method of repayment?

Mr. Esdale: With respect to the repayment, there is no change in the act. That is to say, when a farmer delivers his grain, half of the proceeds will be used to reimburse this loan. There is no change in that element of the act.

There are two other provisions in the amendments. One eliminates the unit quota in establishing the maximum advance that is possible, and permitting deliveries against the unit quota in that or subsequent years to be used to reimburse the loan, and finally provision is made for the farmers to take advantage of this act, when proclaimed, dating back to August 1. Those are the main elements of the new bill.

Possibly as a matter of interest I would indicate to you, from a historical point of view, that over the period of the last eleven years the charges to the Government for these interest rates have been $7.5 million. The average yearly cost to the Government for these interest free advances have been $683,000 during that period.

The other feature that is noteworthy in this eleven-year period of experience of this act is the high rate of repayment. In other words, the defaults have been relatively small. The Government's share of defaults over that eleven-year period have been $43,000 and the share of the elevator companies, who share in this default to a minor degree, has been less than $5,000 over the entire eleven-year period.

Senator Aseltine: Mr. Chairman, when this bill was in the Senate for second reading I spoke on it and stated that generally speaking I was very much in favour of it. The only objection I had was one on which I gave three examples. One example had to do with the farm of 500 specified acres, another farm with 800 specified acres and another farm with 1,000 specified acres. In each of those cases, with the 6 bushel quota for a specified acre, during the full crop year, it was impossible for the farmer to obtain those advances to pay back the amount of the advance. The balance would have to be carried over the next year, and so on from year to year. He would never be able to get out out of debt.

The Chairman: Let us find out what the history is. What have you to say about that, Mr. Esdale?

Senator Aseltine: What I would like to see is a bigger quota, not only so that he could market more wheat but so that he could in each year pay back the advance which might have been obtained. This is a good act and is very popular, and the addition of doubling the advances that can be made is very satisfactory and it will be a great help. However, what we want to do is get bigger markets, sell more grain and have a heavier or bigger quota per specified acre, so that if it does happen that we must have advances from time to time they can be paid back during the top crop year and the farmer will be able to keep out of debt.

The Chairman: Have you digested all that, Mr. Esdale?

Mr. Esdale: Yes, Mr. Chairman.

The Chairman: Then, let us have the answer?

Mr. Esdale: Very briefly, I would in principle accept the arithmetic on the point of the farmer who has received a cash advance at a rate of a dollar based on this six bushel quota. The senator's arithmetic and points I would accept, that one could not repay it entirely in the identical crop year. Therefore, he would have to move into the second crop year. If that were the experience, ending the crop year, with a six bushel quota, I would agree he would move into the second crop year, to repay that cash advance. I think the only other comment I would express is that I would hope that the appearances of the six bushel quota would be not as often as the others, and historically the six has not occurred very often.

Senator Hays: What we have to do is get out and sell wheat.

The Chairman: Do you want to be commissioned as one of the persons to do that, senator?

Senator Paterson: Is not the solution to sell the wheat and if we do not sell it we just get in the mine deeper?

The Chairman: You have given the answer. One has to find the market.

Senator Paterson: We have to reduce it to where we are competitive. We have let the Americans sell under us.

The Chairman: Are you ready for the question? Shall I report the bill without amendment? It is agreed.

The Chairman: Honourable senators, we had a motion referred to the committee by Senator Carter in connection with the matter of statistics and how they are handled in the departments. The only way to deal with this, it seems to me, would be to set up a steering committee to meet and decide how we are going to go ahead with this, because it is a big question and the procedure should be analysed. My suggestion was that we should establish a steering committee and I would suggest for your consideration Senator Carter, Senator Molson, Senator Bourget, Senator Thorvaldson and Senator Walker as a committee of five. The chairman, of course, by virtue of being chairman, would be part of that steering committee.

Senator Kinley: What exactly is it that the committee will be considering?

The Chairman: It will be considering Senator Carter's resolution.

Senator Kinley: I was away, as you know.

The Chairman: Senator Carter's resolution had to do with a study and examination of our recording of statistics and what the procedures are and everything else. It may be quite a lengthy hearing that we will have to conduct, and, therefore, we should start out on the right basis and analyse the thing. These are only suggestions that I have made as to the steering committee. It is up to the committee to decide who will be on it.

Senator Smith (Queens-Shelburne): I so move, Mr. Chairman. It is a splendid idea and very practical.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: This steering committee will then report back to the main committee. Thank you. That is all the business we have this morning.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable ALAN MACNAUGHTON, *Acting Chairman*

No. 9

Complete Proceedings on Bill C-219,
intituled:
"An Act to amend the Farm Credit Act".

WEDNESDAY, NOVEMBER 13th, 1968

WITNESS:
Farm Credit Corporation: G. Owen, Chairman.

REPORT OF THE COMMITTEE

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable ALAN MACNAUGHTON, *Acting Chairman*

No. 6

Complete Proceedings on Bill C-110,
intituled:
"An Act to amend the Farm Credit Act".

WEDNESDAY, NOVEMBER 13th, 1968

WITNESS:

Farm Credit Corporation: G. Owen, Chairman.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28995—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 12th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow for second reading of the Bill C-110, intituled:

"An Act to amend the Farm Credit Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Everett moved, seconded by the Honourable Senator Thompson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

28995—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 13th, 1968.
(6)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien, (*Bedford*), Benidickson, Blois, Burchill, Carter, Croll, Desruisseaux, Everett, Fergusson, Gelinas, Gouin, Haig, Isnor, Kinley, MacKenzie, Macnaughton, McDonald, Molson, Smith (*Queens-Shelburne*) and Thorvaldson. (21)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion of the Honourable Senator Croll, the Honourable Senator Macnaughton was elected *Acting Chairman.*

Upon Motion it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill C-110, "An Act to amend the Farm Credit Act", was considered.

The following witness was heard:

Farm Credit Corporation:

G. Owen, Chairman.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 10.20 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 13th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-110, intituled: "An Act to amend the Farm Credit Act", has in obedience to the order of reference of November 12th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

ALAN MACNAUGHTON,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 13, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-110, to amend the Farm Credit Act met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, in the absence of the chairman is it your pleasure to elect an acting chairman?

Senator McDonald: I move that Senator Macnaughton be acting chairman.

The Clerk of the Committee: Is it agreed that Senator Macnaughton be acting chairman?

Hon. Senators: Agreed.

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us today two bills. Do we have the usual motion for the printing of 800 copies in English and 300 copies in French of our proceedings?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: This morning we are dealing with Bill C-110, the Farm Credit Act. We have as witnesses Mr. G. Owen, Chairman of the Farm Credit Corporation, Mr. W. H. Ozard, Vice-Chairman and General Manager, Operations, and Mr. R. McIntosh, Comptroller, Financial Services Branch.

Mr. Owen, have you an opening statement that would help us?

Mr. G. Owen, Chairman, Farm Credit Corporation: Mr. Chairman, honourable senators, I would like to make a few brief remarks as to the general intent of the bill. First, the most significant and immediate provision is the increase in capital to the corporation. As of tomorrow we anticipate that all of the capital available to us to lend, in addition to that capital which we expect to collect from farmers this fall, will have been committed in new loans. Therefore, we require an increased capital authorization to the corporation.

The second significant amendment is the removal of statutory interest rates from the bill itself. As honourable senators will know, the act initially provided to borrowers a rate of interest fixed at 5 per cent. That is very much out of line with present-day interest rates and, in fact, is substantially below the cost to the corporation of borrowing.

The bill also provides a fluctuating rate on the upper limit or part of various loans. The present bill proposes to remove those fixed rates and to have the interest rate or rates prescribed from time to time by the Governor in Council.

I could mention many of the factors which economists would use to substantiate the argument that interest rates should be subsidized. On the other hand, I could also mention many of the other factors which economists would use to suggest that the interest rate should not be subsidized. I do suggest, however, that the setting of the interest rate by the Government becomes a matter of Government policy, and, while I would be happy to anwer questions with respect to its implications, I feel that it is a matter of Government policy rather than a matter of direct...

Senator Aseltine: Well, this is Government money.

Mr. Owen: Yes, sir. I think the third and possibly the most controversial item, that which is subject to the most varying interpretation, is the increase of the maximum size of loans up to $100,000.

Senator Aseltine: How long will that last?

Senator Croll: So long as the money lasts.

Senator Aseltine: How long will the money last?

Mr. Owen: We would suggest, sir, about two and a half years. A lot depends, of course, on the economic situation of agriculture.

Senator Aseltine: And the size of the loans made.

Mr. Owen: Well, the size of the loans, and this is what I wanted to emphasize at this stage—it does not increase the amount of money which any individual farmer may borrow. It means that if there are two farmers together in one farming business, then they can each borrow the same amount as they could if they were individuals farming separately. You will appreciate that very often two farmers may find it really to their economic advantage to operate a farm on a partnership basis. Now under previous legislation those two men might, as individual farmers, be eligible to borrow $40,000 each under a standard mortgage loan. If they formed a partnership and shared machinery and jointly operated the land in the interests of efficiency and economy they could only become eligible for $40,000 to the farming business.

The actual change here is relating the amount of the loan to the people involved in the farming business rather than increasing the amount any individual farmer may borrow. Incorporated in those are provisions that those farmers who wish to incorporate their farm business may also be able to borrow money. They have in the past been able to borrow money provided they were related to one another by birth, by marriage or by adoption. But sometimes farmers wish to join with their neighbours, maybe first in a partnership and later in an incorporated business. This bill makes provision for that sort of arrangement. It permits loans to this type of corporation only if the share distribution is that which will be defined by regulation and if the persons who are qualifying shareholders and who in effect are the borrowers have farming as their principal occupation. In other words, by the provisions of the bill itself the loans can only be made to incorporated farm businesses which are actually the incorporation of the farmers' business rather than investment of non-farmers in the farming sector.

The next provision is a significant one.

Senator Desruisseaux: Mr. Owen, on this point I would like to ask a question about co-operative farmers. Is it permissible to borrow to the full extent of each member?

Mr. Owen: You are speaking now of a co-operative association?

Senator Desruisseaux: Yes.

Mr. Owen: Provided each member individually owns his own land and then becomes a member of a co-operative farming association, he is eligible to borrow as an individual. If the co-operative association as such owns the land in its own right, provided it has three or more members occupied in farming, then it could borrow as a co-operative association up to $100,000.

The Acting Chairman: May I suggest that we complete the statement and take the questioning afterwards? We might make faster progress.

Mr. Owen: The fourth item of importance is the extra assistance for establishing young farmers, particularly when they are being established in co-operation with or in conjunction with their parents. Under Part III of the present legislation under which we could lend up to 75 per cent of the value of land and chattels, we have up to now only been able to lend to an individual who is farming on his own. If he was farming in partnership or in some other arrangement with his father, he was ineligible under this particular condition. We have now made arrangements in this bill under which two farmers together can borrow under this part of the act where we lend on land and chattels and supervise the operation of the farm for a period of time. If one of the members of this farming business happens to be under 35 years of age, then despite the fact that his father may be over 45, which was the previous age limit under the supervised loans, they are still eligible. The purpose of this is to provide an opportunity for farmers whose sons wish to come into the business with them to get the capital needed to make the farm big enough to support two farming families so that the vocation will be reasonably attractive for his son.

There is a further provision that if one of the members of the farm business is under 35 years of age and can demonstrate to our satisfaction that his ability to manage a farm is measurably above that of the average, then we could lend up to 90 per cent of the value

of land and chattels. I would suggest that at the moment trends indicate that there isn't a need for introducing a great number of new people into farming. On the other hand, I think this particular clause is related to the opportunity for some of those who are highly qualified young men but who have very little in the way of equity required to get into the farming business today, to get into it, because we must recognize they are going to be leaders of the farm industry in the future.

The fifth item is that dealing with loans to Indians farming on reserves. Up to the moment we have not been able to lend to such persons. There was nothing in our act which said we could not, but if they cannot give us a mortgage against land, and since we are only permitted to lend when we have a first mortgage against land, we have been unable to lend to Indians farming on reserves. In this bill there is provision that we can enter into an agreement with the Minister of Indian Affairs and Northern Development to provide a form of guarantee in lieu of a mortgage against the land, and this will permit us to lend to Indians on reserves on the same basis we would lend to farmers in any other part of the country.

I think, honourable senators, that is the summation of the important aspects of the bill, and I would be happy to answer any questions as we go through it clause by clause, or in any other manner you wish.

Senator Croll: One thing relating to the mechanics of this; say two farmers enter into a partnership and one has 50 acres and the other has 25 acres and the division is on the basis of 50 and 25, how would they covenant to you? On what basis?

Mr. Owen: The covenant to us would be a joint mortgage, with the land of both partners mortgaged to the corporation, and the two borrowers would be jointly and severally liable for the repayment of that mortgage.

Senator Croll: Of the total sum?

Mr. Owen: Yes.

Senator McDonald: Where you have a father and son operation, can they borrow to the maximum of $100,000?

Mr. Owen: If they borrow under Part III of the act—that is, under the supervised loans—and they are either both under 45 years of age or one of them is under 35 years of age, then they can borrow up to $100,000, providing, of course, they meet the other qualifications.

Senator Croll: Before you increased the amount, what percentage went into those larger loans—the maximum?

Mr. Owen: Are you referring to the last amendment?

Senator Croll: Yes.

Mr. Owen: About 30 per cent were above the previous maximum, but only 3 or 4 per cent would be up to our present maximum. These figures really are just approximate.

Senator Croll: When you say "up to the present maximum," what do you mean?

Mr. Owen: Before this bill it was $40,000 for a standard mortgage loan.

Senator Croll: And you say about 3 per cent?

Mr. Owen: Yes, about 3 per cent.

Senator Croll: And the others?

Mr. Owen: $55,000 under supervised loans, again, I would think it would be not more than 3, 4, 5 per cent—something in that order. We are not changing the amount per individual, but we have been unable up to now to lend to two people farming together, to support two farm families.

Senator Croll: What is your middle figure? In what area is the greatest amount of loans made?

Mr. Owen: In the neighbourhood of $20,000 to $27,000.

Senator Croll: That is the bulk?

Mr. Owen: Yes, sir.

The Acting Chairman: Senator Aseltine?

Senator Aseltine: Mr. Chairman, I said pretty nearly everything I had to say in the Senate yesterday. However, I would like to say something now as well, if that is in order.

In the first place, I want to say that we have an office of the Farm Credit Corporation at Rosetown, Saskatchewan, which is very well run and is doing good work, giving good advice, and we are quite satisfied with the way everything is being carried on. But the difficulty that I see with the whole setup is something that I raised yesterday in the

Senate, and that is the effect these new gift tax regulations and the new estate tax regulations are going to have on what a farmer can accomplish in the way of bringing his children into the farm picture with him.

It seems to me that if one cannot make a gift before he dies or leave it to his son in his will without in each case paying, in the first case, a big gift tax or, in the second case, a big estate tax, there is no hope whatever for the young farmer to get into the farming business, even with the help of the Farm Credit Corporation.

I would like to ask the gentleman who is the head of the Farm Credit Corporation—is that your position?

Mr. Owen: Yes, sir.

Senator Aseltine: . . . to say something about that.

Mr. Owen: Well, sir, I must confess that we have been working so assiduously on our preparations to implement the provisions of this legislation that we have not yet made a full study of the implications of the proposed changes in the estate and gift tax provisions.

On the other hand, I think incorporated in this bill is a factor which will help to get around this particular problem and assist farmers somewhat to overcome it. I know it would have assisted them on the basis of the previous legislation with respect to gift and estate taxes. Very frequently the way a son starts farming is by buying land with a loan from the Corporation and security provided by his father. In this way the expansion of the farm business to make it large enough to include the son and provide a living for him and his family is effected by buying the land in the name of the son. There is another trend, towards the incorporation of farm businesses, and one of the problems of transferring farms from one generation to another in the past has been that the son had to buy the farm. More and more farmers are incorporating their farm businesses, and the son is gradually buying the farm by pieces in the form of shares rather than by pieces in the form of land. It is an easier way for the son to acquire an interest in his father's farm.

Senator Aseltine: There have been a great many sales from father to son, and the father has been able, under the old gift tax regulations, to cancel so much of that purchase price a year until the son becomes the owner. He cannot do that any more.

Mr. Owen: Yes, that is right. This does create a problem. I am suggesting that where they are very large they are likely to incorporate, and the purchase can be shares over a period of time.

Senator Aseltine: How much has been accomplished in the incorporation of farms? I only know of two or three farms in our whole area that are being run as corporate bodies.

Mr. Owen: As of about the fall of 1966 there were about 2,400 incorporated farm businesses in Canada.

Senator Aseltine: In the whole of Canada?

Mr. Owen: Yes, sir. Most of those are actually family farm incorporations. I would suggest this number has increased rapidly since that time, and I would suggest the trend in this direction will either be influenced upwards or downwards, depending on the changes made in the tax structure in the future, including the question of income, income tax, taxes on family units and various of the other matters that have been talked about.

I would suggest on the question of incorporation, particularly as the farms get larger, that the direction of this trend will depend largely upon the arrangements which are made with respect to income tax, gift tax and succession tax.

Senator Croll: Is not there a provision in the Ontario Gift Tax Act which permits this without being liable to it in lieu of death duties? You have not come across it?

Mr. Owen: I have come across a number of instances where farmers make gifts to their sons who are starting farming. I had assumed that this gift tax provision was a federal gift tax provision, and personally I am not aware of any different provision in Ontario, but it is certainly a thing our solicitors will be taking into account, but I have not been familiar with it.

Senator Everett: Mr. Owen, the Act provides that a farmer who has taken a loan can pay it off without notice of bonus, is not that correct?

Mr. Owen: That is correct, sir.

Senator Everett: Can he, in effect refinance a loan by that method? In other words, can he pay off a loan, and take out a new loan on the same security?

Mr. Owen: Yes, sir. About 40 per cent of the loans that we make now are to farmers who already have loans from us; who have borrowed money to expand. When we make a new loan we repay entirely the first loan, and set it up as one new and separate loan.

Senator Everett: That is more or less a consolidation of two loans?

Mr. Owen: That is right, sir.

Senator Everett: What I am concerned about here is the interest rate situation. We are now in a period of high interest rates. It is quite possible that because of monetary policy we will move to a period of low interest rates. Farmers who have entered into long-term arrangements now at 7.75 per cent or 8 per cent might find three or four years from now on a 30-year loan that they are borrowing at 2 per cent or 2.5 per cent over the rate being charged by the Corporation at that time. I think you have agreed that that is possible. It may not happen, but it is possible.

Mr. Owen: Yes. It has happened before.

Senator Everett: What we are trying to do here is put the farmer in much the same position as that of the large corporation. We are trying to supply him with long term money for expansion purposes at a reasonable rate. The Minister of Agriculture said that the rate would not be more than one per cent over the cost of borrowing to the Government. This is very attractive, but one very attractive part of a corporate loan is that there is usually a clause for repayment. You may be locked in for five or ten years, and you may have to pay a bonus, but in some way you can repay that loan and then re-finance at the lower interest rate. That is a protection that is always available to the corporate borrower. It is even available to the person who mortgages his house, I believe. What concerns me here is the question: Are farmers going to be locked into a rate that is applicable today, and have to pay that rate without being able to refinance?

Senator Aseltine: For the full term?

Senator Everett: Yes, for the full term. I realize they may pay the loan off, but the scarcity of money to farmers that you have been talking about creates a situation where if the Corporation were not prepared to re-finance on the basis of interest rate reductions alone, there would be no other source from which the farmer could get money. In effect, the farmer would be locked into that rate which he pays today, and which in a period of time may be two or three per cent more than the then going rate.

Mr. Owen: I can assure you, honourable senators, that this is a matter we are very aware of, and very concerned about. I think we must look at the $1 billion that we have out now, and ask: What are we going to do for the individual farmer who has money he has borrowed at five per cent over the next 20 or 25 years, and who now wishes to get new funds. Can we consolidate the two into one loan?

I would believe, subject to the prescription of regulations, that the favourable rate which he presently enjoys would be transmitted to him in an adjustment to the rate on his future loan.

If interest rates go down, and we subsequently find ourselves lending at a rate lower than what he is—if the same principle applied, then his interest rate on his old funds at a higher level would be reflected in his new rate. His new rate would be higher than the general lending rate.

Now, in normal housing loans you must re-finance elsewhere if you want a reduction in rate, unless the lender happens to decide he wishes to go down in rate, and unless there is a clause in the mortgage permitting renegotiation at a particular time.

I would not be prepared to say what the Government might eventually do in this respect, sir, because you must remember that if we pass on the benefit of low interest on loans that are existing now when the farmer borrows new funds, and then pass on the benefit of low interest rates later when the farmer wishes to re-finance, the financial position of the corporation would be impossible, unless we can make arrangements with the Government to get the same consideration from them. I could not forecast what the final solution to this type of problem will be. I suggest though, with respect to the very problem you are referring to, that the fact that there is no other source from which the farmer can borrow to pay us off may be evidence in itself of a problem in respect of farm financing, and that the farmer really should not be locked into a situation where there is only one source of funds. If there were several sources of long term credit he could borrow from any one he wished, and pay us off—that is, if interest rates dropped.

There is nothing in our legislation to prohibit this. That is about as far as I could go.

I can say only this, that it is a problem of which we are acutely aware. We do not think it fair to say to those farmers who have the $1 billion from us at the moment that they have to re-finance their loans at a higher rate. On the other hand, when you come to re-finance higher loans at a time when you are lending at a lower rate, then it will be a question of whether this benefit should be carried on.

Senator Everett: It satisfies me to know that the Corporation is aware of the problem, and proposes to keep its eye on it. I just want to make this one point, that mortgage companies face this particular problem in the normal course of their business. They also have to borrow on a long term basis, and they are stuck with the rate at which they borrow today, unless they can re-finance. But, they still face the problem of people paying off loans.

I would like to correct you on one point. You said that in respect of a home mortgage the mortgagee can pay off the mortgage, but he has to re-finance with another company. That is not entirely the case because while the company that holds the mortgage may be annoyed at having its mortgage paid off, it is still in a competitive business, and it quite often will accept a new mortgage at a lower rate in order to keep the business.

Mr. Owen: Yes, sir.

Senator Everett: So, it satisfies me to know that you are very much aware of the problem.

Mr. Owen: There is another aspect of that, I suggest. In their interest rate to begin with they have incorporated a sufficient margin to take care of that situation, and perhaps we could get around it in the same way.

The Acting Chairman: Were you basing your remarks partly on clause (82), Mr. Owen?

Mr. Owen: Yes, the amendment to section 19 of the act.

The Acting Chairman: Yes:

> The Governor in Council may from time to time by regulation prescribe the rate or rates of interest to be paid in respect of any loan made under this Act.

Mr. Owen: Yes, sir.

The Acting Chairman: Senator Carter?

Senator Carter: Mr. Chairman, I think the witness earlier told Senator Croll that the bulk of the loans were within the range of $20,000 to $25,000, and well below the maximum. I gathered from what he said to Senator Everett that included in that number would be new loans and additional loans to people who already had loans.

Mr. Owen: Yes, sir.

Senator Carter: I was not aware until your reply to Senator Everett that there was this provision. I am wondering if you have any breakdown, but what I am mostly interested in is the reason for the loans being below the maximum. Was it because there was a request for a loan below the maximum, or was it because there were limiting factors which would not permit the amount of the request to be met?

Mr. Owen: Your first question relates to the fact that some of these are second loans. I was really saying that between $20,000 and $27,000 our average loan is about $23,000; the bulk of them are around there. That sum includes the amount used to pay off old loans they have. Generally speaking, the reason many of these are below the maximum is related directly to the size of farm business the man has and the amount he can borrow and repay. In some instances the amount is limited by the security he can offer; it may be limited by his repayment ability, or it may be limited by the amount of long-term capital he actually needs. Many farmers could borrow more, they do not borrow everything they could borrow, so the relationship is really more to the size of the farm business. When I refer to the size of the farm business I am not talking about acres but about income.

Senator Carter: Then the average size of the loan is no reflection of the size of the loan requested, but is a reflection of what the corporation feels can be safely loaned to the farmer in view of the considerations you have just mentioned.

Mr. Owen: There are many cases in which we could lend much more but the farmer does not in fact want more. There are many instances in which we ask the farmer to apply for a larger loan than that for which he originally applied because we feel that in order to be able to pay back any loan he must make a greater expansion in his farm business. In that way in some instances we encourage them to apply for more. Some of them do not need much more, so although

they could borrow much more they do not actually obtain it.

Senator Fergusson: Could you tell us the geographical location of the incorporated farms? I really want to know whether there are any in the Maritimes.

Mr. Owen: To my knowledge we have come across very few; we have found some but very few. The great majority would be in Ontario, Saskatchewan, Alberta and British Columbia.

Senator Aseltine: Could you give us some information about the disappearance of the small farms?

Mr. Owen: I like to measure farms by size of income. I am always happy to see the incomes of farmers going up so that the number of small farmers measured by size of income is going down. In fact, the statistics indicate that the number of commercial farms in Canada—that is the number with gross sales of more than $2,500 per year—has increased steadily since 1951. We must acknowledge that $2,500 is a very low gross income upon which to live today, so although the statistics indicate a great decrease in the number of small farms it must be recognized that the majority of farms that are disappearing are in fact not farms but rural residences from which people make some living and earn very much more outside it.

Senator Aseltine: And the farm population is decreasing accordingly?

Mr. Owen: Yes, sir, those we classify as farm population. We may question how they should have been classified originally. If we talk about small farms in terms of income—which is the only way one can measure a farm, because acreage does not mean anything in view of the wide distribution in acreage requirements—surely that we are looking for is an increase in the income, an increase in the higher level, which is coming about, and a decrease in the number with incomes below that which would give anybody a reasonable standard of living.

Senator Aseltine: The small family farm in the Prairie provinces is pretty well on the way out, because they cannot make that size of income with a small farm.

Mr. Owen: That is right, sir.

Senator Aseltine: They are selling to the bigger owners, and that is one reason why the price of land is going up and up and up.

Mr. Owen: The only thing I can say to that on behalf of the corporation is that we do not lend to the larger farm operators. We have an upper limit. We will not lend to the larger ones, and we suggest they must seek their capital elsewhere. We concentrate our lending on assisting those to enlarge who are able to get up to what will be a viable farm business rather than lending to those who are already well established. I agree with you, your premise is absolutely correct, that is what is happening.

Senator Aseltine: Your corporation is responsible for it.

Senator McDonald: What are the maximum farm assets over which you would not give a loan?

Mr. Owen: We do not establish any specific figure because some kinds of enterprises are capital intensive and others are labour intensive. Some farmers need more income than others. We ask ourselves: "Has this particular farmer as his farm operates got a reasonable income for himself and his family? Is he reasonably well financed in the business?" If he is we say we will not lend him money to expand. Since the maximum loan to an individual is $55,000 and this represents about $80,000 to $90,000 worth of land, we feel we cannot very well decline below that level, but if an individual farmer's net worth is in excess of $75,000 we take a fairly close look at it before agreeing to lend him money.

Senator McDonald: If the farmer's net worth is in excess of $75,000 and he is working in parnership or some family arrangement with his son, would his son be given a loan?

Mr. Owen: Yes if the loan is going to increase the land owned by the son, in other words to increase the son's proportion. If the father is wealthy we would not lend him money to assist him to expand himself, but we would allow him to put up security to assist his son to borrow.

Senator Croll: What percentage of farm loans do you make in Canada?

Mr. Owen: Of total borrowing by farmers, of about $2 billion in 1967 we loaned about $260 million, or about 12 per cent. That is of all kinds of loans. However, on long-term mortgage loans we loaned something over 60 per cent.

Senator Croll: To farmers?

Mr. Owen: Long-term loans to farmers.

Senator Croll: What do you mean by "long-term"?

Mr. Owen: Something secured by real estate for a term of more than 10 years.

Senator Croll: I am not sure that I caught what you said. I understood you to say that from 1952—perhaps that date is not right—farm income has continued to go up.

Mr. Owen: Not directly. I said that the number of farmers with annual sales in excess of $2,500 had gone up steadily since 1951.

Senator Croll: You took $2,500 as what you thought was the minimum?

Mr. Owen: We took $2,500 as the minimum qualification for a commercial farm measured by the Dominion Bureau of Statistics.

Senator Croll: There are no figures to indicate what happened below that figure.

Mr. Owen: In some cases they have gone down drastically below that figure.

Senator Croll: Above that figure you say there has been a steady increase in income.

Mr. Owen: Yes.

Senator McDonald: But, the numbers under 2,500 have gone down drastically.

Mr. Owen: I am really referring to the number of farms in these particular economic classifications.

Senator Croll: You have talked about income. The basis is income and to get back again you said there had been a steady increase of the income.

Mr. Owen: In the number of farms, sir. To quote the precise figures, in 1951 there were commercial farms, that is, those with sales of 2,500 or over, 235,000 in Canada. In 1961, 259,000 and in 1966 about 277,000. The farms with sales of less than 2,500; in 1951 there were 387,000. In 1961, 221,000 and in 1966, 153,000.

The Acting Chairman: Honourable senators, is it your desire to take this bill clause by clause in view of the extended discussion in both houses?

Senator Croll: I will move the bill.

Senator Isnor: I was interested in the statement made by the witness with regard to the Indians. You have made no loans to Indians; is that correct?

Mr. Owen: No loans to Indians farming on reserves, sir.

Senator Isnor: Have you made any loans to Indians?

Mr. Owen: Off reserves?

Senator Isnor: Yes.

Mr. Owen: I expect we have, but I could not be sure. We never ask the racial origin of anyone farming. If he has land and can mortgage it, we do not make any records of race. I could not say; I suspect we have.

Senator Isnor: Am I correct in saying that you stated that you were unable to make the loans to Indians because they are not in a position to mortgage their lands?

Mr. Owen: That is right.

Senator Isnor: Do you have more than one kind of loan? In other words, do you always combine the land and chattels?

Mr. Owen: We make the loan on the land first, sir. If more capital is needed then we can loan on the basis of land, and we take security on chattels. We never have a loan under the Farm Credit Act on the chattels only.

Senator Isnor: I want to get over that Indian situation by taking mortgages on chattels.

Mr. Owen: Mortgages on chattels on Indian reserves can only be valid if taken before the chattels go on the reserves. This is a possibility under another program, the syndicate legislation. This is also done through chartered banks under the Farm Improvement Loans Act.

Senator Burchill: Senator Aseltine was talking about the value of land. I was rather interested in that. How is that value determined? In a matter of purchase, I can see a purchase between an individual and a farmer and a corporation. Is there any assessment or evaluation on top of that?

Mr. Owen: Yes, sir, the purchase price between two private individuals is not really a thing in which we get ourselves involved excepting that if we happen to be advising an applicant who is going to buy land, we may

suggest to him that he look elsewhere to see if he can get the land at a better price. For our own purposes, we evaluate land based on its agricultural productive value. This is a measure of the income which we expect that farm to be able to produce and how much you can afford to pay for the farm, and on the basis of income expectations expect to get a reasonable return for your labour, management and capital investment. This at the moment, in some parts of the country, is significantly below the actual value at which land is changing hands.

Senator Burchill: You have officials who estimate the return on the investments?

Mr. Owen: Yes. I might mention that for the half section of land to add to that of a man who has already three-quarters, the value to him in the form of income may be substantially higher than it would be for his home farm, because it gives him an opportunity to spread out his overhead costs, his machinery costs and his other costs on that larger unit of production. This is one of the economic reasons, aside from our credit, why farmers are willing to pay high values, high prices, for areas of land to add to an existing farm. In economic terms, the marginal utility of that land to him is very high.

The Acting Chairman: It has been proposed that I report the bill without amendment. Shall I report the bill without amendment?

Hon. Senators: Agreed.

At 10.20 a.m. the committee concluded its consideration of the bill and proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable ALAN MACNAUGHTON, *Acting Chairman*

No. 7

Complete Proceedings on Bill S-15,

intituled:

"An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code".

WEDNESDAY, NOVEMBER 13th, 1968

WITNESSES:

Department of National Health and Welfare: R. E. Curran, General Counsel. Dr. R. A. Chapman, Director General, Food and Drug Directorate. M. G. Allmark, Assistant Director General (Drugs), Food and Drug Directorate.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29161—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-*
Choquette	Isnor	*Shelburne*
Connolly (*Ottawa West*)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (*Cape Breton*)	White
Everett	MacKenzie	Willis—(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 12th, 1968:

"With leave of the Senate,

The Honourable Senator Hollett resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Basha that the Bill S-15, intituled: "An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code", be read the second time.

After debate, and–

The question being put on the motion, it was–

Resolved in the affirmative

The Bill was then read the second time.

The Honourable Senator McGrand moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was–

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29161–1½

MINUTES OF PROCEEDINGS

Wednesday, November 13th, 1968.
(7)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.20 a.m.

Present: The Honourable Senators Macnaughton (*Acting Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Carter, Croll, Desruisseaux, Everett, Fergusson, Gelinas, Gouin, Haig, Isnor, Kinley, MacKenzie, McDonald, Molson, Smith (*Queens-Shelburne*) and Thorvaldson–(21).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill S–15, "An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code" was considered.

The following witnesses were heard:

Department of National Health and Welfare:

R. E. Curran, General Counsel;

Dr. R. A. Chapman, Director General, Food and Drug Directorate;

M. G. Allmark, Assistant Director General (Drugs), Food and Drug Directorate.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 10.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, November 13th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S–15, intituled: "An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code", has in obedience to the order of reference of November 12th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

ALAN MACNAUGHTON,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 13, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S–15, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code met this day at 10.20 a.m. to give consideration to the bill.

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us Bill S-15. Do we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Acting Chairman: We have with us today Dr. R. A. Chapman, Director General, Food and Drug Directorate of the Department of National Health and Welfare; Mr. M. G. Allmark, Assistant Director General (Drugs), Department of National Health and Welfare, and Mr. R. E. Curran, General Counsel of the Department of National Health and Welfare.

Senator MacKenzie: Mr. Chairman, may I ask one question? Is this the same bill, to all intents and purposes, as was before us a year ago?

The Acting Chairman: That is right, Senator MacKenzie. Mr. Curran, I believe you have a general statement to put before the committee.

MR. R. E. CURRAN, GENERAL COUNSEL, DEPARTMENT OF NATIONAL HEALTH AND WELFARE: Mr. Chairman, honourable senators, this bill is a consolidation of Bills S-21 and S-22 which were before the Senate roughly a year ago–with one exception, in that this bill does not contain the portion of Bill S-22 which dealt with hazardous substances. That has been taken out and I understand it will form a subject of a separate bill.

This bill, in effect, only amends the Food and Drugs Act and the Narcotic Control Act, and makes consequential amendments to the Criminal Code.

It does really three things. First, it implements a recommendation of the Standing Committee on Health and Welfare of the House of Commons, which went into the question of contraception as was covered by the Criminal Code. That committee recommended that the prohibition on the sale and advertising of contraceptive devices be taken out of the Criminal Code and transferred to the Food and Drugs Act. This bill accordingly defines a contraceptive device and also enlarges the definitions of "device" to include a number of things which we thought were covered but where there was some argument as to whether, strictly speaking, they were covered within the language. Therefore, contraceptive devices will now form part of the Food and Drugs Act.

The second change is in the regulation-making section, in regard to the control of the advertising and sale of contraceptive devices to the general public.

Consequential upon that, the words pertaining to contraception will be taken out of Section 150 of the Criminal Code, so that this will completely remove the sale or advertising of contraceptive devices, as contained in the Criminal Code, and will transfer the legal sale of contraceptive devices to the Food and Drugs Act, with the same authority to make regulations with respect to advertising to the general public.

Honourable senators, on that point I should tell you that the intent at the moment is to permit of advertising to the general public, under regulation, of course, by responsible agencies concerned with

family planning and the dissemination of birth control information, but not to permit of commercial advertising to the general public of contraceptive devices.

The regulations, I can tell you, have been drafted and they will follow that pattern for the time being. Whether any change will later be made in the type of regulation I cannot predict; but we have had no real experience in Canada, because of the prohibition in the Criminal Code, as to whether commercial advertising or otherwise can creep in.

At the moment we are proceeding on the basis that we will limit the advertising to responsible agencies connected with family planning, but advertising to the general public of a commercial nature of contraceptives as such will not, for the time being, be permitted.

Senator Smith (Queen's-Shelburne): Mr. Chairman, may I ask, for clarification, will that description which has been mentioned apply also to advertising in trade journals and various publications available to druggists, and so on?

Mr. Curran: No, senator. It will not apply. This prohibition relates to advertising to the general public. We do not consider advertising in the Canadian *Medical Journal* to be advertising to the general public, or if it is directed to one of the professions, or to the Canadian *Nurses Journal*. It might possibly be that advertising would appear in a professional publication, but not in trade journals. We are talking about newspapers, magazines, radio and television advertising.

Honourable senators, I am not taking these points in the order in which they appear in the bill but rather in the order of their importance or of their subject matter. The next point is contained in section 10, which really is a reproduction of what was contained in Bill S-21 when it was previously before the committee, with one addition. This deals with restrictive drugs. It sets up a new Part in the Food and Drugs Act, entitled Restrictive Drugs. This is contained on page 5 of the bill.

The bill which was before this committee a year ago dealt only with lysergic acid diethylamide, which is generally known as LSD.

Since the committee considered that bill we have also added three other drugs to the prohibited list in the Food and Drugs Act, and these are now transferred to this bill. These drugs are found in Schedule J, which is shown on page 8 of the bill. In addition to LSD, you will see DET, DMT and STP.

I shall not attempt to pronounce the chemical names, but I would tell you that these are very dangerous hallucinogenic drugs. They have made some appearance in the illicit market with young people. A short time ago we added them to Schedule H of the Food and Drugs Act, which is the prohibitive section. For tidying up purposes, we are now bringing them under this bill.

Senator MacKenzie: Marijuana is not scheduled?

Mr. Curran: Marijuana is in the Narcotic Drugs Act. Marijuana is not dealt with in this bill.

Senator Croll: Are these drugs easily obtainable?

Mr. Curran: That is a technical question. The legal use of these drugs is rather limited. They are highly experimental at the present time. But we have some evidence of the illicit distribution of these drugs.

Senator Croll: Could a doctor prescribe some of these for me?

Mr. Curran: The answer is no. They are not available to the medical profession.

Senator Croll: You say they are not available. Who uses them, then?

DR. R. A. CHAPMAN, DIRECTOR GENERAL, FOOD AND DRUG DIRECTORATE, DEPARTMENT OF NATIONAL HEALTH AND WELFARE: LSD is the only one available in Canada for clinical testing at the present time. LSD is available to institutions approved by the Minister of National Health and Welfare for clinical testing to determine safety and efficacy. Lysergic acid diethylamide or any salt of it, in other words the LSD drugs, are made available but the others are not. There has been no request for institutions to use these other drugs.

Senator Croll: What are we getting into them for, if we will never use them?

Dr. Chapman: It is to control the illicit traffic in these drugs.

Senator Croll: How does the trafficker get any of these drugs? How would a man who is trafficking in

these drugs get any of them in order to carry on his business? Where would he get them?

Dr. Chapman: So far as we know these illicit drugs found on the Canadian market are brought into Canada from other countries, chiefly from the United States.

Senator Croll: But they are unknown in this country otherwise.

Dr. Chapman: So far as the manufacture of them in this country is concerned. However, I might add that these are not that difficult to make. They cannot be made, however, by a high school student with a toy chemical set, as has been suggested.

Senator Croll: Well, don't start explaining how to make them. Forget about it.

Dr. Chapman: It takes a competent chemist in a reasonably well-equipped laboratory, and although they do appear in the United States we are not aware of any specific manufacture in Canada.

Senator McDonald: With respect to DET, DMT and STP, do you know if they are used for clinical purposes in the United States, or is the production and sale of these drugs illicit in the United States as well as in Canada?

Dr. Chapman: So far as I am aware the production and sale of these other drugs is also illicit.

Senator McDonald: So far as you are aware there is no clinical use of them in the United States?

Dr. Chapman: I am not aware of any.

Senator Croll: How dangerous is their use?

Dr. Chapman: Extremely dangerous.

Senator Croll: And yet there is some use of these drugs by people who do not understand their implications.

Dr. Chapman: Oh, no. The institutions that are approved by the Minister of National Health and Welfare are thoroughly investigated and are under the control of very competent medical practitioners. Moreover, the individuals to whom the drug is given are under medical supervision throughout the treatment.

Senator Croll: How does it start? Where does anyone get a knowledge about these drugs and their use? Is it the narcotic people who do this? Are they the ones?

Mr. Curran: LSD is separate.

Senator Croll: I know about LSD.

Dr. Chapman: The drug that is listed here as STP appeared in the United States a little over a year ago. It showed up because it was found that several people had suffered from hallucinations after taking a drug, but when the antidote for LSD, that is, chlorpromozine, was administered, rather than having the usual salutary effect, it appeared on the contrary to enhance the effect of the drug, and upon further analysis it was found that it was a different compound entirely. It was not LSD but was STP that these individuals had taken. STP is much more potent than LSD.

Senator Croll: You say that this is a precautionary measure and you want to be ahead of the game for a change, instead of behind the game.

Mr. Curran: That is right.

The Acting Chairman: It is to give you control over unethical suppliers and purveyors.

Mr. Curran: This will also make unauthorized possession an offence, which at the present time it is not. The police have been hampered in their enforcement activities very frequently when they have come across one of these drugs. For example, in one of the Maritime areas—not yours, Senator Fergusson—the police found in a very small community some young people who had quantities of STP which they had illegally purchased. We could not lay a charge against anyone for the possession of STP—which, incidentally, Professor Leary, of whom you have no doubt heard, describes as "Serenity, Tranquility and Peace". Those are the words for which STP is supposed to stand.

Senator Croll: What form does it take? Is it a pill or a liquid?

Mr. Curran: It is a powder.

Senator Croll: Much of it can come in, then.

Mr. Curran: It would be possible, despite the best enforcement efforts. It is impossible to close the

border to keep everything out. This measure will act as an additional deterrent whereby we can deal with unauthorized possession. At the present time we cannot.

Senator Croll: Unauthorized possession with knowledge?

Mr. Curran: Oh, yes, you would have to have knowledge of the thing possessed. In the opinion of the RCMP this bill will be a very helpful aid to them. It follows more closely the pattern of the Narcotic Control Act, with some differences in penalties. But the subject matter of the legislation is roughly the same as that in the Narcotic Control provision.

Senator Carter: Mr. Chairman, in Part IV of the bill, "possession" is said to mean possession as defined in the Criminal Code. I take it it defines possession as "possession for the purpose of trafficking". Is that correct?

Mr. Curran: No. They simply have a broad definition of possession in the Criminal Code indicating that in order to be guilty of possession you have to have either the physical possession of the thing or the physical control of the possession–with, of course, knowledge of what you have. This was put in some years ago in the Narcotic Control Act to get round some legal objections that had been raised suggesting that the word "possession" may have had a different meaning. So we adopted for our standard the definition of possession as is understood in the Criminal Code, and that is why it is incorporated here. It serves to give uniformity to all of the legislation so far as the word "possession" is concerned.

The Acting Chairman: Senator Carter, look at subparagraph (d), "traffic".

Senator Carter: Oh, yes. You have had this power to control LSD for several months now, have you not?

Mr. Curran: No. How we have controlled LSD is a highly different matter. In 1962, at the time of the thalidomide tragedy, we set up a schedule in the Food and Drugs Act of what were called prohibited drugs. Thalidomide was one and LSD was the other. Then, in order to permit some clinical evaluation, we exempted LSD in a limited way. We allowed small sales of LSD to approved institutions–institutions approved by the minister for evaluation of efficacy and safety. There are some 14 such institutions in Canada doing a very limited amount of experimentation with LSD.

That is how LSD is being used for clinical evaluation. But it is not commercially available. There is only one supplier in Canada. That supplier is Connaught Laboratories. They will sell to only an approved institution under the conditions that Dr. Chapman mentioned, that is, for closely supervised use in the institution. I might say that the other drugs will follow the same pattern. If there is any need for clinical evaluation of these drugs, the regulations will permit the same type of clinical evaluation. That is the scheme.

Senator Kinley: One of the principal things is this matter of possession. But if you get some of these drugs under a doctor's prescription and you store it yourself and you are caught with it, you have to prove that you do not have it for traffic. If a charge is brought against a man he has to convince a court that he does not have it for trafficking, and that seems to go against the presumption that a man is innocent until he is proven guilty.

Mr. Curran: But if we find a man in possession, we still have to prove that he was guilty of unauthorized possession. He does not have to prove his innocence. We have to prove he was not a person entitled by law to be in possession.

Senator Kinley: But if he gets it by doctor's prescription.

Mr. Curran: But in the case of these drugs, he cannot get it by doctor's prescription. There is no drugstore in Canada that may stock these drugs, and no doctor can get them. I am talking about LSD, DET, DMT and STP.

Senator Haig: How do you put some of these drugs under the Food and Drugs Act rather than under the Narcotic Control Act?

Mr. Curran: These drugs, because of their medical properties, are not classed as narcotic drugs. The drugs that come under the Narcotic Control Act have been classified by the expert committee of the World Health Organization as being narcotic drugs. In this way we have preserved the purity of the Narcotic Control Act by following the recommendations of the expert committee of the World Health Organization. In this instance we have come across a new

category of drug like LSD. At first we thought that such drugs should come under the Narcotic Control Act, but after careful examination we decided that, since they were not narcotic drugs, it opened up a whole different area. As LSD was the first of these drugs, we felt we could expect other similar drugs to appear and that therefore we should open up a special part of the Food and Drugs Act so as to be ahead of the game, so to speak, and we would be in a legal position to deal with drugs that might appear on the market and which would not have the characteristics of narcotic drugs.

This is why we have created a new classified type of restricted drug which is quite different from narcotic drugs. Narcotic drugs, as you know, are drugs which presumably have a legal use under strict control. But these drugs mentioned here have no medical use as yet and they are still in a highly experimental stage and we felt they should be controlled by legislation.

Senator Hollett: Mr. Chairman, I wanted to find out something about subsection (2) of section 150 of the Criminal Code and why the amendment is proposed to cut out the words "preventing conception". What is the idea behind it?

Mr. Curran: As you know, under the Criminal Code it stated, and the section is repeated on the last page of the bill–

> (2) Every one commits an offence who knowingly, without lawful justification or excuse,
>
> .....
>
> .....
>
> (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of preventing conception or . . .

That was considered by the Standing Committee on Health and Welfare of the Commons two years ago. They heard a number of witnesses and had briefs from agencies to the effect that this was a dead letter in our law because many contraceptive devices were being manufactured and sold, and the law to that extent was being ignored. They recommended that those words should be taken out of the Criminal Code and that the control of contraceptive devices, that is the sale of contraceptive devices, should be transferred to the Food and Drugs Act because these are articles which normally are under medical supervision. They thought it was appropriate that the Food and Drugs Act which was concerned with that subject should be used rather than the Criminal Code, which prohibited the sale completely when everybody knew that many of these things are being sold in drug stores and under medical prescription. In order to bring some sense into the thing the Committee recommended that these should be taken out of the Criminal Code and the subject matter transferred to the Food and Drugs Act. That is the purpose of this amendment.

Senator Hollett: But you say they knew that these were being sold, and I want to ask why the people selling them were not prosecuted for selling them under section 150 of the Criminal Code.

Mr. Curran: Well, there was a provision in section 150 whereby it was a good defence to show that the public good was being served. You may recall many years ago in Eastview the famous case of *Rex v. Palmer* where a nurse employed by a birth control agency was charged under section 150. Her defence was that in disseminating this type of information and providing the means for birth control she was serving the public good, and the court upheld this view and it created a lot of confusion as to what the offence really meant. As a result the matter became a dead letter.

The attorneys general of the provinces responsible for enforcing the Criminal Code were not laying many charges, and this came to a head two years ago when the special committee heard representations in this whole area and recommended that this be brought under the proper form of control under the Food and Drugs Act where this and other matters continue to be dealt with.

Senator Hollett: Because they believed in the public good?

Mr. Curran: Yes.

Senator Hollett: The committee believed it was in the public good to advertise and sell them?

Mr. Curran: Well, not advertising.

Senator Hollett: I know all about that, but they are going to set up a committee to do it.

Mr. Curran: No, there will be special regulations dealing with advertising to the general public of contraceptive devices which have been legally sold for a

long time under medical prescription and which will continue to be sold.

Senator Hollett: Who will draw up the regulations?

Mr. Curran: The governor in council.

Senator Hollett: The Government is going to do this?

Mr. Curran: Yes.

Senator Hollett: The Government will make, what shall I call it, a "red light district" out of Canada, and that is putting it mildly.

Senator Smith (Queens-Shelburne): I think if Senator Hollett had heard what the committee heard half an hour ago he would realize that a lot of this will be taken care of.

Mr. Curran: The purpose of the regulation is to prohibit the commercial advertising of contraceptive devices to the general public. The regulations will authorize advertising to the general public by responsible family planning organizations or organizations concerned with the dissemination of birth control information in the public interest.

These are reputable, legitimate organizations. However, it will not permit of any commercial advertising of these devices to the general public, so you will not find in newspapers or magazines, or on radio or television, any advertisements with respect to contraceptive devices. This will be confined only to advertisements by these agencies. It will not prohibit advertising in professional magazines to doctors and nurses, and people of that kind. So, there will be no commercial advertising of any kind to the public, and the control of these articles will be under the authority of the Food and Drugs Act, which is where the committee thought it logically belonged.

Senator Hollett: Is not this contrary to all the moral rules and laws laid down by all churches—the Christian churches anyway? We have no Christian church that would advocate it.

Mr. Curran: I do not want to get into a liturgical discussion on this area, but there has been a great deal in the press recently on the question of "the pill," and I think many of the churches advocate the use of contraception to control the size of families for the economic welfare of those particular families.

As I say, I think this is a very vexed issue to get into, but I can only interpret what is the intent of the Government in transferring this to the Food and Drugs Act. I would say that probably it is a moral issue between people as to whether they want to use them. There is no compulsion here on any person to use them. This is only to make it possible for people to do so without thereby committing a criminal offence, as they might have done before.

Senator Hollett: As they were doing, and which the Government has not thought fit to prosecute. This is what worries me.

Senator McDonald: Could I return to LSD for a moment? About a year ago we had a committee meeting which you attended, doctor, similar to this one, discussing LSD, and at that time we had some professional advice and some not so professional advice, in my opinion. I wanted to ask you if there had been any experimental work, or if the results of such experimental work as has been carried on—I think you said by 14 institutions designated by the minister—indicate that LSD has a useful purpose in society.

Mr. Curran: Dr. Chapman could answer that. I think the answer in brief is that the opinion is far from unanimous, that more people are apprehensive of LSD, even from a medical point of view. Dr. Chapman will probably have more detailed information.

Dr. Chapman: I might point out that I think I used the figure of five institutions where LSD was under active investigation at the present time. Mr. Curran referred to the number of institutions that over the past few years have been approved. That is the reason for the difference between the 14 and five.

There has been a great deal of work done on LSD, but despite this research there has been a notable lack of scientifically controlled research on the therapeutic uses of LSD.

The principal areas in which LSD is reported to have been useful are: chronic alcoholism, but the research tends to lack objectivity and any long-term follow-up; the therapy of psychoneurosis, and it is very difficult in this area to assess how much of the reported improvement was due to the drug and how much to the therapist actually administering the drug and treating the patients. The third area where it has been suggested as being useful is in the psychiatric

treatment of pain in terminal cancer patients. There has been a limited number of cases reported in this area. Those are the areas where it has been suggested it might be useful, but it really has not been confirmed as an effective therapeutic agent.

Senator McDonald: Thank you.

The Acting Chairman: Honourable senators, is there any desire to take the bill clause by clause?

Senator Burchill: I was wondering about one point during the discussion with Senator Hollett. You indicated there was difficulty in securing prosecutions in the case of illicit or illegal advertising under the Criminal Code. How are we going to get around that now you have put them in this act? How are prosecutions going to be effected now? Will you not be up against the same difficulty?

Mr. Curran: Except that by transferring them to this act they become legal devices which can be legally sold under whatever conditions of sale are prescribed. Some of these things will be sold only under medical supervision. But, for example, condoms, which have been in wide circulation for a great many years, have got around the law because the package usually bore the inscription, "For the prevention of disease only," when everybody knew they were being sold essentially for preventing conception. So, this was just an open device to evade the law by putting on the label, "For the prevention of disease only," and they have been widely sold and they will continue to be sold, either for the prevention of disease, if they want, or for the prevention of conception. They can now be sold as contraceptive devices legally, through various outlets, drug stores, and under whatever conditions of sale may be prescribed.

Senator Hollett: By a Government agency, is that right?

Mr. Curran: The sale, no; the conditions of sale, yes.

Senator Hollett: Advertising too?

Mr. Curran: Yes. There is no intention to permit any commercial advertising of these devices to the general public.

Senator Hollett: Then why advertise them?

Mr. Curran: Why advertising?

Senator Hollett: Yes.

Mr. Curran: The only advertising would be legitimate advertising on the part of family planning organizations, of which there is a number in Canada, that give professional, technical advice to families.

Senator Molson: Hear, hear.

Mr. Curran: To prescribe their activities would be a difficult thing, and the law or the regulations as they will be formulated will permit legitimate advertising to or counselling of, if you like, the public by family planning organizations and by organizations concerned with the dissemination of birth control information. That will be the scope of the regulations—not to interfere with their legitimate activities, as they have been carried out in the past.

Senator Molson: Mr. Chairman, I would like to follow through on Senator Burchill's question. In the event that advertising takes place which is not within the regulations prescribed, what then is the action within the power of the department?

Mr. Curran: The action which is within the power of the department is contained in section 25 of the Food and Drugs Act, which will permit a charge to be laid, punishable either on summary conviction or indictment, with the appropriate penalties for violation of the regulation.

The section says:

> Every person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable
>
> (a) on summary conviction for a first offence to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment, and for a subsequent offence to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; and
>
> (b) on conviction upon indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

So that would be the penalty that can be invoked for a violation of the regulations.

Senator Molson: And which is just as severe as might be imposed under the Criminal Code? There is no difference in this respect?

Mr. Curran: This is true, except that the Criminal Code contained almost an outright prohibition.

Senator McDonald: My interpretation would be that it would be much easier to get a conviction now than it was before under the Criminal Code.

Mr. Curran: That is right.

Senator Hollett: Why?

Senator McDonald: For the simple reason that advertising is opened up to the medical profession, family planning organizations, et cetera, but apart from that there is no provision for advertising or sale. I think there is now a much stronger position.

Mr. Curran: This is our view. We will be in a more effective position to control the situation than we were before.

The Acting Chairman: Honourable senators, I should like to point out that last year we passed Bill S–21 and Bill S–22, and this bill that is presently before us contains really the essence of those two bills. If there is no further discussion, would someone move that the bill be reported? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Thank you, Dr. Chapman, and thank you, Mr. Curran.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 8

Complete Proceedings on Bill S-5,

intituled:

"An Act to amend the Canada Evidence Act".

WEDNESDAY, NOVEMBER 27th, 1968

WITNESS:

Department of Justice: J. A. Scollin, Director, Criminal Law Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

28183—1

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 8

Complete Proceedings on Bill S-3,

intituled:

"An Act to amend the Canada Evidence Act".

WEDNESDAY, NOVEMBER 27th, 1968

WITNESS:

Department of Justice: J. A. Scollin, Director, Criminal Law Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29163—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 20th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Burchill, for the second reading of the Bill S-3, intituled: "An Act to amend the Canada Evidence Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29163—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1968.
(8)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gélinas, Haig, Inman, Irvine, Kinley, Laird, Leonard, MacDonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury and Welch. (20)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill S-3, "An Act to amend the Canada Evidence Act", was considered, clause-by-clause.

The following witness was heard:

Department of Justice:

J. A. Scollin, Director, Criminal Law Section.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 27, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-3, intituled: "An Act to amend the Canada Evidence Act", has in obedience to the order of reference of November 20th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 27, 1968.

The Committee on Banking and Commerce, to which was referred Bill S-3, to amend the Canada Evidence Act, met this day at 9.30 a.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have one private bill and one public bill before us this morning, and I think we should proceed first with the public bill, which proposes certain amendments to the Canada Evidence Act.

> Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

We have with us Mr. Scollin, Director of the Criminal Law Section, Department of Justice, and Mr. P. D. Beseau of the legislative section. Since this bill consists of a series of amendments, I think the best way of dealing with it would be to take it clause by clause and just discuss the change that is involved, and its departure from the present law.

Now, on that basis, Mr. Scollin, we start out with clause 2 of the bill which deals with Section 9. This is a repeal section and deals with the expert witnesses.

Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice: Mr. Chairman and honourable senators, perhaps I could say first of all that this is only the start of a general review of the Canada Evidence Act which is going to be made, and these particular amendments contained in Bill S-3 are the ones that were felt to be desirable now.

Clause 1 of the bill deletes subsection (2) of Section 7 of the Canada Evidence Act. Section 7 deals with the calling of expert witnesses and subsection (1) says that:

> ...not more than five of such witnesses may be called upon either side without the leave of the court or judge...

That is basically a fairly simple provision. Subsection (2) provides that

> Such leave shall be applied for before the examination of any of the experts who may be examined without such leave.

This you will probably understand very often creates trouble, because during the course of a hearing it may turn out that more than five expert witnesses will be required.

Occasionally lawyers, being what they are, forget to apply for this at all until it is too late. The proposal, therefore, is to remove this requirement in subsection (2) by the complete deletion of subsection (2) and to leave it up to the judge to grant leave in the event that more than five are required, and that leave can be obtained at any time.

The Criminal Law Section of the Uniformity Conference recommended this amendment in 1960 and this recommendation was reaffirmed in 1966 in the case of *Regina v. Barrs* in 1946. It was necessary for the Alberta court of appeal to quash a conviction for murder, and order a new trial simply because subsection (2) of section 7 had not been complied with. The original trial in this case lasted 15 days. In their own provincial Evidence Act the legislature of Alberta made this change in 1958. Other provinces have followed suit in their provisions; subsequently Ontario in 1960, Manitoba in 1965, and son on, The acts of Nova Scotia, Prince Edward Island, British Columbia and Newfoundland do not, in fact, contain any such restriction in their Evidence Acts.

Senator Croll: Did you say it was in 1946 that that was upset, or in 1964?

Mr. Scollin: 1946.

Senator Croll: What I do not understand is this. If the matter was recommended in 1960,

re-recommended in 1966, by the unfirmity board, why do we wait so long? Why did we wait? This is 1968. The first recommendation was in 1960, the second in 1966. This seems to be a matter of considerable importance, particularly in view of the judgment that you point out, where for 15 days they sat there and listened and someone was convicted, and later it has to be upset. Why have we not dealt with it sooner?

Mr. Scollin: I do not know really that I am in a position to answer that.

The Chairman: I suppose one answer might be that the mills of God grind slowly.

Senator Croll: But not that slowly, on such criminal matters. How long have you been there?

Mr. Scollin: I, personally?

Senator Croll: Yes?

Mr. Scollin: For whatever worth it is, I have been there a couple of years.

Senator Croll: Someone else before you had this?

Mr. Scollin: I think there are various factors. There is the question of opening up the act, the question of getting time to do these amendments, the question of getting parliamentary time. I think that various factors are involved in this. Also, notwithstanding *Regina v. Barrs*, the thing had worked reasonably satisfactorily before; and if counsel did in fact pay attention to what they were doing, they know when to ask leave. The fact is that it is something which can have unfortunate consequences; but if lawyers are on their toes and if they would ask at the proper time, this should not happen, when you can in fact get leave. It is only in a most unusual case that it becomes really necessary to ask for more than five expert witnesses. Normally this problem does not arise, but it is particularly applicable in a case where during the trial it suddenly develops that more experts are required.

Senator Connolly (Ottawa West): If you remove subsection (1), unless there is some provision elsewhere in the act, does it not follow that leave would not be required for the calling of any number of expert witnesses at any time?

The Chairman: If you remove subsection (1). But the proposal is to strike out only subsection (2). If you took the whole section out, expert witnesses would be in the same position as any other witnesses.

Senator Prowse: You would be liable to surprise in trials continually.

The Chairman: Shall the amendment carry?

Senator Leonard: I move that the amendment carry.

The Chairman: It is carried.

Clause 2.

Mr. Scollin: Clause 2 of the bill proposes to add subsection (2) to the present section 9. Section 9 of the act prohibits a party producing a witness, from proving that that witness has made a previous inconsistent statement, unless the judge has declared that the witness is adverse. Various reasons are given for not giving a party liberty to discredit his own witness. The party has put him forward as being worthy of credit. It is also said that it would be unfair to subject a witness to one cross-examination by his own counsel and one by opposing counsel.

The Chairman: I think the basic principle is that if you put forward a witness you are asking the court to accept his credibility and then there must be a special reason, and you would need to have good reasons, for cross-examining him as though he were an opposing witness. This deals with what the circumstances may be. Generally, you would have to establish that he was an adverse witness. This deals with that very point, only in relation to an earlier or opposing or different construction shown by a statement he made.

Senator Prowse: In writing.

The Chairman: Yes.

Senator Prowse: It does not cover the situation where a person might know that they have information, then the other side are not going to call him, because they do not want his evidence; and if you call him, and if he becomes reluctant or forgetful or something like that—if he is smart about it, he is just going to be as friendly as the devil, but he cannot remember. If you have anything at all that is in writing to suggest that he ought to remember, you can put it in.

The Chairman: It is the run of the grain. You are not going to put a witness in the box who can be cross-examined usefully by the other side, if you can get the evidence you want from somebody else.

Senator Prowse: This deals with the point that the other side would not cross-examine, they would just get him off the stand.

The Chairman: This is a good provision, based on my experience. Shall the clause carry?

It is carried.

Clause 3 of the bill.

Mr. Scollin: Clause 3 is designed to expand the present section 29, dealing with methods of producing and proving bankers' books and records, to other deposit institutions. This is done by deleting the definition of the word "bank" in subsection (7)(b) and defining a "financial institution" in the way set out in subsection (7)(ba), by extending it to include any institution incorporated in Canada that accepts deposits of money from its members or the public.

The Chairman: That takes us almost right through in clause 3. The amendment in relation to section 29 of the act is to subsections (1), (2), (3), (4), (5), and (6), taking us through to halfway down on page 3 of the bill. They all deal with the changing of the word "bank" to any "financial institution". This is broadening the scope.

Senator Macnaughton: How far does the definition "financial institution" go? Does it cover investment companies, or any companies taking in money?

Senator Prowse: The definition is at the bottom of page 3.

Senator Macnaughton: I know, but somehow I do not think it is sufficient.

Senator Leonard: It is a question of taking deposits.

The Chairman: That is the test. One of the characteristics of a bank, as you know, in the broadened use of the words "financial institution", is that it must be some organization that takes deposits. Therefore, your question about the investment companies would not be pertinent to this.

Shall those subsections carry?

Hon. Senators: Agreed.

The Chairman: That brings us down on page 3 to subsection (6a). This appears to be a new subsection.

Mr. Scollin: Subsection (6a) is designed to enable an ordinary search warrant to be executed on the premises of a financial institution, if it is specially so endorsed. This amendment was made necessary by a decision of the Supreme Court of Ontario in the *Queen v. Mowatt, ex parte*, Toronto Dominion Bank (1968), 2 C.C.C. 374.

In that case, Mr. Justice Lacourciere of the Supreme Court of Ontario, held that a bank which is neither suspected of an offence under the Criminal Code nor party to a prosecution is not subject to the authority of an ordinary search warrant under section 429 of the Criminal Code.

Tracing the history of this provision back to the Bankers' Books Evidence Act in England, the judge held that subsection (5) of section 29 was a special provision designed expressly for the convenience of banks to prevent disruption of business and was a special code, self-contained, relating to the instances under which a bank could be searched and books seized and taken away.

Subsection (6a) is designed to cover such a case, by providing that in an appropriate case a search warrant may be executed if it is specially endorsed.

The Chairman: And it is limited to inspecting and to taking copies.

Senator Macnaughton: The same procedure is followed by the Provincial Securities Commission. They can issue warrants for the examination and for taking copies.

The Chairman: Although the Securities Commission in Ontario may also seize books and records.

Shall this subsection carry?

Hon. Senators: Agreed.

The Chairman: It is carried.

Subsections (2) and (3) of section 3 of the bill deal with definitions, as you will note. Is there any comment on those definitions?

Senator Prowse: Would that cover both federal and provincial incorporation?

Mr. Scollin: That would cover both the provincial and federal incorporation, yes.

Senator Prowse: It would cover any incorporation at all? Would it include also the registration of a foreign company? Suppose you had a company incorporated in the United States that was registered and doing business in a province of Canada.

The Chairman: You mean a company that accepted deposits.

Senator Prowse: Perhaps that situation would not arise or would call for special provincial registration. I was thinking, for instance, of banks that have operated here but were not incorporated here.

The Chairman: You mean private banks.

Senator Prowse: For instance, the Mercantile Bank.

The Chairman: If they were not incorporated in Canada they would not get the benefit of this.

Senator Prowse: I have in mind trust companies and others doing business in the country today, taking deposits, particularly under provincial incorporation.

The Chairman: They would be covered.

Senator Prowse: But then suppose you have an American corporation that opens up an office in a province under provincial law? I suppose provincial law would permit that.

The Chairman: I do not say this was any finality, but I would not suspect that other than a Canadian incorporation could carry on.

Senator Prowse: I see.

Senator Leonard: This would include credit unions and the Caisses Populaires.

Mr. Scollin: That is so.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 4 of the bill.

Mr. Scollin: This section is designed to render records kept in the ordinary course of business admissible if certain specified conditions are met. The basic purpose of the amendment is to overcome the difficulties which the exclusionary hearsay rule has created in view of modern business techniques of recording entries in a business. Computerized records, for example, are frequently impossible to get into evidence under the present rules because there is no person who handled the transaction who can speak with personal knowledge of the transaction, or, even if there is, it may be difficult or impossible to identify or find such person.

I may say that in 1966 the Province of Alberta wrote to the Department of Justice pointing out the difficulties arising in a similar kind of case to that which resulted in the English act.

In the case that was drawn to the attention of the department by the Deputy Attorney General of Alberta, an automobile theft ring was removing the more obvious identification numbers and plates from automobiles. If familiar marks, scratches and similar aids to identification by the owner are also removed, proof of identification of the altered vehicle as the stolen vehicle is virtually impossible by present methods.

Some manufacturers allotted identifying numbers to motor vehicles by means of a computer. These numbers are machine stamped on records, and in some cases two serial numbers are placed on the vehicle. Processing is done by numerous people and it is almost impossible for an individual to identify his particular contribution in each case. Motor vehicle manufacturers who allotted numbers by means of computers were unable to come to court and say, "Yes, this automobile was ours; it is stamped by our computerized machine."

The Chairman: All this does is to make admissible certain parts of evidence which would otherwise not be admissible. The weight of this or its credibility comes into play. In other words, the probative value of it is something to be determined in the course of the trial. At least it makes it admissible.

I was thinking about microfilm while Mr. Scollin was speaking. For instance, newspapers today microfilm back copies of their papers after a certain period of time has expired. They do this in the interests of saving space. If a person wants to look at a particular copy that goes back into that period, they put that person in a room with a gadget enabling him to look at microfilm and see what is in the paper. After the person locates what he wants the newspaper will have a transcript made. With this rule, of course, the matter of its admission could more readily go forward.

The general purport of this section of the bill which is adding a new section 29A to the Canada Evidence Act is dealing with this aspect of the admission of copies and the effect of the hearsay rule.

Shall the first nine subsections of the new section 29A in section 4 of the bill carry?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): May I ask one question on that before you leave it? You mentioned microfilm. Is there anything here that deals with the reproduction of information on tape recording material?

Mr. Scollin: The definition of "record", which is contained at the very bottom of page 7, in subsection (12)(e) is broadly enough defined to cover books, documents, papers, cards, tapes or other things, including electrical impulse storage, for example. That is our opinion.

Senator Leonard: Does that include tape recordings of tapped wires?

Mr. Scollin: The condition precedent to the record going in is that it is a record kept in the usual course of business. I would feel that unless somebody had been very naughty, that would not be a record made in the usual course of business.

Senator Connolly (Ottawa West): It would depend on the business.

The Chairman: We have carried the first nine subsections. Subsection 10 deals with evidence that is inadmissible under the section.

Mr. Scollin: First of all, under subsection (10), some of the things mentioned may be admissible under other provisions of the law in any event. This just says that they do not get the advantage of this section. Subsection (11) says the provisions of the section are in addition to other methods of admissibility. Subsection (10) is designed to keep out of the operation of this section certain records which are clearly not the kind of records which ought to be producible by affidavit or just speaking for themselves.

For example, a record made in the course of an investigation or inquiry would include things like statements taken by policemen from witnesses. These ought not to be thrown into court as taken in the ordinary course of business. And in subsection (10)(a)(ii), a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding certainly, again, ought not to be thrown openly into court. These are privileged or private communications made between lawyer and client or between lawyer and witness in a case.

Senator Prowse: Mr. Scollin, this is actually what I had in mind. This would not preclude the production, say, of evidence that was taken or notes that were taken by a lawyer in the case where he had been consulting with his client? This would be in a case involving a charge of conspiracy against lawyer and client. It only excludes things under the section.

Mr. Scollin: If they are admissable under another clause, they can go in. For example, under subsection (3). Then subparagraph (iv) of paragraph (a) of subsection (10) says that if on a matter the witness would not be competent or compellable, such matter occuring in a record in the ordinary course of business cannot go in under this section. Paragraph (b) deals with matters concerning national security or public policy, and these records cannot go in, under the section.

Paragraph (c) of subsection (10) means that you cannot throw in holus bolus in a trial the transcript of the proceedings taken in a previous trial. You will notice that the definition of "business" includes "court". Were it not for this paragraph it might be argued that the transcript could be thrown in as made in the ordinary course of business, but this is not the intention.

Senator Prowse: A record made by a court might almost fall under (i).

Mr. Scollin: It might fall under sub-paragraph (i) of paragraph (a).

The Chairman: I am wondering whether the transcript of evidence taken at a previous trial could be used in a repeat of the trial on the basis that it was made during the ordinary course of business.

Senator Prowse: This would seem to make it all immaterial. If it were to follow an investigation, I would suggest it might be excluded under that. But this spells it out.

Mr. Scollin: The Criminal Code outlines very limited circumstances in which a previous transcript may be used.

Senator Connolly (Ottawa West): I want to ask a question before I leave for another committee. In the course of the discussion conducted here this morning by Mr. Scollin, we have been talking about the "ordinary course of business" and that is set out in subsection (12)(a). But what about organized crime where people in the normal course of their business conduct illegal business? Is that covered?

Mr. Scollin: There is no restriction in the act to lawful business. I think the test is a

factual test. That is, whether the business is carried on or not. Whether it is an unlawful or lawful business I do not think is relevant.

The Chairman: Except that "business" means any business. If you just stop there, it would seem that whether you were doing something unlawful, it may still be a business.

Senator Prowse: This may be important in instances where there are prohibitions on the use of evidence. But if they can be produced, as Mr. Scollin suggested, where you have a matter of conspiracy or where you are charging people with conspiracy, this evidence has been obtained in the lawyer's file in the form of notes. I am thinking of a particular instance where the allegations in the particular case were based on the notes in the lawyer's file. Under subsection (10) they would not be producible, and provided this is limited to a financial institution, that is one thing. But when it comes to the question of losing privilege, the moment I am alleged to have conspired with a client, then I think in that instance both of us lose privilege.

Mr. Scollin: I think this privilege may be lost in circumstances where you are unknowingly a party to a conspiracy by the client.

Senator Prowse: Because it is his privilege?

Mr. Scollin: I think there is some authority to that effect. If what you are doing is unknowingly illegal, the privilege does not exist. It would seem to follow that you would not be giving "legal" advice in the operation of a known illegality.

The Chairman: The privilege we are talking about is the privilege of the client.

Senator Croll: Was there any thought given to extending this to accountants who are in the situation just as often as lawyers?

Mr. Scollin: The position of doctors, accountants, probation officers and people who receive confidential information is something that is going to await an overall review of the laws of evidence. There is a number of cases where there is something to be said for looking to see whether or not a privilege should be created for these people who are frequently involved in situations involving confidential communications. But at the present time the only privilege recognized is that between solicitor and client. I think, however, if we are going to look into the area of recognizing further privileged situations, it would have to be done by way of an overall review of the legislation rather than by just adding pieces here and there.

Senator Connolly (Ottawa West): Senator Croll's question is an interesting one because I can remember cases where medical people claimed privilege and sought recognition for the rights of privilege, but the courts put it, as far as I recall, that there was no such privilege and that the disclosure made by the patient to the doctor had no protection whatever.

Mr. Scollin: Recently Mr. Justice Stewart in Toronto did recognize it in one case where a doctor declined to answer—he refused to force him to answer. This was a psychiatrist. But that is not settled law yet.

Senator Croll: When you say it is not settled law, I may be wrong, but I have an idea that this privilege has been extended in Great Britain to accountants particularly in matters involving taxes and where the lawyer fights only half the battle and an accountant is involved just as much as the lawyer. I understand it has been extended in Britain. Could I be wrong?

Mr. Scollin: I am not aware of the extension to accountants in Britain.

Senator Prowse: But in any event, the generaly field of the extension of privilege is at present under review and may be coming to us in the form of further amendments later.

Mr. Scollin: I think it would be wrong to give the impression that somebody is sitting down and going through this now. But the whole situation will shortly be under review so far as the law of evidence is concerned.

Senator Croll: Well, do not make us wait eight years for it this time.

The Chairman: We might even send for you.

Senator Croll: We might even draft a bill ourselves.

The Chairman: Shall these subsections (10), (11), and (12) carry?

Hon. Senators: Carried.

The Chairman: Then we come to section 5 of the bill. There does not seem to be very much to that.

Mr. Scollin: This is just designed to remove some words from the bottom of the form—the

words "and by virtue of the Canada Evidence Act." This amendment was recommended by a number of members of the legal profession and by the conference of commissioners for uniformity of legislation. The idea is to enable the standard form to be used for all jurisdictions. Very often people have difficulty in knowing whether the oath they are taking is under a provincial act or a federal act, and many provinces use the same form. If the wrong act is referred to, this might cause difficulty in a prosecution under section 114. The idea here is to take out the specific reference to the Canada Evidence Act and end this form with the word "oath". So that for the purposes of section 144, for example, making a false statement, it does not really matter whether it is false because of the Canada Evidence Act, the federal jurisdiction, or because of the provincial jurisdiction.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

The Chairman: Thank you, Mr. Scollin.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 9

WEDNESDAY, NOVEMBER 27th, 1968

Complete Proceedings on Bill S-16,

intituled:

"An Act to incorporate Transcoastal Life Assurance Company".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Transcoastal Life Assurance Company: Douglas Thornton, Vice-President and Counsel, Union Mutual Life Insurance Company; John D. Richard, Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 9

WEDNESDAY, NOVEMBER 27th, 1968

Complete Proceedings on Bill S-16,

intituled:

"An Act to incorporate Transcoastal Life Assurance Company".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Transcoastal Life Assurance Company: Douglas Thornsjo, Vice-President and Counsel, Union Mutual Life Insurance Company. John D. Richard, Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29165—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnanughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 19th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Lamontagne, P.C., moved, seconded by the Honourable Senator Boucher, that the Bill S-16, intituled: "An Act to incorporate Transcoastal Life Assurance Company", be read the second time.

After debate,
The Honourable Senator Fournier (*de Lanaudière*) moved, seconded by the Honourable Senator Flynn, P.C., that further debate on the motion be adjourned until the next sitting of the Senate.

After debate, and—
The question being put on the motion, it was—
Resolved in the negative, on division.

The question then being put on the motion of the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Boucher that the Bill S-16, intituled: "An Act to incorporate Transcoastal Life Assurance Company", be read the second time, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lamontagne, P.C., moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29165—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27th, 1968.
(9)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.15 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Haig, Inman, Irvine, Kinley, Laird, Leonard, Macdonald (*Cape Breton*), MacNaughton, Pearson, Rattenbury and Welch. (20).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-16, "An Act to incorporate Transcoastal Life Assurance Company", was considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Transcoastal Life Assurance Company:

Douglas Thornsjo, Vice-President and Counsel, Union Mutual Life Insurance Company.

John D. Richard, Parliamentary Agent.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

The names of the Honourable Senators Bourget and Molson were removed from the list of members serving on the Steering Committee.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 27th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-16, intituled: "An Act to incorporate Transcoastal Life Assurance Company", has in obedience to the order of reference of November 19th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 27, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-16, to incorporate Transcoastal Life Assurance Company met this day at 10.15 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*): In the Chair.

The Chairman: We now have a private bill, Bill S-16, for consideration. It is an act to incorporate Transcoastal Life Assurance Company.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Chairman: We have as witnesses Mr. Douglas Thornsjo and Dr. Normand J. Belliveau of the Transcoastal Life Assurance Company; and, of course, Mr. Humphrys, the Superintendent of Insurance.

Shall we follow our usual practice and have the statement from the Superintendent?

Hon. Senators: Agreed.

The Chairman: Mr. Humphrys?

Mr. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to incorporate a new life insurance company. The principal shareholder of the new company will be a United States life insurance company, the Union Mutual, with its head office in Portland, Maine. The Union Mutual is a very old, well-established United States company, having been formed in 1848. It has been doing business in Canada for 100 years, as was mentioned in the debate in the Senate.

The company has developed a considerable volume of business in Canada, mostly in the group and accident and sickness field. They now wish to incorporate a Canadian subsidiary for the further and future development of their activities in Canada, rather than continuing to operate on a branch basis, as has been the case heretofore. However, it is not the intention of the Union Mutual in any way to alter the existing contracts of insurance it has intered into in Canada, but if Parliament grants this charter, and if this new company is organized, the pattern is likely to be that the new company, being a Canadian entity, will undertake the administration of the existing business in Canada of the Union Mutual.

I should emphasize that this would be without change in the contracts and without change in the security behind those contracts. They will still remain contracts of the Union Mutual and the obligations of that company, and we will still continue to maintain assets in Canada to cover the liabilities in Canada of that company.

I understand that their desire to have a Canadian subsidiary springs from their wish to expand their operations in Canada, and from a consideration that their volume has grown and they think there are advantages really to Canadians and to themselves in having a Canadian corporation to carry on the business in Canada.

The Chairman: The ownership of the operation would remain the same, it would be a wholly-owned subsidiary?

Mr. Humphrys: The company would be formed as a wholly-owned subsidiary of the Union Mutual and the entire capital and surplus would be put up by that company.

The bill to incorporate the new company, called the Transcoastal Life Assurance Company, is, with one exception, in the standard form. It is the same as bills for this purpose that have been before this committee many times.

It states the name of the company; the location of the head office; the initial capital being $1 million; and it is provided that there must be at least $1 million paid and at least $500,000 in addition in surplus before the company can start business. It will have the

power of undertaking life, personal accident and sickness insurance. The Canadian and British Insurance Companies Act will apply in the usual way.

The one provision which is unusual is in clause 8 of the bill, and this provides that within the first five years of operation of the company they will be obliged to sell off at least 25 per cent of the stock, and within the first 10 years at least 49 per cent. These provisions are being sought by the petititioners as an indication of their desire to hold out the opportunity for participation by Canadians in this enterprise; and it is provided that if the shares are not sold as so indicated, then the principal shareholder will no longer have the right to vote.

Senator Croll: Mr. Humphrys, tell me, how do you enforce section 8?

Mr. Humphrys: I should explain this, senator, that this is not a provision that is required to be in a draft bill; it is not part of the standard bill we have seen so often, and the standard bill that is incorporated in the schedule to the Insurance Companies Act. This particular provision is sought by the petitioners. As far as the department is concerned, we have no objection to them seeking the imposition of this restriction on themselves, and it is an indication of their intention to make participation in ownership available; and if they do not do it, then they lose the right to vote.

So the sanction is that at a meeting the votes of the shares owned by the principal shareholder could not be cast, so it does not seem to me, or it did not seem to us in the department, that we needed to press for any particular penalty, because they would lose their voting right. If at a meeting a dispute arose where the principal shareholder had one view and the other shareholders had other views, then the other shareholders would carry the day because the secretary would be required to reject any votes cast by shares owned by the principal shareholder, since the bill says "no person shall... exercise the voting rights".

The Chairman: Let us assume that no shares were sold off. Therefore, you have a position, say, at the end of five years, and at the end of 10 years, where the principal shareholder owns the total of all the shares?

Mr. Humphrys: There are two points on that. One is that there would be directors' qualifying shares, and the majority of directors must be Canadian citizens resident in Canada. If the shares owned by the principal shareholder could not be voted, the votes would be in the hands of the directors, and the majority would be Canadian citizens resident in Canada.

If this company issues participating policies, which it undoubtedly will do, the parent, being a mutual company, then under the Insurance Act each holder of a participating policy has the right to attend and vote at the annual meeting, so policyholders' votes would be of prime importance.

Senator Cook: You have outside shareholders by section 1.

Mr. Humphrys: It would have to be directors' qualifying shares.

The Chairman: But the shareholders hold one share each qualifying them as directors, and they are Canadians, but if they do not hold their shares in their own right—in other words, have the beneficial interest in them—then they would be disqualified under this subsection (2).

Senator Leonard: Under the general act they have to own their own interest, do they not?

Mr. Humphrys: The general act requires the shareholders to own the shares.

Senator Leonard: That is, the shares are registered in their own names.

Mr. Humphrys: Yes.

Senator Macnaughton: I do not understand the underlying purpose of this provision.

Senator Croll: The underlying purpose of the provision is to get the bill through the House of Commons.

Senator Macnaughton: But how do you propose to offer these shares?

Mr. Humphrys: I shall have to ask the representatives of the company to answer that question.

Mr. Douglas Thornsjo, Vice-President and Counsel, Union Mutual Life Insurance Company: I am the vice-president and counsel of the Union Mutual. We feel it is impossible at this time to establish the precise method of distribution for the first 25 per cent interest, and then the subsequent 24 per cent interest. Ordinarily we would expect to go to a

brokerage house or a securities house, and have them do the underwriting in which these shares would be offered to the public. In addition, we have given oral assurances to our provisional board of directors that if they wish to increase their direct holdings in the company they would have the first option to do so. So, the Canadian directors will take the shares they wish to take, and after that we would expect there to be an underwriting and a public offering of the securities.

Senator Prowse: An immediate public offering?

Mr. Thornsjo: No, we would like the five year provision—within five years. I think the principal reason for that is that a new insurance company in its first few years does not look too attractive, and we feel we have an obligation to the public. We are confident we are going to run this company successfully, but until we prove it we do not think we have any business offering shares in a new insurance company to the public. I will go so far as to say that that is the traditional feeling of the insurance regulators, that you do not offer shares to the public until the company has been seasoned to some extent.

Senator Prowse: By the time these shares get to the public they will have a value greater than the original subscription price?

Mr. Thornsjo: I would think so, sir.

Senator Croll: When you speak of an oral undertaking I would point out that we cannot take too much notice of that. You may then be president instead of general counsel.

Mr. Thornsjo: There is no question about it.

Senator Croll: It is conceivable that the directors may consist of five nominees. They may even hold the shares in their own right, and they can deal with the thing completely.

Mr. Thornsjo: I think that we should be very candid with the committee on this point. One of your members pointed out that a principal objective of this provision is to get the bill through the House of Commons. There is no question but that this plays a part in our thinking. But, equally, we have a sincere feeling that we would be better off with a slice of a company that is controlled and owned by Canadians than we would be with the whole cake owned by ourselves. We feel there is a legitimate nationalistic attitude in Canada today that should be recognized and honoured.

To show you how sincere we are on this point, I will review the issues here. This is not a provision that is ordinarily put in, because it is not required. We, however, are sincere about the undertaking we are making, and if it is the wish of this committee we are prepared to introduce an amendment to this bill which would provide for fine and punishment of the officers of the company in the event that the 25 per cent and the additional 24 per cent provisions are not adhered to. So, we are dead serious about this. We will go as far as the committee wishes us to go.

Senator Croll: Have you an amendment that we can look at?

Mr. Thornsjo: I believe we have.

The Chairman: Frankly, I do not think we should concern ourselves with that phase of it. Have you a view on this, Mr. Humphrys?

Mr. Humphrys: I would not think it would be necessary to impose a penalty on the company, since they are seeking a clause in their charter that has not been put in other charters. It is not something that is required by law. They are seeking to have this condition imposed upon themselves. The penalty of having your voting rights suspended strikes me as being pretty severe.

The effect of a contravention here, as has been pointed out—I think this clause is one that is in the general insurance act, and in another connection, and it is intended to cover the case where, notwithstanding the prohibition, there is an inadvertent violation and votes are cast where there is not, perhaps, a question at issue, and nobody wanted to suspend the meeting if there was not an issue, but if there was an issue clearly it would not be very hard to discover that the principal shareholder was prohibited from voting.

So, I would not feel—this is certainly the department's point of view—that the company needs to be made subject to a penalty if notwithstanding this prohibition any officer does cast a vote. But, I do not think we should put in a penalty for failure to sell the shares, because it is one thing to have an intention of selling the shares, and another thing to find a buyer.

Senator Croll: I defer to the Superintendent.

Senator Cook: That would be a continuing disability? In other words, that would continue from year to year, and would hang over their heads?

Mr. Humphrys: Yes.

The Chairman: These people are offering to practise a degree of self-denial by which they take less than 100 per cent of what the law would permit them to take.

Senator Prowse: Well, it is their business except to this extent—this, on the face of it, I presume, would be necessary for them to do. Now, suppose they have a meeting and unauthorized persons vote. The vote is not void *ab initio*, but within a year a special general meeting can then void it. If at that special general meeting improper persons vote again—and by the time you can call a second general meeting more than a year has gone by—then presumably you cannot get back with the original one. It may be a desirable thing, and it gets into another field. I do not think anybody in this house or in the House of Commons is going to fail to notice this. Probably there is no effective way of policing this thing without endangering the position of the policyholders. In other words, if you suddenly put in penalties it will jeopardize the position of the company and, therefore, jeopardize the position of the policyholders. I do not think anybody wants to do that.

My own feeling about this is where you have something that purports to provide protection when, in fact, it cannot provide that protection, it becomes perhaps an honest form of misleading. I do not say that in any nasty sense, but with the best intentions in the world you are doing something which is going to end up different from what you intend. I would sooner see it without this in it.

The Chairman: Senator, you used the word "protection". Are you suggesting that the provisions in this section in relation to the 25 per cent and the 49 per cent are in the nature of a protection? If they are, then who is being protected?

Senator Prowse: I take this as being a form of protection of Canadians' desire today to be masters in their own house. This, I think, is the intention of the company and I commend them for it, but as the body passing legislation, where what they intend to achieve cannot be achieved, I do not think we should go ahead and put it in. I would sooner leave them with an undertaking to the Superintendent that they would do this than have it written into legislation, when the legislation becomes in effect meaningless.

The Chairman: Frankly, I would rather see it in the bill if you are going to do it at all than have it in the form of an undertaking that the Superintendent approves.

Senator Croll: Are not we better off to give them the normal bill that other corporations have and take a chance with it rather than do what they are attempting to do here, in all good faith, which in the end may be very misleading? Are not they better off if they have these sections out of it completely and ask for the incorporation of a bill, which I am prepared to give.

The Chairman: I do not have a crystal ball, but my guess based on past performance in the other place in relation to private bills, which is not very different from this, has been that a provision of some kind in this direction has been inserted as the result of discussion in committee in the other place, and then the bill will come back to us to approve it as amended. Therefore, we might just as well deal with it now. This is what they ask for, and there is nothing wrong with what they ask for.

Senator Prowse: Might I ask two questions which I think will put everything in perspective? They should be directed to one of the officers of the company. The two questions, which I can ask in one, are these: how long has Union Mutual, which is going to be the parent here, been operating in Canada, and what is the present total volume of business for which they are responsible in Canada?

The Chairman: You understand that they operate as a branch in Canada?

Senator Prowse: I am talking about the Canadian branch.

The Chairman: I think we were told they have been operating 100 years in Canada.

Senator Prowse: Well, he has the answer.

Mr. Thornsjo: This year the company will have been operating for 100 years. I think the following figures give the reply to your question. As of the end of 1967 we had in force ordinary life insurance policies of $5,739,457; we had group life insurance policies in force of $91,449,692; in terms of premium, the single biggest figure was, as Mr. Humphrys indicated, group health premiums, of which in 1967 we wrote $3,223,400. I think the significance of these figures is the rapid substantial increase. For example, in 1965 we had

only 21,000 group health certificate holders; these are individuals covered by group health certificates. In 1966 that number moved from 21,000 to 38,000; from 1966 to 1967 the number moved from 38,000 to 329,000. It is that kind of tremendous recent increase in the number of people covered in Canada and the premium volume increase in Canada that we felt belonged in a Canadian company.

Senator Prowse: In other words, what you are doing is translating the business which had hitherto been carried on as a branch of the American company into a Canadian company?

Mr. Thornsjo: I am not sure I understand your question.

Senator Prowse: From here out?

Mr. Thornsjo: Yes, prospectively.

Senator Prowse: Prospectively the new business will be written in the name of the new company?

Mr. Thornsjo: Yes.

Senator Prowse: But this company will take over the administration?

Mr. Thonsjo: Yes.

Senator Prowse: But they are not absorbing?

Mr. Thornsjo: No, sir.

Senator Prowse: Which was the picture we got the other day, that this was a company being formed to absorb the company presently operating. That is not so?

Mr. Thornsjo: No, sir. The only thing the new company will do vis-à-vis the old business is to service it. With the withdrawal of the Union Mutual from the selling of new business in Canada, necessarily we would have to close offices. It would be unfair on and inconvenient for an existing policy-holder not to have a place to go to for attention here, so the new company proposes, in return for a fee from the old, to maintain offices and personnel so that existing Canadian policyholders have no contractual rights impaired as to convenience of servicing. If he wants to change his beneficiary, if he wants to get some questions answered, if he wants a claim paid, he can go to the same place he has gone to in the past and get that servicing.

Senator Prowse: It is the intention, as far as it is possible for you to do it, to divest yourself of up to 49 per cent to Canadian owners?

Mr. Thornsjo: Yes, sir.

The Chairman: Are you ready for the question? Shall I report the bill?

Senator Macnaughton: I am rather stupid this morning and there is one question I should like an answer to. What is the effect of section 8 subsection (3)? It says:

> If any provision of this section is contravened at a general meeting of the Company, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but ... is ... voidable at the option of the Company.

That means that only the company can make it voidable.

Mr. John D. Richard, Parliamentary Agent: It is the company acting by means of a special general meeting of the shareholders who are otherwise eligible to vote at that meeting. I may say, gentlemen, although I do not want to delay you too long on this point, we were inspired in drafting section 8(3) by the wording of the present section 16D(4) of the Canadian and British Insurance Companies Act, which was passed by Parliament in 1964 and assented to early in 1965. I might also say that the provision is identical to a provision to be found in section 8(3) of an act incorporating the United Investment Insurance Company, which was approved by the House of Commons on July 4, 1967, which is Bill C-114. This type of clause that we are proposing has been approved by Parliament in a public bill, and was given effect to in a private bill as recently as July, 1964.

Senator Macnaughton: But what does it mean?

Mr. Richard: It means the actions are voidable but not void *ab initio*. If a contravention occurs the proceedings taken at the meeting are not void *ab initio* but are voidable, and in order to become voidable they must be voided by a meeting of shareholders held within one year from the general meeting at which the contravention took place.

The Chairman: And a resolution of the shareholders at that meeting declaring the vote void?

Mr. Richard: Yes. Some legitimate concern was expressed for policyholders. As Mr. Humphrys pointed out during appearances before the committee in the other place, which I think will commend itself to your reasoning, matters carried on at a general meeting of shareholders do not necessarily affect the policies and contracts between the insurer and the insured. Basically these are the proceedings which could be avoided, not the contract of the insurance between the company and itself, the insured.

The Chairman: Are you ready for the question?

Mr. Richard: I think it may be of some assistance to you if I told you who the people are. I have three of the provincial incorporators in attendance, Dr. Belliveau from Montreal, a surgeon and Immediate-Past President of the Canadian Medical Association and a past president of the Quebec Medical Association; Dr. Cyril Rotenburg of Toronto, a Director of Radiology at Toronto East General Hospital, and Edouard J. Bourque, a well-known businessman in the national capital area. The other two gentlemen are Dr. Roberts and Mr. Cameron. However, they were not available this morning. It is intended that these gentlemen will take a very active participation in this company.

Senator Cook: I should like to raise a point on subsection (3) of section 8. Does this mean the contract with a third party is voidable at the option of the company?

The Chairman: Senator Cook, I think the situation would be the same as if you were dealing with, say, some different kind of company and you were making a contract with them. If you did not examine the authorities and the limits on the authorities and if there is voidability, the effect of that is that you just would not make a deal.

Senator Cook: It is a big assumption put in there.

The Chairman: If they have legal advice they would be taken care of. If they have not legal advice sooner or later they have to come to the lawyer. Shall we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 10

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill S-30,
intituled:
"An Act respecting Canadian Order of Foresters"

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.
Canadian Order of Foresters: R. G. I. Nicholson, Q.C., Parliamentary Counsel. S. J. Beaudoin, General Manager.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 10

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill S-18,
intituled:
"An Act respecting Canadian Order of Foresters".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.
Canadian Order of Foresters: R. G. S. McIntosh, General Counsel. S. J. Beaudoin, General Manager.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29356—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator Fergusson, that the Bill S-18 intituled: "An Act respecting Canadian Order of Foresters", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29356—1½

MINUTES OF PROCEEDINGS

TUESDAY, December 10th, 1968.

(10)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Salter A. Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Everett, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Lang, Leonard, MacDonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Welch and Willis. (23)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill S-18, "An Act respecting Canadian Order of Foresters", was considered.

The following witnesses were heard:

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

CANADIAN ORDER OF FORESTERS:

R. G. S. McIntosh, General Counsel.

S. J. Beaudoin, General Manager.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.50 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 10th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-18, intituled: "An Act respecting Canadian Order of Foresters", has in obedience to the order of reference of November 26th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, December 10, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-18, respecting Canadian Order of Foresters, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have two bills before us this morning, the first is a small private bill, that is small when compared with the size of the second one, and certainly so far as the volume of paper is concerned, and I thought we might deal with that first. Since this bill, S-18, originated in the Senate I think we should print the proceedings. Do I have a motion to that effect?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Chairman: Mr. Humphrys is here and it is our practice to have him make his report first. By the way, Senator Leonard, you dealt with this in the Senate. Is there anything you wish to add?

Senator Leonard: There is nothing I wish to add other than to say that in addition to Mr. Humphrys we have Mr. R. G. S. McIntosh, general Counsel for the Canadian Order of Foresters and also Mr. Serge J. Beaudoin, General Manager.

The Chairman: Well, if they feel it is necessary to add anything after Mr. Humphrys has spoken, they will have an opportunity of doing so.

Mr. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to convert an existing society, the Canadian Order of Foresters from provincial jurisdiction to federal jurisdiction. The Canadian Order of Foresters is a fraternal benefit society having been incorporated pursuant to Ontario law in 1879. Since then it has operated successfully as a fraternal society and now is established in all provinces of Canada. It has assets of around $29 million, and it has an insurance business of $85 million. It issues all normal types of life insurance and endowment insurance. As a fraternal benefit society it operates first through local courts where the members belong, and then the local courts elect representatives to attend High Court meetings which are periodic conventions of this society held every two years.

The society is in a strong financial position and has, as I have indicated, a substantial amount of business, but it has suffered from the same problems which have beset many other fraternal societies in recent years. The peak of fraternal activity in the sense of fraternal benefit societies was reached many years ago, and since that time there have been some problems for fraternal societies to keep themselves alive.

This organization has some 350 courts across Canada and it has maintained a significant degree of membership. They find, however, that it is somewhat difficult to compete in the insurance area with insurance companies and mutual insurance companies, and they would like to develop their activities and their own insurance business in a more extensive way then has been the case in the past. They are seeking a federal incorporation because they feel among other things that it is more appropriate when they are doing business right across the country, and they also think that it will improve their competitive position and their efforts to develop a more active membership and a more extensive development of their business.

The nature of the bill itself follows the pattern of three bills that have been before the Senate and this committee in recent years, where the legislation would continue the organization as if it had been originally incorporated by the Parliament of Canada and would thereby come under the jurisdic-

tion of Parliament and be subject in all respects to the Canadian and British Insurance Companies Act just as if it had been originally incorporated by special act.

Mr. Chairman, I think that summarizes the purpose of the bill, it would continue to incorporate the organization as a federal society; it would be endowed with the power to issue life insurance, personal accident insurance and sickness insurance, and it would be a fraternal benefit society pursuant to the Insurance Act. It would be empowered to insure its members only and would be issuing that insurance on a principle which is quite important to fraternal societies, namely the open contract which makes the constitution and the by-laws of the society part of the contract of membership, and thus it is open to the society to change its by-laws and levy additional assessments should that ever be necessary to maintain the financial strength of the society. As a matter of fact, that power has very rarely been used by societies, and this society is in a very strong financial position. I mention it, not because it is likely to be used, but as perhaps the most distinguishing and interesting of fraternal societies as compared with life insurance companies.

Senator Burchill: I do not see one Canadian order, the Independent Order of Foresters.

Mr. Humphrys: They are different organizations but their objectives and purposes are not very different.

Senator Burchill: Is the I.O.F. federal?

Mr. Humphrys: Yes.

The Chairman: Are there any other questions you wish to ask Mr. Humphrys? Thank you, Mr. Humphrys. Mr. McIntosh, if you feel there is anything you can usefully add, it is your turn now.

Mr. R. G. S. McIntosh, General Counsel, Canadian Order of Foresters: Thank you, Mr. Chairman. Honourable senators, perhaps I might take a few moments to add some minor points to what Mr. Humphrys has said. The Canadian Order of Foresters is purely Canadian. This is one of the important factors for your consideration, I think, at this time. It is purely Canadian and operates in most provinces of Canada, from Newfoundland to the Pacific. Administratively as well as competively it is desirable to have it federally incorporated. It would certainly assist in the administration of the company's activities, as well as to perform competitively with other companies.

Senator Isnor: What do you mean by "competitive"? Have you any competition?

Mr. McIntosh: Mr. Humphrys mentioned that it is from a competitive point of view that the company would desire to be federally incorporated. I am suggesting that administratively also it would assist, in making its returns, and so on, on a federal basis rather than dealing with each province as it now is, because it is operating in most provinces.

Senator Isnor: Are the benefits limited to the membership?

Mr. McIntosh: Yes, they are.

Senator Benidickson: In addition to paying the normal premium for insurance, there must also be a membership fee?

Mr. McIntosh: Yes, this is right. The members and the policyholders are one and the same as far as voting membership is concerned. I believe more will be said in that regard in a few moments.

Senator Leonard: I do not see Senator Grosart here, who asked in the Senate whether or not the members had been consulted about the intention to change the name and the status of the society. I gave my own answer, to the best of my knowledge and belief, that that was so, but I did say the question could be definitely answered by the officers of the society before this committee. In the absence of Senator Grosart, I think we should ask Mr. McIntosh to give the committee the answer to that.

Mr. McIntosh: First of all I would suggest that by the constitution the members of the fraternal organization and the policyholders are one and the same. There are different classifications of members, but the beneficiary members—that is, those who have voting privileges—are one and the same. I believe this is the answer to Senator Grosart's question which appears in *Hansard* of November 26.

He also wished to have made clear to your committee that the provisions of the constitution had been fully complied with in all respects. The proposal to proceed with the application now before you originated from the Need and Welfare Committee of the Canadian Order of Foresters, which is composed of the membership itself. They suggested before and after the last biennial meeting,

the last general meeting of the membership, held in July, 1967, that this be proceeded with. Following that presentation of the committee the matter was considered by the Executive Committee, and it was then suggested by the former Senator Ross Macdonald, who was legal counsel at that time, that every possible step should be taken to see that this was brought to the attention of each and every member of the Order of Foresters, of whom there are some 40,000.

The matter was then dealt with by the Executive Committee, who announced the holding of a special general meeting of the membership, which was ultimately held on February 1, 1968. Notice of that, in accordance with section 5 of the constitution, was duly sent to our subordinate courts and to each of the recording secretaries. The resolutions proposed to be dealt with at the time of the general meeting were outlined and were also sent with the notice.

In addition to that, notice of the general meeting to be held on February 1 was also published in a magazine that periodically goes out to each of the members, so this reached each of the members personally. All this was in accordance with the provisions of section 5 of the constitution, which states that 60 days' notice of such meeting must be given. The notices went out on November 15, 1967, which was in excess of the 60 days' notice required.

In addition to the general beneficiary members there is also a classification of affiliate members. These are individuals who do not belong to a local court; they are not sufficient in number to belong to a local subordinate court of the organization. Section 40 of the constitution, which deals with affiliate members, states that there must be 300 of them in any province before there is an association, say, of the affiliate members. Notice was given to each of the affiliate members in the provinces of Ontario and Quebec on November 13 advising of a general meeting to be held on December 1, 1967. Twenty-five members constitute a quorum of affiliate members, but there was no such quorum at either of the meetings held in Ontario and Quebec. Incidentally, none of the other provinces is affiliated in this respect. Therefore, there were no appointees of affiliate members because they did not have a quorum.

I would therefore suggest that proper notice was given in accordance with the constitution, and further that it was publicized in the magazine that goes out to each member to ensure that every member had full and adequate knowledge of the meeting on February 1, 1968. The meeting was then held. The resolutions were considered in detail; they were voted upon and received approval of more than two-thirds of the voting members there, again fully in accordance with the constitution. Following the meeting of February 1, a notice was again sent out to each member, and again published in the magazine, advising each member that the resolutions had been passed.

Senator Pearson: What is the percentage of the voting members compared to the regular members?

Mr. Beaudoin: About 5,000 out of 40,000.

The Chairman: Are you ready for the question? Shall I report the bill without amendment?

Senator Benidickson: Senator Isnor and I were just discussing the question as to whether a fraternal benefit society would be subject to the same type and rate of taxes as are imposed on other insurance companies by the budget of October 22.

The Chairman: Mr. Humphrys, could you answer that? You do not even know it is going to be law yet, do you?

Mr. Hymphrys: The expressed intention was to make the tax system apply to fraternal benefit societies as well as to insurance companies.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

Whereupon the committee completed its consideration of the bill and proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 11

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill C-111,
Intituled:
"An Act to amend the Customs Tariff"

WITNESSES:

Department of Industry: Dr. C. A. Annis, Chairman, Machinery and Equipment Advisory Board.

Department of Finance: J. Loomer, Director, Tariffs Division.

Department of Trade and Commerce: M. Schwarzmann, Assistant Deputy Minister. R. Kelly, Deputy Director, U.S. Division, Trade Relations.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 11

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill C-131,
intituled:
"An Act to amend the Customs Tariff".

WITNESSES:

Department of Industry: Dr. C. A. Annis, Chairman, Machinery and Equipment Advisory Board.

Department of Finance: J. Loomer, Director, Tariffs Division.

Department of Trade and Commerce: M. Schwarzmann, Assistant Deputy Minister. R. Kelly, Deputy Director, U.S. Division, Trade Relations.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29358—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (*Bedford*)	Gouin	O'Leary (*Carleton*)
Beaubien (*Provencher*)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (*Prince*)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (*Queens-Shelburne*)
Choquette	Isnor	Thorvaldson
Connolly (*Ottawa West*)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (*Cape Breton*)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

"A Message was brought from the House of Commons by their Clerk with a Bill C-131, intituled: "An Act to amend the Customs Tariff", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,
The Honourable Senator Hayden moved, seconded by the Honourable Senator Langlois, that the Bill be read the second time now.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29358—1½

MINUTES OF PROCEEDINGS

TUESDAY, December 10th, 1968.
(11)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.50 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Everett, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Lang, Leonard, Macdonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Welch and Willis. (23)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill C-131, "An Act to amend the Customs Tariff", was considered.

The following witnesses were heard:

DEPARTMENT OF INDUSTRY:

Dr. C. A. Annis, Chairman, Machinery and Equipment Advisory Board.

DEPARTMENT OF FINANCE:

J. Loomer, Director, Tariffs Division.

DEPARTMENT OF TRADE AND COMMERCE:

M. Schwarzmann, Assistant Deputy Minister.

R. Kelly, Deputy Director, U.S. Division, Trade Relations.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 11.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 10th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-131, intituled: "An Act to amend the Customs Tariff", has in obedience to the order of reference of December 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, December 10, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill C-131, to amend the Customs Tariff met this day at 9.50 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: We have before us for consideration Bill C-131, an act to amend the Customs Tariff.

We have with us Dr. C.A. Annis, Chairman of the Machinery and Equipment Advisory Board, Department of Industry; Mr. J. Loomer, Director, Tariffs Division, Department of Finance; Mr. H. D. McGree, Economist, the Tariff Board; Mr. M. Schwarzmann, Assistant Deputy Minister (Trade Policy), Department of Trade and Commerce; and Mr. C.J. Kelly, Deputy Director U.S. Division, Office of Area Relations, Department of Trade and Commerce. So, with this panel of experts we should be able to get all the information for which we could possibly frame questions.

I do not think this is the kind of bill concerning which we need a general statement from the representatives here. Unless you want to start out with questions, my suggestion would be to go through the bill section by section and let the questions spring as they may. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Dr. Annis, who is going to carry this section by section?

Dr. C. A. Annis, Chairman of Machinery and Equipment Advisory Board, Department of Industry: Mr. Chairman, possibly I might say a word to start. I think Mr. Loomer would be the best person to speak about some sections, in that he is the officer of the Department of Finance who is most familiar with the chemical schedule. Possibly I should say a word, or Mr. Loomer or one of the others, about each of these sections, as the chairman calls them.

We refer first to section 1 of the bill. The purpose of this section is to define "wire" for the purposes of the Customs Tariff. Until now the Tariff has not contained any definition whatsoever of wire, and this has led to some problems. It has led to administrative difficulties from time to time.

The Tariff Board some time ago had all the items relating to wire referred to it, as Reference No. 132, and as part of its report the Tariff Board recommended the definitions of wire that are now proposed to be incorporated in the Customs Tariff as a result of clause 1 of the bill.

Senator Kinley: Clause 1 refers to copper wire used in telegraph and telephone facilities?

Dr. Annis: Yes, that would be covered. Also aluminum wire and wire of iron or steel, as would be used for a multitude of purposes, from wire fencing through wire to make nails, etcetera.

Senator Kinley: What are the rates of duty?

Dr. Annis: There are various rates of duty provided for, according to the material of which the wire is made. In general, the rates recommended by the Board, and which are provided for in the schedules to this bill, are somewhat lower than they had been in the past. These reductions were recommended by the Tariff Board as being in the Canadian interest generally, but since this report was received by the Government shortly before the commencement of the Kennedy Round of tariff negotiations, those reductions were not made unilaterally. The reductions were

offered on concessions in the Kennedy Round negotiations.

Senator Kinley: Copper has dropped quite a lot in price, has it not?

Dr. Annis: Yes, basic copper. The price of copper wire, of course, tends to reflect two components: first, the cost of primary copper; and, second, the cost of fabrication.

Senator Kinley: It was in short supply. Is that the reason for the reductions?

Dr. Annis: Not primarily. That may have been a minor element in the Board's thinking, but the Tariff Board is expected to take a long-term view, as I believe was done in the report on this reference.

Senator Pearson: Why was wire singled out and set out specifically in the first section of the bill, compared with all the other imports?

Dr. Annis: That really arises because this bill amends the Customs Tariff, and because they amend the Customs Tariff the provisions of this bill are arranged in the same order as the corresponding provisions in the Customs Tariff. The Customs Tariff starts out with a list of definitions. A number of things were defined—steel plate, and so on—but wire was not. The definition of wire comes first, because definitions are at the beginning of the Customs Tariff.

For the same reason some other things come in an order which may look rather strange, but the explanation is they also are arranged in the same order as the corresponding provisions in the Customs Tariff. It starts out with definitions and goes on to the powers of the Governor in Council and to enumerate the rates of duty that apply in the long schedules appended to the Tariff.

Senator Carter: These figures in section 1—1.25 inches in width, 0.188 inch in thickness—are these international standards?

Dr. Annis: I am not sure how to answer that. They are standards that are widely recognized in the trade in North America. I suspect that the standards in Europe, where the metric system is used, are somewhat different.

May I ask Mr. Loomer if he knows?

The Chairman: Certainly.

Dr. Annis: He does not know either, and I do not think the Tariff Board report refers to it. It refers to the fact these are standards used in North America.

Senator Rattenbury: It is on the BMS gauge, isn't it?

The Chairman: Do you have any comment on that?

Dr. Annis: I think that is correct, but I am afraid we are not technicians on wire.

Senator Everett: What do you call material that is over half an inch in circular cross-section and is made of copper?

Dr. Annis: That would normally be considered a rod.

Senator Everett: A rod?

Dr. Annis: Yes, sections which are larger than wire are normally rod.

Senator Everett: And rods are defined?

Dr. Annis: Yes.

The Chairman: Shall section 1 carry?

Hon. Senators: Carried.

The Chairman: We come now to section 2. Who is going to deal with section 2?

Mr. J. Loomer, Director, Tariff Division, Department of Finance: I will, Mr. Chairman. This is the first of several sections which relate to the implementation of the new schedule for chemicals and plastics, Schedule D to the bill, which begins at page 100. This schedule flows from the Tariff Board report on chemicals under Reference 120. The revised schedule proposed by the board formed the broad basis of the Kennedy Round negotiations on chemicals and plastics. I might say that in the Kennedy Round Canada agreed to a rate on chemicals of not more than 15 per cent, and on plastics a range of rates depending on the degree of fabrication running from 10 per cent to 17½ per cent.

In the Kennedy Round Canada agreed to introduce the concessions made on chemicals and plastics not later than July 1st of this year. However, this did not prove possible, and an agreement was reached with our trading partners that Canada could postpone the implementation of this new schedule until not later than January 1, 1969.

The Chairman: What is the effect of section 10A?

Mr. Loomer: The effect of section 10A is to give the Governor in Council the authority to reduce, remove, or restore the duties under the tariff items providing for chemicals in Chapters 915, 928, and 929, and for certain items covering plastics in Chapter 939, all of which appear in Schedule D to the bill.

Senator Kinley: These sections are all plastics and—what else?

Mr. Loomer: Chemicals.

The Chairman: Are there any questions on this section? Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Section 3. Who is going to deal with this?

Dr. Annis: I will take that one; the next one relates to chemicals again and Mr. Loomer will speak to it.

Section 3 provides for a technical amendment which is consequential to, and which flows from, the amendments that are proposed to Schedule A of the Customs Tariff Act relating to seasonal rates of duty on some rather minor fruits and vegetables. Section 13 of the present Customs Tariff Act authorizes the Minister of National Revenue to make orders prescribing periods during which certain seasonal duties that are provided for in the tariff shall apply. For example, in the past it has been customary in respect of quite a number of fruit and vegetables to provide for a rather low *ad valorem* rate, usually 10 per cent, throughout the off season, or in some cases free entry through the off season, and then in the Canadian season to have a specific duty of one cent a pound or half a cent a pound, or some such figure depending on the article concerned.

Senator Kinley: That is due to the seasons?

Dr. Annis: Yes. The objective is to provide protection or additional protection during the period when it is most needed.

Senator Kinley: You have discretion there, have you not, as to when you put it on, and lift it?

Dr. Annis: Yes, there is discretion, but the discretion is used for the benefit of the Canadian producers. The Minister of National Revenue prescribes the periods, and he through long established practice has acted upon the advice of the Canadian Horticultural Council and agricultural interests; in effect, the season is chosen to best serve the Canadian producers.

I might add that the in-season duties have traditionally been specific amounts which, back when prices were lower, were fairly substantial. With the rise in prices in recent years some of those specifics have become no better than ten per cent *ad valorem*.

The Chairman: Unrealistic?

Dr. Annis: Canadian horticultural interests say that. Canadian consumers prefer that they be lower. In any case until now the in-season duties had been specific. Under the amendments in this bill in certain instances provision is made whereby the in-season duty be an *ad valorem* rate of ten per cent.

Now, in the old provision in the Customs Tariff Act the authorizing clause said that the minister may prescribe the specific rates that are set out. But because there are going to be some *ad valorems* that section had to be amended to provide for the substitution of an in-season *ad valorem*.

Senator Kinley: There has been considerable discussion about grapes coming in and interfering with the Canadian market.

Dr. Annis: Yes, sir, that is correct, but they are not affected by the provisions of this bill. In the Kennedy Round no in-season concessions were given on grapes, and this bill does not provide for any significant tariff changes on grapes. In so far as Canadian producers have a complaint, it is about something that was done a long time ago—the coming in free of duty of some grapes that they found competitive.

Senator Kinley: The farmers were all parked here in automobiles, you will remember, a few weeks ago. There was a demonstration.

Senator Croll: No, that was in respect to corn.

Senator Kinley: Yes, corn coming in from the United States, and Africa, I suppose.

Dr. Annis: I think it was corn from the United States in this case. Might I add a word. I said that there was no change affecting the free entry of grapes in this bill that was related to these complaints. That, I think, is correct, but I should also add that there is

one small change affecting grapes, and I think Mr. Loomer can explain it more clearly. Possibly we do not need to. In terms of substance, what I have said is correct. The issue with regard to grapes is not affected by this bill.

Senator Croll: In respect of corn we did make a change recently, did we not?

Mr. Loomer: Yes, a value for duty was put on corn, senator.

Senator Croll: Yes. Would you tell me how you go about doing it with the other partners to the agreement?

Dr. Annis: This can vary a little, but in the first place there are two or three points I should make, and I think Mr. Loomer can add to them. As far as the rate of duty on corn is concerned, it is 8 cents a bushel, and that is bound by an old trade agreement. That binding is continued without change in these provisions, so that the rate of duty was not affected by this value for duty. The second element in the situation is that the GATT places certain restrictions on the ability of contracting parties to apply non-tariff barriers, and there is also a provision whereby in case of serious injury resulting from commitments a country may in special circumstances, in effect, escape from or modify its commitment. The Canadian action in applying a special duty on corn is a case in point. It is a case where what we did was a derogation from our commitments and consequently our trading partners had to be consulted. I think Mr. Loomer, who was involved in those consultations, probably would like to add something to this.

Mr. Loomer: We did enter into negotiations with the United States, which was, of course, the supplier, and we came to an agreement with them on compensation which involved an acceleration of some Kennedy Round reductions, and these were put in by order in council and this resolved the problem.

Senator Croll: Yes but I understood that they were very unhappy about it and had complained.

The Chairman: Do you mean the United States?

Senator Croll: Yes, the United States. I saw a statement by an official. I do not know what position he has.

Mr. Loomer: That may be right. They were somewhat unhappy about it, but we did meet with them and came to an agreement which they accepted as adequate compensation for the action on corn.

The Chairman: What was the action you took on corn?

Mr. Loomer: A value for duty.

Senator Croll: Can you think of an instance where one of our partners took similar action on something that is important to us?

Dr. Annis: There have been cases. Mr. Schwarzmann would be the best man to speak to that. He is very much concerned with the export side.

Mr. M. Schwarzmann, Assistant Deputy Minister, Department of Trade and Commerce: There have been cases where other countries have taken special action of this kind. One case that comes to mind is that some years ago there were restrictions placed on lead and zinc by the United States under the articles of the GATT, which provide for emergency action of this kind. On the whole, the general approach or resort to these provisions is to limit them to as few cases as possible.

The Chairman: Those restrictions that you are talking about on lead and zinc were restrictions on exports?

Mr. Schwarzmann: Imports into the United States.

Senator Croll: Is it fair for me to assume that this is an escape clause within the act?

Dr. Annis: There is an escape clause within the provisions of the General Agreement on Tariffs and Trade to which we are a party, and we, or any other country, can, if we establish our case, resort to that escape clause. It is not an easy hurdle and perhaps it is in the general interests that it be not easy, or, in other words, that people be required to pay for their sins in the sense of the derogations from their commitments.

Senator Croll: Over the period of GATT has that escape clause been used to any extent by our friends, or ourselves?

Dr. Annis: To a significant extent, but not to an extent which would endanger the agreement. The United States is a case in point. The United States has a system whereby appeals for escape clause action may be made to the United States Tariff Commission, and quite a

number of such appeals have been made over the years. The majority of such cases have been, in effect, rejected on the basis of the findings of the Tariff Commission. The Tariff Commission has made recommendations to the President in a number of instances recommending increases in tariffs as the result of escape clause actions, and in some instances the President has, by proclamation, raised duties—but such cases are rare. If you want to pursue this in detail I should mention that Mr. Kelly is an expert on the United States tariff.

Senator Croll: No, no, I am quite satisfied. Here is the question which follows from that. You say they have a procedure whereby they can appeal to their tariff board, who can make a recommendation?

Dr. Annis: Yes, to their tariff commission, which is the title used.

Senator Croll: We have no such procedure. Ours must go to the minister?

Dr. Annis: Our procedure is not the same, but in some respects it is more flexible. An aggrieved party in Canada can take his case to a member of the Government, to a minister.

Senator Croll: And then the minister can order that reference, if he wishes?

Dr. Annis: If he chooses, the Minister of Finance may ask the Tariff Board to look into the facts of the case. But it is not necessary for him to do so. Under our system, the Government does not need to refer anything to the Tariff Board; it can make a decision without doing so, if it should wish.

Senator Croll: The Americans have a direct appeal, as of right?

Dr. Annis: Yes.

Senator Croll: And ours is a matter of Government policy?

Dr. Annis: I am not sure whether that is a valid distinction. It seems to me that any Canadian citizen could argue that he has a right of appeal to his government, and that if he does so, his case is considered.

Senator Croll: I appreciate that, but there is a difference between an appeal to the Tariff Board, which is a specialist in that sort of work and can go into it, and an appeal to a minister, who may have his department to give an opinion but may have quick action, which is the difference.

Dr. Annis: Yes, sir.

Senator Burchill: Do I understand that they by-pass the Tariff Board in that case, that the citizen could by-pass the Tariff Board in going to the minister?

Dr. Annis: In a case of this sort, there is no provision for anyone except the Minister of Finance or the Governor in Council making a reference to the Tariff Board. There is another area in which anyone has a right of appeal to the Tariff Board, this is in matters affecting customs classification. Any importer has a right to carry an appeal from a decision of the Department of National Revenue, on classification or rate of duty, to the Tariff Board.

Senator Burchill: Thank you.

Senator Lang: To follow Senator Croll's line of questioning, to get it clear in my own mind, in a situation where a value for duty is established, what is the act that does it—is it an administrative act, is it by order in council, is it by amending the Customs Act?

Mr. Loomer: It is the Customs Act, section 40A(7)(c), which provides authority for establishing a value for duty.

Senator Lang: By the minister.

Mr. Loomer: Yes, not under the Customs Tariff; it is in the Customs Act.

Senator Connolly (Ottawa West): I wanted to ask how many times Canada has used the escape clause?

Dr. Annis: Not very often. The situation is a little muddy, in that there are a few occasions on which we have taken emergency action on such things as applying a value for duty to some item without formally lodging an escape clause request in Geneva. But we have done this very often.

Senator Connolly (Ottawa West): You do it very much on the basis of danger of dumping?

Dr. Annis: Yes; if there is danger of dumping, this might be a factor, although there is a separate provision relating to dumping.

Senator Connolly (Ottawa West): An allegation of dumping?

Dr. Annis: This may be the case. If a country is in difficulty over implementing concessions it has given, there are available to it two potential escape routes. One is the serious injury clause, article 19 of GATT, which we have been talking about. This can be used without advance consultation. That can be done afterwards. It is used in cases of extreme emergency.

There is another route, the right to renegotiate a concession. If one sees a problem coming but it is not so urgent that one needs to act immediately, use can be made of Article 28 of GATT, which provides an avenue whereby one may renegotiate a commitment. We in Canada have used that occasionally. There were two important cases. One involved a long-term problem on potatoes, where we renegotiated our commitment to enable us to impose a duty. Another instance was where we renegotiated our commitments on the main item relating to cotton fabrics. Quite a long time ago, there had been a provision whereby we had three different rates of duty, depending on the value of the fabric. On anything valued at more than 80 cents a pound the rate of duty was quite low. There had been a time when 80 cents a pound was a very high priced fabric, outside the range of Canadian production. With the change in values, it no longer remained the case, and we had a long-term problem. Canada renegotiated its commitments and gave compensation in other areas to obtain relief from this commitment. That was done through the application of Article 28. This is the route that we have used in circumstances where the United States probably would have used the escape clause.

Senator Connolly (Ottawa West): That answers it. Are any of the so-called developing countries parties to GATT?

Dr. Annis: Yes sir.

Senator Connolly (Ottawa West): Many?

Dr. Annis: Yes, a good many. In fact, about 30 of the developing countries—the underdeveloped and developing countries—participated in the Kennedy Round negotiations on some basis or another. Some of them participated to the extent of signing an agreement providing that they would make reductions in tariff rates. Others participated on a basis which came closer to saying "this is what we would like to get, and if we get it we will do the best we can". There was quite a range in the extent of involvement. As I say, some of them made definite tariff commitments. Jamaica is an example.

Senator Connolly (Ottawa West): In that respect, they complained a great deal about the fact that their native commodities cannot get in the markets of say, the OECD group. Would you say that GATT has helped those underdeveloped countries?

Dr. Annis: I think that GATT has helped them but that the help is certainly—in my view and I feel in the view of impartial observers—far from adequate to meet their real needs. In the Kennedy Round some things were done for them which they would find helpful, and some other things were considered but not accomplished. A good example of this is in the field of tropical products. The Canadian delegation, on instructions from the Government, proposed that all contracting parties go as far as possible towards complete free trade in all tropical products. We removed our duties from coffee and from cocoa beans and cocoa butter. We were able to do this...

Senator Connolly (Ottawa West): What about groundnuts?

Dr. Annis: Groundnuts were free already in our case.

The Chairman: You will still be able to get your peanuts, Senator Connolly.

Senator Connolly (Ottawa West): For so many years I have heard them talking about groundnuts and it was not until recently that I realized they were speaking of peanuts.

Senator Croll: Among other things we heard a great deal about the complaint from Jamaica about sugar. I don't understand what the situation is. Will you explain it to me?

Dr. Annis: I am not sure I am competent to give a precise explanation.

Senator Croll: Well, I know nothing about it, so you will be able to tell me something about it.

Dr. Annis: There are two or three elements in this situation regarding sugar that we might mention. This may be helpful, but it may not be an adequate explanation from your point of view. As far as Canadian tariff

is concerned there is nothing in this bill that affects the rates of duty on sugar, and this is largely true of other countries as well. In the Kennedy Round sugar did not get very much into the negotiations. This was due to a number of factors but largely because of special arrangements that are embedded in legislation in different countries; for instance, the Sugar Act in the United States, and the Commonwealth Sugar Plan that is so important in Britain, and other special European arrangements on sugar. The basic difficulty regarding sugar is the fact that in relation to the import requirements of importing countries, the big suppliers in tropical areas have too much to supply. This has led to a disorganized market where prices have tended to be low.

The Chairman: But, Dr. Annis, you know so far as these Commonwealth countries are concerned that they enjoy a special arrangement as to a certain percentage of their products with the United Kingdom under the United Kingdom sugar arrangements under which the United Kingdom pays these colonies and Commonwealth countries higher than the world price for part of their product. When they start talking about competing in the world market and the price not being high enough, they should average out the higher than average price that they get in the special markets where outside concerns do not have the same advantage.

Dr. Annis: As far as Canadian arrangements are concerned, we provide a substantial tariff preference in favour of Commonwealth countries. Our preferred suppliers, Jamaica and other West Indian countries together with Australia, are able to take advantage of the greater part of the preference of $1.00 per cwt. which we grant them. To some extent it is reflected in a lower price in Canada to the Canadian refinery. But about 85 per cent of the dollar preference goes into the pockets of the preferential suppliers.

Senator Kinley: Have we stopped trading with Cuba?

Dr. Annis: No, but in fact our imports from Commonwealth sources largely supply what we need.

Senator Kinley: We used to get a lot of sugar from Asiatic islands. I remember during the war this was the case.

Dr. Annis: In recent years we have not imported much from there apart from Fiji and Australia.

Senator Kinley: But we don't deal with Cuba now?

The Chairman: Well, there is the odd purchase.

Senator Kinley: I don't think they have an agreement with the United States any more where they get a preference.

Senator Croll: What happens in the case, if there is such a case, of countries that are constantly running to the escape clause?

Dr. Annis: I think it correct to say that there are not any countries running constantly to the escape clause. There has been sufficient resort to it from time to time to cause a little worry about it, but it has not in fact been a major problem. Possibly it would be closer to the truth to say that it has been a useful pressure valve.

The Chairman: Is section 3 carried?

Hon. Senators: Carried.

Senator Benidickson: Mr. Chairman, on the matter of the mechanics in the drafting of the bill, and I should remember this because I used to have something to do with it, we are asked here to make certain amendments to customs tariffs with respect to vegetables largely in this section. My question is why are we provided in this draft with a very extensive Schedule B giving a tremendous number of items in this category relating to vegetables and fruits and so on, and we have descriptions of the present rates applying to a great number of these items such as might be found on page 24 of Schedule B, but many of the items referred to are not there at all. Why are we given so much information in Schedule B and have no information as to the articles or the items that are specifically subject to amendment in section 3?

Dr. Annis: I think that the basic explanation is that Schedule B sets out exactly what will go into the Customs Tariff, the revised provisions that will appear in the Customs Tariff. It was necessary to put it in with the full language. As regards this amendment, it is really by way of reference, as I mentioned earlier, and the changes are consequential to the changes in Schedule B.

Senator Benidickson: But I do not find anything in Schedule B to indicate to me what they are really including in an item like 8702-1

The Chairman: You would have to go to the Customs Tariff. What they are saying is that you can apply an *ad valorem* rate instead of a specific rate.

Dr. Annis: As you can see there is a list of vegetables here, and you can read it off.

Senator Benidickson: I wonder why we are given so much detail in Schedule B and have no details of the items that are subject to the change in the law proposed.

Dr. Annis: I think the technical explanation is that from the point of view of the legal draftsmen, it was not necessary. However maybe we slipped up there and should have done it in a different way.

Senator Croll: How big would the book be if you were to cover all the items?

The Chairman: It would reach from here to Toronto.

Dr. Annis: It would indeed by very large, although these amendments affect more than half the dutiable items, so it is a pretty substantial part of the total.

The Chairman: Dr. Annis has pleaded extenuating circumstances, can we go ahead?

Senator Benidickson: Well, there you have 8702-1 to 8707-1. Could you indicate what products are involved in that specific revision? Are they carrots or mushrooms or what are they?

Mr. Loomer: Shall I just run through them, senator?

Senator Benidickson: Yes, please.

Mr. Loomer: Tariff Item 8702-1 covers asparagus; 8703-1, green beans; 8704-1, beets; 8705-1, brussels sprouts, 8706-1, cabbage; 8707-1, carrots; 8708-1, cauliflower; 8709-1, celery; and 8710-1, corn on the cob.

Senator Benidickson: I am just pointing out these are consumer items, and we are really adding protection to our producers in respect of these items. Is that not correct?

The Chairman: This is a seasonal protection.

Mr. Loomer: No, this section does not add new protection.

Senator Kinley: You have not mentioned blueberries.

Mr. Loomer: They are under fruit. There was always a provision for applying seasonal duties on these items.

The Chairman: All I was saying was that we are talking about seasonal duties at the moment.

Mr. Loomer: Yes.

Senator Carter: Why are some included in Schedule B and others left out?

Dr. Annis: Schedule B includes those things on which we offered some tariff reduction or change in the Kennedy Round. On the most important fruits and vegetables there is no change. This was recognized as being a sensitive area, particularly as regards the in-season rates, and an attempt was made to keep in mind the interests of Canadian horticultural producers.

Senator Everett: On Schedule B, page 26 you have Tariff Item 8731-1 n.o.p. Does that designation apply only to the immediately preceding item?

Mr. Loomer: It applies to all items that are not specifically provided for under the fresh vegetable heading.

Senator Everett: How far back do I go in the schedule?

Mr. Loomer: To 8705-1, which is on page 24. Just above that item is the general heading.

Senator Everett: 8705-1, it would start there?

Mr. Loomer: Yes.

Dr. Annis: It starts from that general heading, "Vegetables, fresh, in their natural state, the weight of the packages to be included in the weight for duty:"

Mr. Loomer: In the Customs tariff it starts at tariff item 8701-1, artichokes.

The Chairman: Does this section carry?

Senator Connolly (Ottawa West): Mr. Chairman, I understand that commercial users of sugar in Canada have maintained that with a free market they are able to buy adequate supplies, and the price they pay for the sugar is a dollar less than the price the commercial users of sugar in the United

States pay, because of this so-called free market.

The Chairman: That is not exactly the situation, senator. The U.S. has a protected market for sugar, to protect its local industry, both cane and beet; and any deals it makes with other countries are at preferred prices, in line with what the domestic price is.

Dr. Annis: I think that is right. The only point I would add is that if a Canadian commercial user is going to export his product he will be in a position to buy MFN sugar rather than Preferential.

The Chairman: Or full duty, because he gets a drawback.

Dr. Annis: Yes, because he gets a drawback, and he will then get a better bargain than the other user.

The Chairman: Shall section 3 carry?

Hon. Senators: Carried.

The Chairman: Section 4?

Mr. Loomer: This section would give the Governor in Council authority to prescribe rules and notes for the section of the new tariff schedule beginning on page 103, which is based on the Brussels nomenclature. This is the system of tariff classification used by most major trading countries, with the exception of the United States.

Under the Brussels nomenclature closely related goods are grouped under headings and the headings are grouped into chapters. The rules and notes, which are an important part of the nomenclature, define more precisely the scope of the various headings.

The Board recommended that these rules and notes be adapted for Canadian use, to take account of the fact that most of the Canadian tariff is not based on the nomenclature. The Board proposed these rules and notes be implemented by Order in Council. They have to come into effect at the same time as the new schedule. I might mention that the chemical industry urged the adoption of the Brussels nomenclature.

The Chairman: Any questions? Shall section 4 carry?

Hon. Senators: Carried.

The Chairman: Section 5?

Mr. Loomer: Section 5 is divided into two parts. The first deals with the proposed new section 18 of the Customs Tariff, and it relates to the budget of November 30, 1967, in which the rates of excise duty on domestic spirits and beer were increased effective the following day. This section, the proposed new section 18 of the Customs Tariff, proposes that effective December 1, 1967, the customs duties on imported spirits and beer be increased by an amount equal to the increase in the levy on domestic products—namely, $1.25 per proof gallon on spirits, and 4 cents per gallon on beer. This is the purpose of the first part.

The Chairman: It is only operative for the month of December?

Mr. Loomer: Yes.

The Chairman: Shall this section carry?

Senator Everett: On page 34 there is a duty applied to tequila under Item 15640-1; and on page 15 there is a duty applied to tequila under Item 15640-1. Could you tell me why there are two?

Mr. Loomer: This bill, amalgamates two different sets of resolutions. The one on the earlier page relates to the budget of 1967; and the one on page 34 relates to the coming into force as of January 1, 1968 of Schedule B.

Senator Everett: The preferential rate there is $5 per gallon, and the 1968 is $1 per gallon?

Mr. Loomer: It is $5 plus $9, which comes to a total of $14.

Senator Everett: Yes.

Mr. Loomer: Effective January 1, 1968, the offset to the excise duty on domestic liquors was separated from the protective element of the customs duties. That is provided for in the second part of section 5. Therefore, in the schedule you now see the net protection rather than the protection plus the amount of the domestic excise duty on alcohol.

Senator Everett: Are you saying it is the same?

Mr. Loomer: Yes.

The Chairman: The sum total is the same?

Mr. Loomer: Yes.

The Chairman: Shall section 5 carry?

Hon. Senators: Carried.

The Chairman: The next section is section 6. Who is taking that?

Mr. Loomer: Section 6 reintroduces, without change, proposals which were originally introduced in the 27th Parliament in connection with the June 1, 1967, budget. The proposed package of changes set out in Schedule A of the bill have been in effect on a provisional basis since June 2, 1967. Briefly, this section provides for the establishment of six new statutory tariff items, the amendment of seven existing items, and the continuation without change of five temporary items which otherwise would have lapsed on June 30, 1967 or December 31, 1967.

Senator Croll: What are the six new items?

Mr. Loomer: Tequila is one of them.

The Chairman: That makes one breathe easier, does it not—although, I am not sure it does.

Mr. Loomer: The first item on page 15 is yeast. Tequila is the second. Then, there are 35240-1 moulded shuttle blanks; 46241-1 microfilm reader-printers, on page 16; and 42711-1 front-end loaders.

The Chairman: There is one more.

Mr. Loomer: And drugs, n.o.p., item 22003-1, page 15. Those are the six new items.

The Chairman: Does this section carry?

Senator Croll: I have just come across this, and I should like to ask why you tax church vestments. I am referring to Item 56400-1.

Mr. Loomer: This is a reduction in the duty on parts of church vestments.

Senator Croll: Have you always had it?

Mr. Loomer: Yes. In fact, what has been done here is to make a provision for parts of church vestments which were dutiable at higher rates, and add them to this item.

The Chairman: Does this section carry?

Hon. Senators: Carried.

The Chairman: Section 7?

Dr. Annis: Perhaps I should speak to this. I do not know whether I should say anything or not, because this is the main clause relating to the application of the tariff reductions provided for in the Kennedy Round, and if one embarks on this it will be necessary to say a great deal. Since your Chairman discussed this in some detail last night it would seem to me to be superfluous for me to repeat what he said I would not do it as well.

The Chairman: I will tell you what I will do. I will assign this as supplementary reading for the members of the committee in their own time. Shall this section carry?

Hon. Senators: Carried.

Senator Smith (Queens-Shelburne): I wonder, Mr. Chairman, whether this would be a good time at which to have a short statement from the witness in regard to the changes in the tariff structure on fish entering this country, and a statement in regard to the effect of the lowering of the rates of customs duty on entry into the United States on our exports of fish products.

The Chairman: Do you know that the United States agreed to take off its import duties on fish?

Senator Smith (Queens-Shelburne): I beg your pardon?

The Chairman: The United States, as part of this arrangement, agreed to take off its duties on fish where the rate was five cents or under. Is not that correct?

Dr. Annis: It was five per cent or under. I think probably I could in two or three minutes say something that might help to some extent. This was an important part of the agreement, and it is an area in which we thought we did very well as far as the tariff arrangements are concerned. I know that some portions of the Canadian fishing industry have difficulties, but they are not as a result of this agreement. In fact, I think a difficult situation is being eased by the concessions which we got in this area, and they are very important.

The United States, which is by far and away the principal Canadian market for fish, is removing completely its duties on fish products, mainly ground fish, which were previously five per cent *ad valorem* or less. In 1966 the value of imports into the United States of Canadian fish in that category was over $91 million, and that constituted a very large part of our production of fish. This removal of duties covers frozen and salted fish from both the coastal and inland fisheries.

Apart from this, there are United States reductions—usually 50 per cent reductions—on a further three-quarters of a million dollars worth of Canadian fish exports. Reducing it to percentage terms, a little more than 75 per cent of Canadian dutiable exports of fish to the United States are favourably and beneficially affected by the concessions.

There was one disappointment in this connection. The United States did not make any change in the access for groundfish fillets, but with that exception we got either a 50 per cent reduction or, in the case of those rates that are already not more than five per cent, complete free entry—pretty well down the line. The removal of those duties is being staged over five equal steps ending in 1972.

Senator Smith (Queens-Shelburne): This point is important to me. You said there was no change as a result of the agreement in respect of groundfish fillets, whether they are frozen fillets or in the form of blocks.

Dr. Annis: I think that that is correct, but Mr. Kelly should answer that.

Mr. C. J. Kelly, Assistant Director, U.S. Division, Office of Area Relations, Department of Trade and Commerce: The ground fish frozen fillets—the access was not changed as it was subject to quota in the United States, and it was exempt from negotiation under statute in the United States. The blocks, I think, were negotiated.

Dr. Annis: Yes, I think that that is right.

Senator Smith (Queens-Shelburne): Perhaps I might get a little more information on this point. I bring up this question because of inquiries I have received in regard to the effect of the Government of Canada subsidizing in some indirect fashion the production of ground fish fillets in both forms. That does not change anything with respect to the escape clause, because there has been no change in the tariff?

Dr. Annis: That is right. However as regards the matter of whether we are subsidizing, and all the problems there, I should say that we are not equipped to deal with it here. The Minister of Fisheries made a statement on this subject when speaking on his estimates in the house one day last week. I think that is the best source of an authoritative statement on the subject. I do not think any of us here are equipped to go into it.

Senator Croll: What does the term "block" mean?

Mr. Kelly: A block includes fillets and pieces, and they are all frozen into blocks of over ten pounds. They are shipped into the United States in that form, and then are used either for processing or for other purposes.

Senator Smith (Queens-Shelburne): They are used for making fish sticks.

Senator Kinley: They are frozen.

The Chairman: Does this section carry?

Senator Benidickson: I raised a question last night, Mr. Chairman, on which you tried to help, and I would like a little more clarification of it. My point is that, as we all know, over a protracted period the experts or officials of many countries participated in trying to work out this Kennedy tariff agreement. My question was: To what extent have parliaments or legislatures reneged on or repudiated the agreements that were arrived at by the experts?

Dr. Annis: Possibly I should comment on that. It may be that Mr. Kelly can add to it. There are two or three points that one might make. The first steps in relation to implementation for a number of countries, including the United States, Canada, Australia, New Zealand, South Africa and Switzerland, had to be taken on January 1, 1968. Every country that had commitments as of that date met them, and met them in full. The second date involved was July 1, 1968. A number of countries, including the European Economic Community, Japan and others, agreed that in their case, rather than making a one-fifth cut January 1, 1968, and another one-fifth January 1, 1969, they would make two-fifths of the total reduction on July 1, 1968. Every country that had such a commitment met it, and met it in full. There had been a little bit of worry about Japan in this connection, whether or not the Japanese Diet would be in a position to approve their changes to meet the deadline, but in fact they did. Therefore, the record to date is that everyone has met all their commitments.

With regard to the tariff reductions, it would seem there is every reason to expect that this will continue to be the case, and that as further reductions are called for on January 1 of next year and so on to 1972 they will be met.

The one point where I suppose there is more of a question mark relates to the American selling price legislation in the United States in chemicals. This is a bit apart. In the case of the United States, as far as meeting the tariff commitments are concerned, the President was given authority in advance by Congress, so it is a presidential authority. The necessary Congressional action has been taken; it was taken in the Trade Expansion Act of 1962.

Senator Benidickson: He was given a certain number of years' authority?

Dr. Annis: Yes, and they just met the deadline. The authority expired on June 30, 1967.

The Chairman: Shall section 7 carry?

Hon. Senators: Carried.

The Chairman: We now come to section 8.

Mr. Loomer: Section 8, and the related schedule C to the bill, involves in part a housekeeping or tidying up operation relating to substantive changes proposed by section 7 dealing with the Kennedy Round. However, this clause and schedule C also implement a number of recommendations of the Tariff Board which were not involved in the Kennedy Round negotiations. The first substantive change is item 40920-1, which appears on page 94, which brings into effect the Board's proposal for free entry for machinery and equipment used in grading and packing fresh fruit and vegetables. This is followed by the new schedule of tariff items proposed by the Tariff Board in its report on Reference 130, which related to machinery and apparatus for the mining industry. The items here are 41001-1 to 41045-1. There were some renegotiations with regard to these items.

Senator Kinley: Could I have an interpretation of that phrase "a class not made in Canada"?

The Chairman: The courts have been busy on that at times.

Senator Kinley: Yesterday in your speech, Mr. Chairman, you talked about it as an item of protection, "a class not made in Canada". How is that put up? Is it if anybody in Canada makes it, or if half the quantity is made, or if they supply the market? How do you interpret that phrase?

Dr. Annis: Maybe the officials of the Department of National Revenue may wish to speak to this, but I think I might start. The phrase in connection with certain items of "a class not made in Canada" has appeared in the customs tariff for a long, long time. In fact, it made its first appearance away back in the 1870s. It has become very important since 1936 when it was applied to the main machinery items. In connection with its interpretation, the legal basis of the interpretation is provided for in an Order in Council. An Order in Council was passed in 1936, which lays down the rule that goods shall not be considered to be of a class or kind made in Canada unless the Canadian production is sufficient to supply 10 per cent of the normal Canadian consumption.

Senator Kinley: Is it 10 per cent? I thought it was 5 per cent.

Dr. Annis: It is 10 per cent. That is the basic rule. The interpretation of that rule is a matter initially for the Department of National Revenue. When interested parties feel they had a grievance over the interpretation of the Department of National Revenue they have a right to take their case by way of appeal to the Tariff Board. There are a number of Tariff Board decisions which are relevant. In one or two cases it has gone to the Exchequer Court, and once to the Supreme Court.

Senator Kinley: You say 10 per cent?

The Chairman: No, that is what the Order in Council says.

Senator Kinley: How is that 10 per cent arrived at?

Dr. Annis: It is in terms of 10 per cent of the normal Canadian consumption. It is a matter for administrative and court determination as to what is "normal Canadian consumption". With respect to a good many products, it is fairly easy to define it, at least in theory, taking a one year period or a longer period if that is appropriate and figuring out what the consumption is. In the past it has become difficult in cases where one is dealing with "one of a kind machines", such as newsprint machines or something like that, where you may have one or two ordered one year, none the next and so on. This has been a very difficult problem, which I do not think we should attempt to go into further now.

The Chairman: Shall section 8 carry?

Hon. Senators: Carried.

The Chairman: Passing to section 9, this looks like one for Mr. Loomer.

Mr. Loomer: This is the section that provides for the deletion of a number of existing items covering chemicals, plastics and related products and the introduction of a new schedule D to the bill based on the recommendations of the Tariff Board in its report on Reference 120. The new items on pages 100 to the middle of page 103 are written in terms of the present Canadian tariff nomenclature. These items include such things as minerals and compounds derived from natural deposits by non-chemical means. Many of these products fell within the terms of reference to the Tariff Board but are excluded by the "Brussels Nomenclature" from the chapters providing for chemicals and plastics, namely chapters 915 to 939. Accordingly the Tariff Board made separate provision for such products in the proposed schedule.

The Brussels Nomenclature classification system is used beginning on page 103 under the heading "Group XII—Products of the Chemical, Plastics and Allied Industries".

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Section 10. Who carries this one?

Mr. Loomer: This is an amendment to a drawback item in Schedule B to the Customs Tariff. The drawback item 97052-1 is amended to permit the payment of drawback on a broader category of equipment, including heat-treating and vulcanizing apparatus for the manufacture of rubber parts and tires for motor vehicles. Also the provisions of the item are extended to the following additional end-uses; the manufacture of cutting tools and patterns for the automotive industries, and the manufacture of motor vehicle accessories. These changes will assist Canadian automotive parts, accessory and tooling manufacturers in keeping their costs down.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

Senator Croll: These items will help to keep their costs down.

Mr. Loomer: Yes sir.

Senator Croll: You did not add anything to keep their costs down to the consumer. That was not in there was it?

Mr. Loomer: I am not quite sure how you write that into a Customs Tariff sir.

The Chairman: That belongs to another department.

Section 11. I think this is also a drawback item, Mr. Loomer.

Mr. Loomer: This clause provides for an amendment to three drawback items which are set out in Schedule F to the bill. The changes in two of the items are consequential to the recommendations of the Tariff Board on mining machinery. The third is consequential to the renumbering of certain tariff items in Schedule A to the Customs Tariff.

The Chairman: Section 11 is next to the last of the drawback items. Does this clause carry?

Hon. Senators: Carried.

The Chairman: Section 12, the last drawback item.

Mr. Loomer: This section provides for the deletion of two drawback items, 97016-1 and 97065-1, the introduction in Schedule G on page 127 of a new item 97023-1, and amendments to the wording of two existing drawback items.

Senator Benidickson: What are the items?

Mr. Loomer: The items being deleted are 97016-1...

Senator Benidickson: That is in the section. I meant what are the products? I can find that in the schedule, I believe.

Mr. Loomer: The new item 97023-1 relates to ethyl alcohol. For the two items being amended, 97026-1 and 97046-1. the Tariff Board recommended some changes in wording in its report on reference 120.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Now we turn to Section 13.

Mr. Loomer: Section 13 relates to Schedule C to the Customs Tariff which prohibits imports of certain goods into Canada. This is Schedule H to the bill. The amendment is to the item which prohibits the importation of margarine or other similar substitutes for

butter. For over 80 years there has been an unqualified prohibition on the importation of margarine or other similar substitutes for butter. The proposal now is to qualify this prohibition by adding the words "unless in any particular case or class of cases exempted from the provisions of this item by a regulation of the Governor in Council."

Senator Croll: Was there ever any importation of margarine?

Mr. Loomer: It was prohibited.

Senator Croll: This gives you the same right to permit it in certain circumstances?

Mr. Loomer: Yes.

The Chairman: Manufacture is prohibited.

Senator Kinley: Manufacture was prohibited for a long time. You went to the Privy Council office.

The Chairman: Shall Section 13 carry?

Hon. Senators: Agreed.

The Chairman: Section 14. This deals with the commencement date of these various items. Dr. Annis dealt with that in his original statement. Is there anything more you want to add?

Dr. Annis: I do not think that it is really necessary. I could repeat the point, that the reason for more than one commencement date follows from the fact that there are included here some proposals, just a few of them, that originated in the budget of June 1, 1967 and which were provisionally brought into effect then. Other commencement dates began later, as stipulated in the various resolutions.

Senator Croll: If we pass this bill in the Senate, then we have met our commitments in time?

Dr. Annis: Yes, sir.

The Chairman: Shall Section 14 carry?

Hon. Senators: Agreed.

The Chairman: Section 15.

Senator Leonard: If this is the last section, might I ask a general question? This might have been dealt with; I was out of the room, and for that I apologize. I was wondering about the new 50 per cent deposit required in the United Kingdom on imports and its relationship to GATT. Is it within the terms of GATT or is it a loophole? I wonder if the witness, Dr. Annis, might say something about that?

Dr. Annis: I am not really very well qualified to do so. One comment that I might make is that the GATT has certain provisions for emergency action which countries may take if they are in balance of payments difficulties.

It was under those provisions that, in the early stages of the GATT, a great many countries imposed quantitative restrictions, quotas, for balance of payments reasons. Those have mostly disappeared. In part they have disappeared because of the pressures that the delinquent country's trading partners were able to bring upon them in the GATT.

As regards the special action which the United Kingdom has taken in the current problem, it is a matter which has been and will be discussed in the GATT context. The only comment I could usefully make is that the British will be justifying their position there and undoubtedly they will have critics there. This is a forum in which, in private, a country's trading partners can put their case and ask that their interests be looked after, or at any rate safeguarded to the extent that is possible in the circumstances.

Senator Croll: Has France taken any such action as Britain?

Dr. Annis: France has taken some actions. I am not sufficiently familiar with the details.

Senator Croll: Or any other of the common market countries, to your knowledge?

Dr. Annis: Germany, of course, has taken measures which are designed to slow down their exports and encourage their imports. This is an alternative to a revaluation upwards of their currency—which a good many have urged upon them as being a course of action which would be appropriate in the circumstances.

The Chairman: In Germany they have withdrawn numbers of their subsidies, have they not—subsidies on exports?

Dr. Annis: They have gone beyond that.

Senator Kinley: Has Germany still got the two currencies, one for internal use and one for export?

Dr. Annis: No, sir they have a single currency now.

The Chairman: Section 15.

Dr. Annis: Section 15 would confer upon the Governor in Council authority to postpone the coming into force of tariff reductions, those that are dated next January 1 or a following date, if circumstances warranted. This authority could be used on either a selective basis or a general basis, if there were, for example, defaults by one of our trading partners, a failure on their part to meet their commitments. This is an authority which we hope will never be used, but it is something which could be used to safeguard our position in the event of trouble.

Senator Croll: You never had this authority before under GATT?

Dr. Annis: This is in our own legislation, not in GATT.

Senator Croll: But you never had this authority before?

Dr. Annis: Not in this way, not in a bill like this. I suppose in one sense this sort of authority has existed in the past because reciprocal trade agreements have been implemented by order in council rather than by legislation. If tariff reductions were made by order in council, then the Governor in Council would automatically, under the terms of the Interpretation Act, have the right to withdraw them.

The Chairman: That power is under section 10 of the Customs Act, the reciprocal agreements. They are there by the Governor in Council approval, is that right?

Dr. Annis: That is right.

The Chairman: So what the Governor in Council can do, the Governor in Council can undo. I suppose that is the principle. If the party in the reciprocal agreement does not deliver as intended, why, they can always revert.

Senator Lang: I am trying to understand this procedure. May I take a specific example? Under GATT, a 50 cent a ton duty on bituminous coal was to be reduced 10 cents a year, starting January 1, 1968, 10 cents a ton the next January, and so on. How was the 10 cents a ton reduction of January 1, 1968 effected?

Dr. Annis: It was effected pursuant to the terms of the resolution which had been introduced in the House of Commons. It is a long-established tradition that the Government may put into effect provisionally pending approval by Parliament, budgetary changes, tax changes, and that sort of thing. It is done on a provisional basis.

A problem in this connection arose when Parliament was dissolved without the legislation having been passed. When Parliament was dissolved without the legislation having been passed it was necessary to resort to a rather unusual device. It was an order in council passed pursuant to section 22 of the Financial Administration Act maintaining in effect the reductions in duty which previously had been put into effect pursuant to the resolution.

The Chairman: Shall section 15 carry?

Hon. Senators: Carried.

Senator Lang: I presume that this plan of tariff reduction on coal is embedded in here somewhere.

Dr. Annis: Yes, sir, if you look at the right place.

Senator Lang: In what form is it? Does it automatically go down 10 cents next January, and a further 10 cents the following January?

Mr. Loomer: If you look at the top of page 87, sir.

The Chairman: This will assure you of heat at lower prices.

Senator Lang: Or maybe light.

The Chairman: Or maybe both.

Mr. Loomer: You will notice that for item 58800-1, the most-favoured-nation tariff on and after January 1, 1969, will be 30 cents, and the following January will be 20 cents, and on and after January 1, 1971 will be 10 cents, and after January 1, 1972, it will be free.

Senator Lang: Is there any power to accelerate that reduction?

Dr. Annis: It would not be contrary to our commitments to accelerate. The commitment is that we will go at least this fast, but there is no commitment which says we cannot go faster. That lies in the hands of Parliament.

Senator Lang: But it could not be done by a ministerial act?

Dr. Annis: I would doubt that. This is a statute.

Senator Lang: But it could be postponed by ministerial act.

Dr. Annis: But only under circumstances that would justify it.

Senator Connolly (Ottawa West): Mr. Chairman, since this is the last section, could I ask a question? I suppose it is fair to say that the reductions in the Kennedy Round have come about primarily because of the passage of the Trade Agreement Act in the United States that gave to the President the authority for a period of five years to authorize these cuts. Now you have gone through this exercise and have achieved a great deal within the deadline. Is it fair to ask the officials whether they think that there could be another round after all these have been implemented, or do they think, simply from an official point of view, that officials in all the other countries that were party to the discussions anticipate a similar exercise with further reductions at some future time?

Dr. Annis: I think that officials would be like other observers who have some advantages in speculating in a field like this, but are not in a position to be certain. They probably don't know. I think you are quite correct when you say that this is a major step that is being brought into effect. It will involve quite a bit of digestion in our own country, and in other countries. Officials here and elsewhere, are thinking in terms of possibilities for future progress in this as in other fields of international co-operation, but I do not think that either here or in other capitals they are going very far out on limbs to predict or to advocate in detail what future steps should be. Both in official circles and academic circles one hears of various possibilities, for example, various sorts of free trade areas, sector approaches to free trade, and this kind of thing, but at the present stage all those are rather speculative. Naturally there are some approaches that would appeal to one country but not to another. One must think in terms not only of what one would like, but what might be negotiable against the kind of background that is provided by the world we live in today.

Senator Connolly (Ottawa West): But meantime negotiation of individual agreements still is possible.

Dr. Annis: Yes, but of course it is possible only to the extent that countries have negotiating authority. In Canada, negotiations can be carried on and the results implemented either under the authority of section 10, to which the chairman has referred, or by coming back to Parliament afterwards. There would be some countries, specifically the United States, where negotiations are only possible within the limits of authority conferred by Congress on the President, and at the moment the President doesn't have any negotiating authority.

Senator Croll: You say at the present the President does not have negotiating authority. Is that because it is the end of a regime or the end of time?

Dr. Annis: Because the provisions of the Trade Expansion Act of 1962 have expired, and as yet there is nothing else to replace it. There have been suggestions from official circles in Washington that the administration will be going to Congress at some not too far distant date to ask for new authority, but as of now there is no bill before Congress.

Senator Croll: Has it not been the practice over a period of years to give to the new government or the new President authority when he comes into office, or is it simply that the dates have conflicted?

Dr. Annis: I think the correct answer is that the dates have conflicted.

Senator Croll: In other words, the carryover.

Dr. Annis: Yes, the carryover. We could start from the Reciprocal Trade Agreements Act of 1934 which had a whole series of renewals, usually for three-year periods. Then we had the Trade Expansion Act of 1962, which, while it had a different name, was really a continuation on a broader basis of the sort of thing that had been done every three years or so since 1934.

The Chairman: Shall the schedules carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendement?

Senator Burchill: Before you report the bill, Mr. Chairman, I think I should say that this is a magnificent achievement and I think the officials are to be very much congratulated. I think this is a real breakthrough.

Senator Carter: I want to ask one question relating to Schedule A, the first item there which is Yeast. Is that the only reference to yeast in the schedule?

Mr. Loomer: No, there are two other items referring to yeast.

Senator Carter: I remember when yeast used to come in from Britain in granular form, it used to come in free, but then when it was compressed there was a duty on it.

Mr. Loomer: The effect of this is to reduce the duty on granular yeast.

Senator Carter: And whether it is granular or in cake form, is it the same?

Mr. Loomer: This bill provides for a 5 per cent British preferential rate and 10 per cent most-favoured-nation rate.

Senator Kinley: What is the situation with regard to our money? They used to have in the United States a countervailing rate of 5 per cent. Do they still do that in the States?

Mr. Kelly: As I understand it the countervailing duty is only applied in the United States when there is a bounty or grant given on the export of goods into that country. It is not in connection with tariff reductions.

Senator Kinley: And on this fish business that Senator Smith was talking about, have they done anything about the quotas?

Mr. Kelly: No, the ground fish fillets are under quota and this was not changed in the Kennedy Round and it still remains in effect.

The Chairman: Shall I report the bill?

Hon. Senators: Agreed.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 12

First and Second Proceedings on the
"WHITE PAPER ON ANTI-DUMPING".

WEDNESDAY, DECEMBER 11th, 1968
and
THURSDAY, DECEMBER 12th, 1968

WITNESS:

Department of Finance: C. D. Arthur, Deputy Director, International Economic Relations Division.

APPENDIX:
"A"—Proposed Draft Regulations Relating to Sections 9 and 10 of Draft Anti-Dumping Bill.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29360—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird
Aseltine
Beaubien (*Bedford*)
Beaubien (*Provencher*)
Benidickson
Blois
Bourget
Burchill
Carter
Choquette
Connolly (*Ottawa West*)
Cook
Croll
Desruisseaux
Dessureault
Everett
Farris
Fergusson
Gélinas
Gouin
Grosart
Haig
Hayden
Hays
Inman
Irvine
Isnor
Kinley
Laird
Lang
Leonard
Macdonald (*Cape Breton*)
MacKenzie
Macnaughton
McDonald
Molson
O'Leary (*Carleton*)
Paterson
Pearson
Phillips (*Prince*)
Rattenbury
Roebuck
Smith (*Queens-Shelburne*)
Thorvaldson
Vaillancourt
Walker
Welch
White
Willis—(49)

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois:

That the Standing Committee on Banking and Commerce be authorized to examine and report upon the White Paper on Anti-Dumping dated September, 1968, tabled today; and

That the Committee be empowered to send for persons, papers and records and to print its proceedings upon the said White Paper on Anti-Dumping.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29360—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, December 11, 1968.
(12)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien (*Bedford*), Blois, Burchill, Carter, Cook, Desruisseaux, Fergusson, Gouin, Haig, Inman, Irvine, Isnor, Kinley, Leonard Macdonald (*Cape Breton*) MacKenzie, Macnaughton, Molson, Rattenbury, Welch and Willis. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* that the Honourable Senator Leonard be elected *Acting Chairman.*

The White Paper on Anti-Dumping was considered.

The following witness was heard:

DEPARTMENT OF FINANCE:

C. D. Arthur, Deputy Director, International Economic Relations Division.

Mr. Arthur addressed the Committee on the White Paper with particular reference to the proposed Draft Act contained therein.

Draft Regulations re sections 9 and 10 to be printed as an Appendix hereto.

At 1.00 p.m. the Committee deferred further consideration of the above matter until the next sitting and thereupon adjourned.

THURSDAY, December 12, 1968.
(13)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m. to resume consideration of the White Paper on Anti-Dumping.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Gouin, Haig, Inman, Irvine, Lang, Molson, Rattenbury and Welch. (17).

In attendance:

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of the Committees.

Mr. Arthur, from the Department of Finance, was again heard.

The White Paper on Anti-Dumping and the Draft Act contained therein were further examined at length.

The proposed amendments to the Draft Act, as contained in the Votes and Proceedings of the House of Commons of Monday, December 9th, 1968, were discussed.

At 1.00 p.m. the Committee adjourned further consideration of the above matters until Wednesday, December 18th, 1968, at 10.00 a.m., and thereupon adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 11, 1968.

The Standing Committee on Banking and Commerce, to which was referred the White Paper on Anti-Dumping dated September, 1968, for examination and report, met this day at 11.30 a.m. to give consideration to the White Paper.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I might start with a few preliminary remarks, because this is a proceeding which is not quite in the usual manner of our deliberations.

This White Paper on Anti-Dumping was tabled on Monday of this week in the Senate, and a motion was made by the Acting Leader of the Government in the Senate to refer it to this committee.

Copies of the White Paper on Anti-Dumping should be before all members of this committee. This White Paper has been before the committee of the House of Commons, the Finance, Trade and Economic Affairs Committee, for some time. I think they have had some 22 meetings of that committee studying the White Paper.

Included in the White Paper is a draft bill. This White Paper and this bill follow upon the Kennedy Round negotiations, and the proposed legislation is part of Canada's undertaking during those negotiations, and there is a time limit on Canada's enacting the legislation. So, the purpose of our studying the White Paper is as a preliminary to the consideration of a bill that will reach us in due course, or that is expected to reach us in due course.

Senator Isnor: It is already before the house, is it not?

The Acting Chairman: As far as I know, it has not yet been introduced—it had not been up to Monday night—but it is proposed to introduce it this week, and if we were trying to close for the Christmas recess by, say, the end of next week, our time for consideration of the bill itself would be limited and, therefore, the present sittings of the committee are for the purpose of giving as much study as we can to the subject matter and to what we understand will be proposed in the bill, before the bill actually reaches us.

In order to do that, we have before us this morning Mr. C.D. Arthur, Deputy Director of the International Economic Relations Division, Department of Finance. Subject to any questions which senators might like to ask now, I would propose to ask Mr. Arthur to proceed and explain this White Paper and whatever we would like to know about it.

Senator Haig: What is the time limit, Mr. Chairman?

The Acting Chairman: I think the time limit is January 1, 1969.

Senator Kinley: Mr. Chairman, would you turn to page 15, Article 4, "Definition of Industry"? Would you read the first line of Article 4, "Definition of Industry," which is on page 15?

The Acting Chairman: Yes, Senator Kinley, Have you a question?

Senator Kinley: It starts off:

> In determining injury...

I think that work is "industry"? Have you got that?

> In determining injury the term "domestic industry" shall be interpreted...

The Acting Chairman: I think if we allow Mr. Arthur to go ahead he will be able to clarify that.

Senator Kinley: But it is a serious mistake, and I think it is a typographical error.

The Acting Chairman: No, I think the word is "injury".

Senator Kinley: You think that is right?

The Chairman: Yes, and I think you will find this is a key to the question of dumping.

Senator Kinley: All right.

The Acting Chairman: I think I should make one further remark, and that is that in the light of the circumstances in which we are considering this White Paper it is not proposed to close these proceedings today. We will continue our consideration of the White Paper until the bill either reaches us or we are satisfied with the progress that has been made in the House of Commons on the bill in anticipation of its reaching us. So, we will not conclude these hearings today.

Hon. Senators: Agreed.

The Acting Chairman: Mr. Arthur, would you now proceed?

Mr. C. D. Arthur, Deputy Director, International Economic Relations Division, Department of Finance: Mr. Chairman and honourable senators, if it is acceptable to the committee I would like in my statement to explain in a general way, rather than on a clause by clause basis, the principal features of the draft anti-dumping act which is incorporated in the White Paper, and its relationship to the various provisions of the anti-dumping code agreed to by the Government at the conclusion of the Kennedy Round.

I also hope to review certain features of the draft act, particularly the enforcement provisions which are not dealt with in the Code.

The committee might find it helpful if I make a few comments concerning the question of dumping, and the background to the Code, before proceeding as I have suggested. Article VI of GATT which is on page 9 of the White Paper, has provided since 1947 that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in an importing country, and that anti-dumping duties may be applied to offset the impact of dumping.

Conversely, this provision can be interpreted to mean that the practice of dumping is condoned internationally providing it does not cause or threaten injury to domestic producers.

In balance of payments terms, or looked at from the consumers', including the industries', standpoint it is, of course, desirable that it be possible to import those goods required from abroad at the lowest prices obtainable. However, excessive imports at unrealistic prices which have an injurious effect on domestic production, employment, and economic growth may not be in the national interest. Accordingly, legislation to deal with dumping must of necessity seek to arrive at a balance which reflects the realities of the economy, and, at the same time, promotes the development and growth of efficient productive units.

Article VI of GATT sets out, but only in very broad terms, what constitutes dumping. It is open to differences in interpretation, and is silent on the important matter of procedures. Possibly because of these deficiencies differences arose over the years in the anti-dumping procedures of different countries, and in the Kennedy Round the major trading nations agreed that they should work out a new convention which would ensure some degree of uniformity in the use of national anti-dumping policies and procedures. The Government decided that Canadian representatives should participate actively in these negotiations because without such participation there was a risk that a code would be developed which did not reflect Canadian views or the needs of our economy. If this happened, obviously we would be under pressure from some of our trading partners nonetheless to adhere to the code.

As the Minister of Finance stated in the introduction of the White Paper, the Government authorized signature of the code on behalf of Canada because our two principal objectives in negotiations had been achieved, namely, that it protected Canadian exports against the unreasonable use of anti-dumping duties by other countries, and at the same time enabled Canada to apply such duties when dumping caused or threatened injury to Canadian industry. Other signatories to the code are under an obligation to apply it from July 1, 1968, and Canada has undertaken to comply with its terms not later than January 1, 1969.

The present legislation provides that if the actual selling price of imported goods ruled to be of a class or kind made in Canada is less than the fair market value of the goods as determined under the Customs Act, then in addition to the normal duties under the tariff a special or dumping duty is to be levied equal to the difference between the selling price and the fair market value as determined

under the Customs Act up to a maximum of 50 per cent *ad valorem*. To obtain a ruling that a product is of a class or kind made in Canada, Canadian firms must produce an amount equal to at least 10 per cent of the domestic consumption of that product. It follows that no protection against dumping is given to producers who produce less than the required 10 per cent, or to firms just starting out in business, which is when they may require it most, even though this is clearly permitted under GATT. It can also be argued that because of the so-called automatic application of anti-dumping duties under our law many Canadian consumers and business firms have to pay more than they should for imported materials and other goods, and that Canadian producers who are not being damaged by dumping get protection they do not need.

Another important point is that our existing anti-dumping law does not explicitly require a formal inquiry or determination that injury has occurred to a domestic industry because of dumping. Rather, our law, which is unduly cumbersome because it embraces two separate statutes, involves a set of general rules which are applied to each import transaction. It is the lack of a formal inquiry into injury which has given rise to a number of complaints from our trading partners during the past few years.

Mr. Chairman, that is all I would like to say at this time in the way of background comments, as I suspect the committee is more interested in the provisions of the draft act. I should like to apologize in advance should my remarks get too technical. You will appreciate that it is rather difficult to discuss complex legislation of this kind in general terms. As I mentioned earlier, I do not intend to proceed on a clause by clause basis, but rather to discuss each major segment of the draft act and its relationship to the code.

Senator Isnor: Before we go to the act, could I ask Mr. Arthur what he means by the term "selling price". What selling price is that?

Mr. Arthur: The selling price to the importer in Canada. In determining dumping under the present customs legislation, dumping occurs if the selling price to the importer in Canada is less than the fair market value of the goods in the country of export.

Senator Isnor: Then the selling price applies to the importer and not to the general public?

Mr. Arthur: No, sir, it is to the importer of the goods. That is the selling price to which I referred.

Senator Rattenbury: Is the 10 per cent which will apply a new provision?

Mr. Arthur: No, sir. The 10 per cent rule is one that applies under the present legislation. That is not carried forward into the new or proposed legislation.

Senator Rattenbury: That is what I thought.

Senator Kinley: When we talk about dumping, this relates to dumping between Canada and another country. What about the dumping of grain from the United States? Is there anything internationally to look after that? Into France, for instance, or Britain?

Mr. Arthur: As honourable senators will know, we do have, and have participated in, many discussions on international grain prices and international grain agreements. I would suggest that that is the context in which the question should be put. It has no direct relationship to this proposed legislation that is before you.

Senator Kinley: This White Paper is international.

The Acting Chairman: I imagine that would be covered by the International Wheat Agreement.

Senator Kinley: The Americans have dumped this year.

Senator Molson: Are not we considering only the trade in or into Canada?

Senator Kinley: That is my question.

Senator Molson: There is no suggestion here that any other trade off our shores can be affected by the proposed legislation.

Senator Kinley: Well, is that the answer?

Mr. Arthur: That is correct.

Senator Kinley: Then that is the answer, that it is not in. You used the words "normal price" in referring to anti-dumping, but the normal price is a pretty general thing, is it not? When you explained it you referred to the selling market price, and I think that is a better definition.

Mr. Arthur: I think I can probably answer these questions if I may proceed with my explanation of the draft bill, which I hope will cover how normal value is determined.

The Acting Chairman: I think Mr. Arthur will now deal, as I understand it, with the various clauses in the draft act, which is in your White Paper. Probably it starts at page 40.

Mr. Arthur: If it is agreeable, I should like to deal with it in narrative form I will jump from section to section but I will give the reference to the committee and also give the page reference as I go along.

The first segment of the draft act I should like to discuss with you is that relating to dumping. Section 8, (on page 48) of the draft act, provides that goods are dumped if the normal value exceeds the export price. This section also defines the margin of dumping as the amount by which the normal value of the goods exceeds the export price of the goods.

Sections 9 through 12—section 9 also starting on page 48—set out the criteria or rules to be followed in determination of both normal value and export price.

Taken together, these five sections may be considered the most important in the draft act in that they outline the conditions under which goods can be ruled as dumped into Canada, and the basis for the measurement of the margin of dumping.

I might mention, Mr. Chairman, that the concept of "margin of dumping" which is used in the Code, and has been carried forward into the draft act, is quite a different concept from that which we now have in Canadian law, because it relates to the difference between two values, the normal value and the export price, both of which are subject to a determination by the national authorities, which will be carried out, in our case, by the Department of National Revenue.

Section 9 on page 48 provides that the normal value is to be taken as the price at which like goods are sold, at arm's length, in the ordinary course of trade in the country of export at about the same point in time as the goods were sold to the Canadian importer.

Detailed adjustments for differences in the terms and conditions of sale, and in taxation and for other differences affecting price comparability between the sales in the country of export and the sale to the Canadian importer, are to be prescribed by regulations of the Governor in Council.

The Acting Chairman: Mr. Arthur, I understand that there is a draft set of those regulations.

Mr. Arthur: Yes, sir. In the other committee we tabled draft regulations on sections 9 and 10 which, if it is your committee's wish, I would be pleased to furnish.

The Acting Chairman: Is it the committee's wish that we should have those draft regulations?

Senator Haig: As an appendix to today's proceedings.

Hon. Senators: Agreed.

The Acting Chairman: If you will file them with us, we will have them printed as an appendix to today's proceedings.

Mr. Arthur: Yes, Mr. Chairman.

For draft regulations, see Appendix "A".

Senator Molson: In speaking about the adjustments, for example, the very heavy purchase tax in the U.K. would be one of those elements that would be removed from the price in making a comparison between the export price and the normal value, is this correct?

Mr. Arthur: Yes, if it were a tax that was remitted on exports, that is right, sir.

Senator Molson: Which the purchase tax is; it does not apply?

Mr. Arthur: Yes, it does not apply.

It will be appreciated that to achieve comparability between the importer's home market sales and the sale to Canada recognition must be given to legitimate differences for quantities, trade levels, deferred discounts, freight and taxation. These are now provided for in either the Customs Act or in the general regulations under section 6 of the Customs Tariff.

If it is not possible to establish normal value in this way, the act provides for three alternative methods that may be used.

Firstly, if the exporter sold goods solely or primarily for export but there were sales of like goods for home consumption in the exporting country by other vendors, the Department of National Revenue must look to these latter sales.

Secondly, by reference to the price at which like goods are sold by the exporter to importers in third countries. That is the second alternative, that it is possible, if there are no domestic sales of the like goods, then to look at the sale of such goods by the exporter to importers in third countries.

The third alternative is the cost of production of the goods, plus an allowance for administrative, selling and all other costs and profits. In the case of the latter two methods the Minister of National Revenue must exercise an option as to which basis is to be used in any particular case.

Where goods are exported to Canada by a state trading country, normal value is to be determined in a manner prescribed by the minister. Accordingly, it will be possible to continue the present practice of establishing values for imports from such sources by reference to the values at which like goods produced in neighbouring countries are sold under normal conditions.

Senator Isnor: Could you give us an example of the comparison they make, Mr. Arthur, from another country as compared to our country?

Mr. Arthur: This is a very hypothetical case, Mr. Chairman, but supposing that, say, shoes were exported from Poland and the Minister of National Revenue decided it was not possible to establish normal value or, under the present law, fair market value, for these shoes, then it is open to him to look at the value of that type of shoe as sold in an open economy country. In other words, he might, in that particular case, look at the price at which that class or style of shoe would be sold, say, in the United Kingdom.

Senator Isnor: Would you like to make a comparison of cotton goods being imported into Canada from Japan at the present time, as compared to our local production?

Mr. Arthur: That circumstance is slightly different. That would be considered an open economy. The possible problem with cotton goods is not so much their being dumped, because it may in such circumstances be possible to establish that the price that they are being offered to Canada is similar to the price at which they are offered for sale in Japan.

There is a consequential amendment proposed in this White Paper which deals with really non-dumped goods which have a disruptive effect on sectors of Canadian industry, but they are not in the normal sense dumped goods. In the sense of the Code they are not dumped goods. I will be commenting on that particular section later.

Senator Isnor: I will wait until then.

Mr. Arthur: Section 10, which is at page 52 of the White Paper, provides that "export price" is to be taken as an amount equal to the lesser of the exporter's sale price for the goods, or the importer's purchase price for the goods, adjusted in the manner prescribed by the regulations to exclude all charges thereon resulting from or arising after their shipment to Canada—in other words, on an f.o.b. basis.

Provision is made in section 10(2) for the establishement of an export price where none exists—for example, in the case of a consignment shipment—or where the exporter's sale price is unreliable because the transaction took place between associated persons, or because there may be some compensatory arrangement between the parties concerned. This provision will be most important in dealing with "hidden" dumping because it requires going behind the customs transaction in those cases involving related companies. It has often been represented to us that our existing law is not as vigorous in protecting Canadian producers from such dumping as are the laws of some other countries.

Section 11, on page 56 of the White Paper, is a residual provision which provides the Minister of National Revenue with authority to prescribe the manner in which the normal values and export price is to be determined where sufficient information is not available.

Section 12 carries forward two provisions of the present Customs Act relating to indirect shipments.

How do these sections of the act compare with the provisions of the Code? I believe the committee will find that they are precisely in accord with Article 2 of the Code, which is to be found at page 17 of the White Paper, and which is concerned with the determination of dumping.

The second major requirement in both the draft act and the Code is that there must be a formal inquiry into the impact of dumping on Canadian production. Anti-dumping duties may be alleviated only when dumped goods have caused, are causing, or are likely to

cause, material injury to production in Canada of like goods, or have materially retarded the establishment of production in Canada of like goods. This is the most significant change contemplated as compared to the existing law.

Article 3 of the Code is concerned with the determination of injury.

The draft act contemplates the establishment of an anti-dumping tribunal—this is section 21, which is found at page 80—to be composed of not more than five members to be appointed by the Governor in Council to receive representations, hear evidence, and arrive at decisions on the effect of dumped imports on Canadian production.

Senator Haig: Mr. Chairman, at this point may I ask who institutes the inquiry? Is it the industry affected, or...

Mr. Arthur: The draft legislation, Mr. Chairman, provides that a complaint of dumping can be initiated by the industry, or it is open to the Deputy Minister of National Revenue to commence an investigation if he believes that dumping is occurring and that that dumping would be injurious.

Senator Haig: Thank you.

Mr. Arthur: The next section of the act that I would like to deal with, Mr. Chairman, has to do with procedures.

Part II of the proposed bill, commencing at page 58, sets out the procedures to be followed by the Department of National Revenue and the anti-dumping tribunal in their investigations of dumping and injury. In summary, an investigation is to be initiated by the deputy minister either on his own initiative or on receipt of a complaint on behalf of Canadian producers if, in his opinion there is evidence of dumping, and either he or the tribunal is of the opinion that the dumping is injurious to production in Canada.

If as a result of this initial investigation the deputy minister concludes that goods are being dumped, he makes what is called a preliminary determination, and from that date until an order or finding is made by the tribunal imports of the goods in question are entered provisionally, subject to a final decision by the deputy minister regarding the amount of duty payable.

Senator Isnor: That is something new, is it not, Mr. Arthur?

Mr. Arthur: That is true, sir, yes. The deputy minister may demand either the payment of provisional duties or the posting of security in respect of any goods entered during this period. Should the deputy minister decide not to initiate an investigation after receiving a complaint he must advise the complainant in writing of his decision, and the reasons for such decision.

If the investigation was not initiated merely because the deputy minister did not consider that there was sufficient evidence of injury, the act provides that the complainant may seek the opinion of the tribunal on the question of injury.

As required by Article 5(c) of the Code, the act provides that the deputy minister must terminate the investigation before making a preliminary determination, if he is satisfied that "there is sufficient evidence of dumping to justify proceeding with the investigation", or "the margin of dumping of the goods or the actual or potential volume of dumped goods is negligible", or "if there is not sufficient evidence of injury".

If the investigation is terminated because of the lack of evidence of injury, the matter may be referred to the tribunal for its opinion, which must be rendered as soon as possible. Public notice must be given of the deputy minister's decisions regarding the initiation of investigations, the preliminary determination, the final determination and the determination of investigations. On receipt of the deputy minister's preliminary determination of dumping, the anti-dumping tribunal inquires into whether the dumping of these goods is the cause of injury, threat of injury or of material retardation.

Section 16 (2), on page 70, provides that the tribunal may also direct the deputy Minister to investigate the dumping of goods similar to those covered by the preliminary determination. The tribunal must within a period of three months from the date of the preliminary determination decide on the impact of the dumping on Canadian production. If the tribunal finds injury, then the deputy minister makes a final determination of dumping in respect of any goods described in the order which were entered into Canada before the order or finding of the tribunal, and anti-dumping duties are levied definitively. All like goods entered subsequent to the tribunal's order or finding are subject to the definitive application of dumping duties at

the time of entry in the amount of the margin of dumping as calculated in respect of each importation.

Section 32, on page 90, provides:

> The Tribunal may, at any time after the date of any order or finding made by it, review, rescind, change, alter or vary the said order or finding or may rehear any matter before deciding it.

The decision as to the margin of dumping and the category of goods involved is to be subject to appeal to the Tariff Board, and on points of law, to the Exchequer Court. This is similar to the appeal procedures now provided for in the Customs Act. However, like the legislation in Britain and in the United States, there is no appeal from the tribunal's decision of injury.

Senator Carter: I wonder if the witness could clarify one thing. On a number of occasions he used the term "goods". Do you mean all goods, all kinds of goods, or just manufactured goods, raw materials? What do you mean by goods?

Mr. Arthur: It would cover any goods. It is "like goods".

Senator Carter: Agricultural products?

Mr. Arthur: It is conceivable that it could be, but again agricultural imports are usually not dumped in the sense of the definition of dumping referred to here, but rather that they cause disruption of the Canadian market, particularly if they are end of season or because of the advance of the season, when the price of the agricultural product may be in keeping with the domestic market circumstances, but at a price which causes disruption on the Canadian market.

Senator Carter: Would it not be better to use the word "commodities" rather than "goods"?

Mr. Arthur: I believe the draftsmen consider "goods" to be more embracing than the word "commodity". It is one we have carried forward into this proposed legislation.

The Acting Chairman: I take it the answer to Senator Carter's question is that there could be dumping of agricultural goods that would come under this proposed act?

Mr. Arthur: Yes, sir.

Senator Molson: Could the word "goods" include commodities?

Mr. E. Russell Hopkins, (Law Clerk and Parliamentary Counsel): The word "goods" is not defined in either the international code or here.

Mr. Arthur: No.

Senator Molson: It is not in the definitions of this draft act.

Mr. Arthur: Article 2 of the code, on page 12, provides for the definition of "like product", and says it:

> . . . shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Senator Molson: So you are using the word "product" and talking about "goods" in the draft act.

Mr. Arthur: I think that my reference to "goods" here is in the narrative that I am using, because the proposed legislation carries forward into it the definition of "like products" as set out in the code.

Senator Kinley: I think there is considerable trouble with second-hand goods such as automobile parts.

Mr. Hopkins: "Like goods" is in the definition.

Mr. Arthur: The legal draftsman and those responsible for the drafting of the proposed legislation felt that the expression "like goods" would be more embracing and more clearly understood than the wording in the code, which refers to "like products".

The next features of the proposed legislation that I would mention relate to retroactivity. The draft act provides for the definitive application of anti-dumping duties to goods entered provisionally during the course of inquiry and retroactively for an additional three months in those cases where there is a history of dumping or the importer should have been aware that the exporter was practising dumping, and massive dumped imports in a relatively short period causes material injury to production in Canada. These provisions, taken almost word for word from article 11 of the code, are found in sections 4 and 5 of the draft bill, on pages 44 and 46. The

latter section, section 5, is designed to meet the difficult problem of so-called sporadic dumping.

If I may, I should now like to comment on certain additional features of the draft act, some of which are not dealt with in the anti-dumping code. The first is the matter of enforcement. It is clear that under the code governments need to have certain information if they are to carry out their obligations in the length of time specified. Paragraph (i) of article 6 provides that:

> In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

Because governments are permitted under the Code to make final decisions if sufficient data is not supplied, this puts a certain amount of pressure on the parties concerned to provide the required data. Equally important is the matter of false or incorrect information and fraud.

The provisions of sections 34 of the draft act, together with sections 10(3), 11, 17(2), 18(4) and 27(2) are intended to meet these problems and to enable the effective administration of the act.

Section 34, on page 92, in particular puts teeth into the act by not allowing the perfecting of an entry until the Deputy Minister has been supplied with the necessary data, and provides for a fine equal to the duty-paid value of the goods where the information is false or incorrect. These provisions are particularly important in the case of transactions between related companies.

Another important feature of the draft act is that it will be possible to provide protection for firms just starting out and those supplying a small share of the domestic market.

As I mentioned earlier, under the present law such protection may only be granted if Canadian industry is supplying at least 10 per cent of the Canadian requirement and has obtained a "made in Canada" ruling.

Senator Molson: Mr. Chairman, I am a little puzzled there. How could the entry not be completed or perfected if there has been no complaint? Supposing new goods—which is the term we have been using all through this thing—if goods of some new kind start coming in here, there cannot be a complaint immediately, surely? So, presumably those goods would get into the commercial stream well in advance of any action the minister might take, as suggested by you, in not permitting the completion of the entry. I am not quite sure how this could work mechanically. From the timing point of view, I do not see how this could work.

Mr. Arthur: Mr. Chairman, the provisions in the proposed legislation relate to those in which there has been a determination that entry of the goods has been made, there has been a determination of dumping and injury, and then, if later it is determined that they were falsely entered or there was fraud, it does make provision to go back and assess the penalty.

In a case where the goods are entered, say, for some time or have been entered and there has been no determination—there was no determination of dumping or injury—this act relates to the Customs Act and there are provisions in the Customs Act for fraudulent entry now and, indeed, this is a criminal offence, but the provisions in this draft legislation relate only to those circumstances where there has been importation, it has been determined that there was dumping, the dumping was injurious, and later it was further determined that there had been fraud or misrepresentation, and it makes provision there for the penalties that apply in those circumstances.

Senator Carter: I am wondering how this machinery would work with respect to poultry, turkeys, and agricultural products like tomatoes. Our friends in Ontario complain practically all the time, seasonally, that these products are dumped, and if they do not actually put our own people out of business they hurt them financially. With all this machinery, how are you going to get it going fast enough to prevent the injury?

Mr. Arthur: Mr. Chairman, as I mentioned earlier, the problems relating to agriculture and some of the other products that have been mentioned are matters which are dealt with under another section of the Customs Act. They are now considered under section 40A(7) of the Customs Act, and this draft legislation does propose a re-wording of that particular section and placing it in another section of the Customs Act. But these products are really not, in the sense of the Code, dumped products. You are talking, I believe, sir, about distress prices or end-of-season, and so on.

Senator Carter: Yes.

Mr. Arthur: And we will be dealing with that particular section shortly. There are just one or two other comments I would like to make, Mr. Chairman. I should like to mention a most important point concerning the definition of "industry" as set out in Article 4(a) of the Code, which is on page 15, which the tribunal must take into account in its decision on injury.

"Industry" as used in the Code, and "production in Canada" as used in the draft act, do not mean a group of corporations, but relate to the production of a particular product. Accordingly, it is possible to give protection against dumping to a multi-product corporation which is being injured by the dumping of only one of its product lines.

Under our present legislation liability for anti-dumping duties occurs at the time the goods are imported into Canada. Because of the concepts of "dumping" and "margin of dumping", as used in the draft act, differ somewhat from the terms of our present legislation, it will now be possible to create the liability for dumping duties before goods actually cross the border.

The draft act is written in terms of the dumping occurring at the time of the sale, which may be some time prior to the date of shipment of the goods to Canada.

It will be noted that under section 3 of the draft act, on page 44, the liability for anti-dumping duties is established when the tribunal makes its order or finding, and not when the goods are entered. The actual collection of the duties does not, of course, take place until the goods are imported into Canada.

Senator Isnor: How can you enforce that, Mr. Arthur?

Mr. Arthur: Well, Mr. Chairman, you cannot enforce it in the sense of actually collecting the dumping duty, but perhaps I might give an illustration. Suppose electrical generators are ordered two or three years in advance of their importation. If the terms of the contract are known at the time the contract is completed—and that, in terms of this legislation, means the sale or the agreement for sale—it will be open at that time to investigate the sale price of those generators in relation to the sale price of similar generators in the domestic market of the exporting country. If it is determined that the price to, say, the utility in Canada which is buying these generators is less than the normal value of similar generators that would be sold domestically, or in the country of export, you can at that point of time determine a liability for dumping duty. In other words, you can advise the utility company in Canada that if it imports these generators at the price of the contract then at the time of importation they will be liable to dumping duties in a particular amount.

Really, sir, what I am saying is that you can determine the liability. The enforcement or application of dumping duty will not, of course, take place until the time the goods are actually entered into Canada.

Senator Blois: That, Mr. Chairman, is rather unfair to the purchaser in Canada. For instance, if I can go back to the generators you were referring to, such items are purchased perhaps two years in advance. You may be buying them at, say, $2,500 each, but at the time they come into Canada the price here may be $2,800. The purchaser has signed a contract, which he cannot cancel, with a firm in the United States—if he is buying from the United States—and he is paying duty, and that is rather unfair to him, is it not?

Mr. Arthur: Mr. Chairman, the amount of the liability is calculated at the time of sale. The amount of duty that is assessed is based on the circumstances at the time of the sale, and not at the date of the importation, as under the present legislation.

Senator Blois: I must have misunderstood you. Thank you.

Senator Kinley: Mr. Chairman, in the importation of large mechanical products, like diesel engines, time is an awfully big factor. For instance, if you buy them in the United States you get them within a month, but if you buy them in Europe you get them in six months or a year. I have never heard of dumping duties for that type of business. You could buy an engine in Germany or Poland. If you bought it in Poland then it would be cheaper, but the delivery takes a long time. I have never heard of dumping duty being used in respect of such items.

Mr. Arthur: Mr. Chairman, dumping duty would, I suggest, under the present legislation be assessed against such importations if the sale price to the importer in Canada was

less than the fair market value of those goods in the country of export.

Senator Kinley: Less ten per cent, if they are made in Canada.

Mr. Arthur: Yes, sir. I am, of course, referring to goods made in Canada.

Senator Carter: While you are on that point may I ask how you determine dumping. Suppose a country has a two price system—we have been talking about two price systems for weeks—where there is a domestic price and an export price. Where an exporting country has a two price system would we regard that as dumping?

Mr. Arthur: If the export price was less than the normal value of domestic sales, yes—in other words, if the domestic price is higher than the export price.

Senator Carter: But obviously it would be if there was a two price system, because that is what a two price system is.

Mr. Arthur: In those circumstances if the margin of dumping, or the difference between those two prices was such that it would cause injury to Canadian producers of that particular product, then, yes, sir.

Senator Carter: I see. Injury comes into it?

Mr. Arthur: Yes, under the proposed legislation injury must always be determined before dumping duties will apply.

Senator Molson: We ran into this in respect of exporting barley to other countries, and exporting other grains and agricultural products.

The Acting Chairman: That is where there is an internal subsidy...

Senator Molson: Where the domestic industry pays higher prices than those at which barley is sold on the export market.

Mr. Arthur: Mr. Chairman, I am not as familiar with the grains agreement as I should be, but I believe that this is another product that is covered by that agreement.

Senator Molson: The international grain or wheat agreement?

Mr. Arthur: Yes, sir.

The Acting Chairman: Honourable senators, time is running on, and I would like to know what your feeling is. Obviously, we are not going to finish Mr. Arthur's statement by one o'clock, but I point out that we are not under any great pressure of time. I will ask Mr. Arthur if he would like to finish his statement at this meeting.

Mr. Arthur: Mr. Chairman, I have just one short comment to make on the consequential amendments which have come up on one or two occasions this morning.

The Acting Chairman: Then, we will go ahead and finish that, and perhaps we can leave the questioning for another sitting.

Mr. Arthur: With respect to the consequential amendments the only substantive revision involved relates to the proposed deletion of subsection (7) of Section 40A of the Customs Act, which provides for the establishment of arbitrary valuations in respect of goods which are not dumped but which are causing injury to Canadian producers. The real impact of such fixed valuations is the assessment of anti-dumping duties in the amount of the difference between the value so fixed and the actual export price.

Under the Code it is not possible to use anti-dumping duties in this fashion. It is proposed that a new provision be added to the Customs Tariff to deal with imports which are not dumped but which threaten injury to domestic producers. Article XIX of GATT provides for such emergency action. The new provision will enable the Governor in Council, on a report from the Minister of Finance that goods are being imported under conditions which cause or threaten serious injury to Canadian producers or manufacturers, to order the levying of a surtax in respect of such imports. It should be noted that the emergency import tax provision achieves the same result as the present law, but it does not do so through the use of anti-dumping duties. The one change of substance in this connection is that an order under the new emergency provision is to cease to have effect after 180 days unless it is approved by Parliament.

Mr. Chairman, that concludes my remarks.

The Acting Chairman: The meeting is now open for questions, but I think Mr. Arthur would be available to come back at another meeting of the committee.

Mr. Arthur: Yes, sir.

Senator Isnor: I have one or two short questions. Do you represent the Department

of National Revenue or the Department of Finance?

The Acting Chairman: Mr. Arthur is a member of the Department of Finance.

Senator Isnor: It appears to me that the bulk of his work rests with the Department of National Revenue. I was wondering why the Minister of Finance was named instead of the Minister of National Revenue.

The Acting Chairman: I imagine Mr. Arthur can answer the question directly, but I should say that I think Mr. Labarge of the Department of National Revenue will be available as a witness for his department. Perhaps Mr. Arthur could answer Senator Isnor's question directly.

Mr. Arthur: Any action taken under this provision is one which is related to our international obligations under GATT. The Department of National Revenue is an administrative department, the Department of Finance is a policy department, the minister being responsible for commercial policy as it relates to international undertakings, and for that reason it was considered appropriate to make the Minister of Finance the person responsible here rather than the Minister of National Revenue, as under the present act.

Senator Isnor: Then all references to the deputy minister in this act are to the deputy minister of which department?

Mr. Arthur: Of National Revenue. The only reference to the Minister of Finance is in that consequential amendment to which we just referred, the one covering goods which cause injury but which are not in the proper sense dumped.

Senator Carter: I should like to ask a follow-up question to one put earlier when I asked about dumping. You said the factor of injury had to be taken into account. What section refers to injury? I see "dumped" in the definitions in section 2, and it is said to be as in section 8, but section 8 does not say anything about "injury".

Mr. Arthur: I would refer the honourable senator to section 3 on page 44, which says:

> There shall be levied, collected and paid upon all dumped goods entered into Canada in respect of which the Tribunal has made an order or finding...

and so on.

> ...has caused, is causing or is likely to cause material injury to the production in Canada of like goods...

In other words, once this legislation is in effect, dumping duty will not be applied unless the tribunal makes an order or finding that the dumping has caused or is causing or is likely to cause injury.

Senator Carter: Should some reference be made to that section 2, subsection (1)(c)? It seems that dumping is defined in section 8 and also in section 3.

Mr. Arthur: The measurement of the margin of dumping is covered in section 8 of the proposed legislation. The undertaking of the tribunal to determine injury is set out in other sections of the proposed legislation, mainly section 16. Then sections 3, 4 and 5 of the proposed legislation deal with the liability for anti-dumping duty.

The Acting Chairman: In effect, Senator Carter, dumping is all right unless there is injury, so there have to be the two definitions, one of "dumping" and one of "injury". Is that not right?

Mr. Arthur: Yes. The definition of "dumping" is clearly spelled out in the proposed legislation. "Injury" is not; it is a matter of fact; it is left to the tribunal. The code suggests a number of indices that should be taken into account in determining whether there has been injury.

Senator Beaubien (Bedford): Section 7 says:

> The Governor in Council may exempt any goods or classes of goods from the application of this Act.

Does that mean if I am in business and somebody is importing something that is putting me out of business I have no appeal if the Government has decided the act is not to apply to that class of goods? We did not like the discrimination given to the minister in respect of "class or kind". It seems to me this discretion is unbelievable.

Mr. Arthur: My only comment to that is that I do not think in the circumstances just cited any action would be taken under this particular section.

Senator Beaubien (Bedford): Mr. Arthur, that does not answer the question. If the Government does so decide, is there any appeal? What does it mean? Does it mean it is a free-for-all, that you could bring in that class of goods at any price you like and it does not matter whether it affects anybody else in business?

Mr. Arthur: To answer your question directly, if action is taken by the Government under this section—or I suspect any other act—there is no appeal from this provision.

Senator Beaubien (Bedford): This ruling?

Mr. Arthur: This ruling, whatever it may be.

Senator Beaubien (Bedford): That is quite amazing.

Mr. Arthur: Well, I should not comment.

Senator Burchill: That is the policy.

Senator Kinley: Is there any problem with free goods coming into the country with regard to dumping duties? The fact that the tariff makes them free would indicate we want them badly and there is free movement. Does it apply to free goods?

Mr. Arthur: The answer to that is Yes, sir.

Senator Kinley: It does?

Mr. Arthur: It does, whether they are free or dutiable.

Senator Kinley: But there is no problem.

Mr. Arthur: I would suggest to you, sir, that there are goods coming into the country duty-free and there is a fairly substantial Canadian industry competing against this free competition. I would suggest that the agricultural implement industry is one.

The Acting Chairman: Are there any further questions?

Senator Isnor: Is the tribunal that is being set up permanent?

Mr. Arthur: Yes, sir, it is. It says that the tribunal will consist of up to five members, and goes on to say that each member shall devote the whole of his time to the performance of his duties under the act, and shall not accept or hold any office or employment inconsistent with his duties under the act.

Senator Isnor: Mr. Arthur, this is a rather personal question: how long have you been with the department?

Mr. Arthur: Of Finance?

Senator Isnor: Yes.

Mr. Arthur: Well, I have just returned. I was there for six years, and away for four years.

Senator Isnor: That is long enough. Senator Blois will be bringing up later a question in regard to the importation of fur felts used in the manufacture of hats in the town of Truro. The firm appealed to the department, I think, contending at the time it was unfair competition. The ruling was against them, and the firm has since gone out of business. Is that right, Senator Blois?

Senator Blois: Yes.

Senator Isnor: I was wondering if a case like that would be handled by this board in future.

Mr. Arthur: Mr. Chairman, in reply to the question, as I understand it you are going to call on witnesses from the Department of National Revenue, and they would be better equipped to respond to the first part of the question.

Under the proposed legislation, if any complaint were made to the Deputy Minister of National Revenue, before any action was taken the Deputy Minister would have to be satisfied that there was dumping and that dumping may cause injury or is likely to cause injury, and he would refer it to the tribunal. If the tribunal, after an investigation, determined that injury was caused, then the importation of those felts would be subject to dumping duty.

But the Deputy Minister, as under the present legislation, would have to be convinced at the present time that there is dumping. Under the proposed legislation the Deputy Minister would have to be satisfied that not only was there dumping, but the dumping was not negligible and that there would likely be injury if that dumping continued, in which case he would make a determination which would be referred to the tribunal and we would go through the procedure.

Senator Isnor: I think Senator Blois would know the firm.

Senator Blois: Yes, they had several problems, and that was just one of them.

Senator Molson: In winding up, Mr. Chairman, I just come back to the discussion a little earlier. That word "goods" still bothers me a little, in that when we refer to the Code, the word "products" is used. In Canada we seem to have chosen "goods." I am wondering if everything has been done that should have been done in the draft act to eliminate any doubts such as suggested by

Senator Carter. It may be that we have used that word "goods" through Customs and other legislation throughout and it has worked well and there is no reason to change it; but when you refer to the Code you promptly see the word "products" and not "goods".

Mr. Arthur: I cannot really comment on this, other than to say that in several places we have used terminology which is in keeping with the Code, but which, in our view—or, let me say it this way, in the draftsman's view more appropriately reflects the intent.

Senator Carter: Do you have a definition for "goods"?

Mr. Arthur: In section 2 of the proposed bill, on page 40, section 2(1)(g).

Senator Carter: That is "like goods"; it does not say "goods".

The Acting Chairman: I make the suggestion that when Mr. Arthur comes back he might have an answer that would tell us why the word "product" is used in the Code but is changed to the word "goods" in our draft bill.

Senator Carter: I think we would like to know if it covers raw materials too. I am confused. Does "goods" cover everything?

The Acting Chairman: That is what we will find out.

The committee adjourned.

Thursday, December 12, 1968.

Upon resuming:

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we will continue the consideration of the White Paper on Anti-dumping. The draft bill is enclosed. Mr. Arthur has concluded his preliminary statement, I believe. We did ask him before we completed yesterday to explain the use of the word "goods" in the draft bill and to relate it to other words suggested, such as "products" and "commodities". Have you something further to add to that, Mr. Arthur?

Mr. Arthur: Mr. Chairman, honourable senators, yesterday at the conclusion of our meeting the question arose as to why in the draft bill we used the expression "goods", whereas in the Code the word "product" is used. I have since then consulted our legal advisers who have assured me that the expression "goods" is broader than the word "products" and that the word "goods" appears throughout the Customs Act. To ensure as much common understanding between the expressions used in the proposed act and in the present legislation, it was their view that the use of the word "goods" would be appropriate in transforming into the proposed legislation the expression "products" or "like products" in the Code.

I would also like to comment that within the proposed legislation in the interpretation section, section 2 (3), there is a provision which says:

> For greater certainty this Act shall be considered, for the purposes of the *Customs Act*, to be a law relating to the Customs.

And there are a number of provisions in the Customs Act which are essential to the proper application and interpretation of this proposed legislation on anti-dumping.

If I might, Mr. Chairman, I would just wish to read the definition in the Customs Act relating to the word "goods". This is section 2 (j) of the Customs Act, which reads as follows:

> "Goods" means goods, wares and merchandise or movable effects of any kind, including vehicles, horses, cattle and other animals;

I believe, Mr. Chairman, that a question raised by one of the honourable senators yesterday was the matter of whether this would include materials. The answer to that question is yes. That is all I have to say.

The Acting Chairman: Are there any questions on the explanation given by Mr. Arthur? I might ask him, concerning the French version, do we use the same word in the French interpretation of "goods" in our proposed act as in the Code, or is there a different word there also? And is the explanation the same or is the word "product" or its French equivalent in the Code?

Mr. Arthur: My understanding, Mr. Chairman, is that we have used the expression for goods as it appears in the French translation of the Customs Act.

The Acting Chairman: Marchandises.

Mr. Arthur: Marchandises.

The Acting Chairman: So that the same explanation would apply to the French interpretation?

Senator Connolly (Ottawa West): What section are you referring to, Mr. Chairman?

The Acting Chairman: In the proposed act the word "goods" is used in a number of places.

Mr. Arthur: The first time it appears is in the definition section or the interpretation section, section 2 (g).

Senator Molson: I assume no better word than "antidumping" could be found for the French version, Mr. Chairman?

The Acting Chairman: Underpriced is the French expression.

Senator Connolly (Ottawa West): You find it in section 2(1) (c).

The Acting Chairman: In the Code, I believe the translation of underpriced is used.

Senator Connolly (Ottawa West): Perhaps it is worth mentioning in discussing the French and English that the policy now in the Department of Justice is not to take an act and draft it in English and then translate it into French. Rather, it is to write the French as an original rendition, as well as the English, making sure that the one corresponds with the other. I think that is the policy of the drafting section of the Department of Justice. Probably the result is a great deal better. There is more purity in the French version than there used to be when it was translated from the English.

The Acting Chairman: I see in the Code that they actually use the word "le dumping".

Senator Molson: And the word "antidumping".

The Acting Chairman: I do not think there can be much difference in point of view as to what is meant. May I ask the question how are the United States treating the wording in their proposed legislation, or legislation if it is in effect, on the same subject? Do they use a word similar to "goods" even though the Code says "products"? What I am really getting at is whether there is any difference in the application of the anti-dumping code as to the articles covered, when the code uses one word and then we use another word and another country uses another word again? Are we all dealing nevertheless with the same articles?

Senator Molson: Will the end results be the same?

The Acting Chairman: That is the question.

Mr. Arthur: Mr. Chairman, I do not have a copy of the United States Anti-dumping Act with me. My recollections are not as clear as they might be on this point. But I can give the assurance that the use of the word "good" in place of the word "product" is as broad, and would give the coverage in our view that is proposed, as if the word "product" were used.

Indeed, throughout the proposed legislation there are expressions that are familiar and are in use in the present customs administration, and where possible we have used these words in the proposed legislation, of course, ensuring that these give the meaning that is intended in the Code.

The Acting Chairman: Are there any other questions on that point?

Senator Connolly (Ottawa West): And cleared with the trade, too, I suppose? The trades affected?

Mr. Arthur: Yes, sir.

The Acting Chairman: Are there any other questions, then, on the main statement that Mr. Arthur made?

Senator Burchill: Speaking about the United States, Mr. Chairman, I noticed the other day that the United States had taken action against France because France had subsidized certain export industries. Is that applicable to Canada as well?

Mr. Arthur: Mr. Chairman, I believe that the action that the United States took against French imports that they alleged had been subsidized was under their countervailing law, which is different from the anti-dumping law. And we have a countervailing provision in our customs legislation as well.

Senator Molson: Mr. Chairman, yesterday I think Mr. Arthur said that the whole responsibility of instigating action with respect to anti-dumping lay in the hands of the deputy minister. We didn't go into that too fully, but I think there is a section that says that if he decides that an investigation is not justified, and will not initiate it, that it can then actually go to the tribunal. Is this correct? It is in a sense an appeal.

Mr. Arthur: If I may go back on your statement, sir. I hope I did not convey the impression yesterday that only the deputy minister could initiate an investigation. Normally he will commence an investigation on the basis of a complaint from an industry against unfair competition or dumping goods. He may also, of course, on his own initiative commence an investigation. Should the deputy minister in the course of his investigation determine that there is dumping, but that the margin of dumping is such that it would not cause injury, he can terminate the investigation and so advise the complainant. If he should do that there is provision in the proposed legislation that would permit the complainant to appeal to the tribunal whereby he could seek the tribunal's views as to whether or not there was injury, but the complainant is not at liberty to go to the tribunal unless the deputy minister determines that there was dumping. If the deputy minister decides there was not dumping, or that the dumping was negligible, the complainant has no recourse.

Senator Haig: Is there a further appeal from the tribunal to the Exchequer Court?

Mr. Arthur: There is no appeal from the finding of the tribunal on injury. The appeal that is open is an appeal from the ruling of the deputy minister as to the margin of dumping. Once the tribunal has made a finding on injury, the deputy minister then determines the margin of dumping of goods, the definition of goods or the description of the goods that have been dumped. The person against whom the dumping duties are assessed may appeal to the Tariff Board on a matter of fact or to the Exchequer Court on a matter of law.

Senator Connolly (Ottawa West): That is section 19 so far as the Tariff Board is concerned and section 20 so far as the Exchequer Court is concerned.

The Acting Chairman: Is the function of the bill to deal only with the question of injury?

Mr. Arthur: Yes, sir. It has no other function.

Senator Molson: I am wondering if that discretion is not fairly wide, Mr. Chairman, the discretion of the deputy minister in that instance.

The Acting Chairman: And therefore the deputy minister in the first instance is the only person that deals with the determination of the question of dumping itself.

Mr. Arthur: Yes, if a complaint is made to the deputy minister he first determines if there is dumping, then he determines if that dumping is other than negligible, and if that is the case whether that dumping is likely to cause injury, and if he reaches a conclusion on all of these points, he then makes what is known as a preliminary determination. The preliminary determination is transmitted to the tribunal. The tribunal is obliged within 90 days from the date of the preliminary determination by the deputy minister to issue its order or finding on injury. If it decides that these goods, the dumped goods, have caused injury and it issues an order or finding accordingly, the Deputy Minister of National Revenue then determines the margin of dumping and assesses that margin of dumping against the importer.

The Acting Chairman: Any other questions to Mr. Arthur?

Senator Connolly (Ottawa West): I wanted to ask a question on this. The witness said that the question of injury is the sole determining factor when the deputy minister takes action to refer the matter to a tribunal. By "injury" I take it that that includes both paragraphs (a) and (b) of section 3 which read:

> (a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods, or
>
> (b) has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

It seems to me that if one refers to section 13, subparagraph (3), on page 60, the deputy minister or the complainant may refer to the tribunal the question whether there is any evidence that the dumping of the goods has caused, is causing or is likely to cause material injury to the production of like goods. This seems to refer to paragraph (b) of 3:

> (b) has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

Mr. Arthur: If I may answer that question other than "Yes" or "No", section 13 is the section which covers the initiating of an investigation and these are the circumstances that the deputy minister is obliged to consider. Going back to section 3 which you mentioned also, this section applies after the tribunal has made an order or finding under

sections 3, 4 and 5 which are the liability sections for dumping duty under the proposed legislation. The circumstances in 13 are where the deputy minister initiates an investigation, whether the dumping of the goods has caused, or is causing etc.,—these are in advance of determination by the tribunal as to injury, whereas section 3 applies after the tribunal has made its finding, and that is why there is a slight difference in the connection of the words there. I believe this is the question that you are raising, sir.

The Acting Chairman: There are two kinds of injuries spelled out...

Senator Connolly (Ottawa West): In subsection 3.

The Acting Chairman: And in subsection 4 too—which I think are applicable. There is one, an actual material injury caused, and the other is a potential injury. Is that not so, Mr. Arthur?

Mr. Arthur: That is correct, yes.

Senator Connolly (Ottawa West): Perhaps you would not mind if I asked you a question in connection with section 21, the Tribunal established.

This may be a policy question and perhaps should not be asked of this witness, but is it intended that the tribunal should be constituted from members of the public, or from officials of the department or the public service? If this is policy, do not answer it.

Mr. Arthur: I was going to respond by saying that these people are to be full-time, and many of the submissions that have been made to the committee in the other place have suggested that they be persons with broad industry experience, but beyond that...

Senator Connolly (Ottawa West): It is up to the Governor in Council?

Mr. Arthur: Yes, sir.

The Acting Chairman: There is another description of them, is there not, which would mean they could not hold any other position?

Mr. Arthur: Yes, subsection 7 of section 21 requires that:

> Each member shall devote the whole of his time to the performance of his duties under this Act and shall not accept or hold any office or employment inconsistent with his duties and functions under this Act.

Senator Isnor: Yesterday, Mr. Arthur, you referred to import and export injury. What percentage would apply to export injury? Is there any consideration given to that?

Mr. Arthur: This is a piece of legislation relating to the importation of goods into Canada.

Senator Isnor: But you referred yesterday to export as well.

Mr. Arthur: Mr. Chairman, I referred to exports only in the sense that the International Code which has been accepted by a number of countries—the application of the Code—should be of assistance to our exports in gaining access to those countries. In other words, one of the reasons we participated in the discussions that led up to the signing of this Code was because we were interested in ensuring our exports would have as free access as possible into other countries.

Senator Isnor: But you referred again to the word "export". To what extent will this bill, say, in dollars or on a percentage basis, apply? Have you any estimate of that? I ask because it appears to me there are only one or two cases I have known of down through the years where the imports were affected in the export business. Have I made that clear?

Senator Molson: No, not to me.

Senator Isnor: Well, perhaps I could broaden it a little and say that raw fur felts were brought in as part of a manufactured article to be exported, which had an adverse effect on some of the local manufacturers. What percentage, or has there been any estimate of the percentage, of export business as compared to the import?

Mr. Arthur: As I understand the question, it is: What percentage of imported goods that are incorporated, say, in products that are subsequently exported?

Senator Isnor: Yes.

Mr. Arthur: What percentage of our imports do these goods represent?

Senator Isnor: Right.

Mr. Arthur: I have not any estimate.

The Acting Chairman: I have arranged for Mr. Labarge, the Deputy Minister of National Revenue, to appear before the committee on Wednesday next. I imagine that he might

have more information on just what the effect of our anti-dumping legislation has been in imports and exports. Perhaps we can ask that question again of him.

Senator Isnor: Thank you. We will allow it to stand for now.

The Acting Chairman: We will allow it now, but Mr. Arthur does not seem to have the information to answer the question.

Senator Burchill: Previous to this was our anti-dumping legislation under the Customs Act? Did we not have anti-dumping legislation previous to this?

Mr. Arthur: The anti-dumping provisions are in the Customs Tariff, but the means by which the Deputy Minister of National Revenue would determine "fair market value" and "selling price" are provisions of the Customs Act, and this is one of the matters which will be cleared up by this proposed legislation. It will take it out of both...

Senator Burchill: It will take it out of the Customs Act?

Mr. Arthur: ...and put it into a separate piece of legislation which will cover anti-dumping.

Senator Molson: I suppose Mr. Chairman, there will be a tremendous number of goods where the application of this act will be extremely difficult. I am thinking of things that are based perhaps on a chemical formula, where the changing of one small ingredient may change the composition, and so on. I imagine it can become extraordinarily complex to apply this act. Perhaps that is, again, for National Revenue.

Mr. Arthur: Mr. Chairman, it is more appropriate to ask the officials of the Department of National Revenue, but I would refer the senator to the definition of "like goods", and it will be a matter of interpretation of that definition. Of course, in time it will possibly have to await the decisions of the Tariff Board and, possibly, of the Exchequer Court.

Senator Croll: Mr. Arthur, you will have to forgive me, because I was not here the first meeting, and that was not your fault. What is new here that is not already in existence?

Mr. Arthur: Mr. Chairman, the main difference is the fact that dumping duties, once this legislation becomes law, will not be applied unless injury is proven.

Senator Croll: But that has been the law.

Mr. Arthur: No, sir, under our present legislation dumping duty applies if the selling price to the importer in Canada is less than the fair market value and the goods in question are considered to be "of a class or kind made in Canada."

Senator Connolly (Ottawa West): The fair market value in the country of origin?

Mr. Arthur: The fair market value in the country of origin, that is right, sir. If those conditions are met, it is an automatic application of dumping duty.

Under the proposed legislation, if the selling price to the importer in Canada is less than the normal value, which is an expression instead of "fair market value," dumping duty will not be assessed unless injury has been proven.

The Acting Chairman: And the "class or kind" language disappears out of the proposed act?

Mr. Arthur: Yes.

Senator Connolly (Ottawa West): Taking a practical example, and following what Senator Croll says, would this be the result, say, that you have in an American run of textiles, an over-run, and they sell in that market at a cheap price, cheaper than the original run, let us say, the earlier part of the run. Then those goods are brought in here. Some of those end pieces are brought in here and are going to undersell, presumably, the Canadian goods of a like character. But there is going to be some distinction between those specific goods that are brought in and the ones that are manufactured in Canada. The consumer there has an opportunity of getting something cheaper than normally he would. I suppose you cannot answer this question, but the question is whether or not some injury is being done to Canadian manufacturers or retailers or wholesalers is going to depend upon first of all whether or not the goods are considered to be like goods and secondly whether or not the tribunal considers that there has been damage.

Mr. Arthur: Mr. Chairman, I think that the circumstances that have just been outlined may not fall within the terms of this anti-dumping bull, particularly if they are end of season or end of run. If it were looked at under the proposed legislation, it would be a matter of whether this was in the ordinary

course of trade and under competitive conditions and so on. If it is ruled out of that, it is possible under this proposed legislation for the deputy minister to construct a value or to look at the goods sold by others and so on.

But I might suggest to your, sir, that the circumstances that you have outlined may well be dealt with under other than this proposed legislation. As you know, we have a provision in the Customs Act now, section 40(a)(7), which permits the Governor in Council to establish arbitrary valuations. This is the consequential amendment of this proposed legislation. The change is from establishing arbitrary valuation to applying a surtax. The principle behind doing this remains identical, and I would suggest to you that in the circumstances that you outlined it may be that these goods are not dumped in the normal sense, in that you could find in the United States market a price similar to the price that was charged to the Canadian importer. But, on the other hand, these imports may have a very disruptive effect on Canadian production, and under those circumstances...

Senator Connolly (Ottawa West): That is going to be the test.

Mr. Arthur: Under those circumstances it would be open to use, I suggest, the arbitrary provision which is provided for under the proposed section 7(1a) of the Customs Tariff the consequential amendment, as it is referred to in the proposed legislation, is on page 96. As I mentioned, the only thing that we are doing here is moving it into the Customs Tariff and changing from the assessment of an arbitrary valuation to the assessment of a surtax.

One matter that arises under action under this section is that first it is an action by the Governor in Council and secondly it is open to the country against whom we take the action to request compensation. This is a section which, for instance, has been applied on occasion to the importation of turkeys and so on. But the reason I have gone into this is that it may be considered in more than one way, and I would suggest to you probably under the latter section rather than under the proposed anti-dumping.

Senator Connolly (Ottawa West): Normally, heretofore, when it came to a question of assessing dumping, the department or the minister would look at the fair market value in the country of origin and, in the case that I cited of "end of season", as you put it, or "end of run", as I put it, he would not consider that to be the fair market value.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): And he would assess dumping.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): He would still be able to do that.

Mr. Arthur: Yes, sir.

Senator Connolly (Ottawa West): But in addition to that he has got this further arm provided in section 3, this further club, which says that if there is injury to a segment of the Canadian market then in that case, too, he can make that a factor as well.

Mr. Arthur: Mr. Chairman, he will only be able to apply dumping duty in the future if there is injury.

The Acting Chairman: The other case is dealt with and will continue to be dealt with under what is not anti-dumping legislation.

Senator Connolly (Ottawa West): In other words, the cheap goods coming in, even if they are at prices depressed because they are end of run goods or end of season goods, if they do not disrupt Canadian industry are not going to be subject to the dump.

Mr. Arthur: Not under the proposed anti-dumping bill here, sir. But what I am suggesting is that they may well be handled under the consequential amendment which is outside, really, the proposed anti-dumping bill, but is one which we are undertaking at this time because of representations that we have received that we should not be using dumping duties against non-dump imports, which are having a disruptive effect on a segment of Canadian industry.

The Acting Chairman: In other words, we have had a section in our Customs Act which was within the terms permitted by GATT which did allow us to impose special remedies, duties, in cases, for example, of seasonal fruits or in the kinds of case where perhaps there was a distressed selling, and this was not under the heading of dumping. But now in this proposed dumping bill it is a consequential amendment to the Customs Act so as to continue that power that we have been exercising in the past not on grounds of dumping but on grounds of injury to industry in Canada, and the only change there, as I

understand it from Mr. Arthur, is that the power still exists but there is a change in the calculation of the penalty, shall we say, because instead of being a certain duty it will now be a tax. Is that correct?

Mr. Arthur: That is correct.

Senator Croll: As I understand it, the Customs Department have always used the provision of injury to industry. For instance, Senator Connolly spoke of textiles, particularly the end run on textiles that come over here from the United States and from Japan. Are we weakening, strengthening or are we codifying our approach? What are we doing?

Mr. Arthur: Mr. Chairman, the basis for determining what would be a proper, normal value or fair market value for those commodities is as broad under the proposed legislation as it is under the existing legislation. Under the proposed legislation, however, there must be a determination of injury before the dumping duties may be applied.

Senator Croll: But, Mr. Arthur, there always has been. It is all very well for you to shake your head, Mr. Chairman, but I have had some experience of these things over the years, particularly with textiles. One of the reasons given is that there was injury to the existing industry and in consequence he would say "I apply the anti-dumping provision."

Mr. Arthur: In the present legislation there is no requirement that injury be proven. There may be an assumption made that if the goods continued to be dumped there would be injury to Canadian industry, but that has not been one of the conditions that the Department of National Revenue has had to satisfy before applying dumping duty under the existing legislation.

Senator Connolly (Ottawa West): Now they will have to.

Mr. Arthur: They will have to on the basis...

Senator Connolly (Ottawa West): What you are saying, Mr. Arthur, is that heretofore there has been a mathematical calculation. It is a question that the goods were sold at a certain price at a certain time in the country of origin and that that price was lower down there. Then they were sent into Canada at that lower price and the dump was calculated on the original price, and the importer paid the difference between the original price and the price of import which price was the amount by which the dump was calculated.

Senator Isnor: That is not the whole story.

Senator Connolly (Ottawa West): Not the whole story, but at least a part of it.

Mr. Arthur: I think, Mr. Chairman, Senator Connolly's illustration refers to goods which would have had to be considered of a class or kind made in Canada, and the dumping duty could only equal 50 per cent ad valorem under the present legislation. Now in order to obtain a class or kind ruling there must be a production in Canada equal to approximately 10 per cent of demand. Under the proposed legislation if injury is proven it will provide dumping duty being assessed against products even if there isn't 10 per cent production in Canada, and the margin of dumping under the proposed legislation is the difference between the normal value in the country of export and the importer's purchase price with no limitation such as 50 per cent ad valorem as exists under the present legislation.

The Acting Chairman: Are there any more supplementary questions? Senator Carter is next on my list.

Senator Carter: My question has been covered, Mr. Chairman.

The Acting Chairman: Any more questions?

Senator Lang: I presume the theory behind this legislation is to provide less protection than now exists. Am I correct?

Senator Croll: No, no.

Senator Lang: Well, less discretion.

Senator Connolly (Ottawa West): I would think less discretion but more protection.

Senator Croll: I gather what you are providing here with this little variation is a tribunal you haven't got now where you can go other than the ministerial level—in other words you are providing a tribunal where you can take a case if you don't agree with the deputy minister.

Senator Connolly (Ottawa West): You could always go to the Tariff Board.

Senator Croll: This is like a Tax Appeal Board.

Mr. Arthur: Mr. Chairman, I don't know a great deal about the Tax Appeal Board, but I would not suggest that the actions of the

tribunal or the function of the tribunal is to act as an appeal court. Its sole function is to determine whether the dumped goods are causing or are likely to cause injury or retardation to Canadian industry. Now the assumption would be that the tribunal would wish to take into account a number of indices that are suggested in the code, and that they would want to gather as much information as they possibly could about the effect of the imported dumped goods on Canadian industry. Once the tribunal does make its order or finding, there is no appeal from an order or finding of the tribunal, and the deputy minister then will determine the margin of dumping, both the margin of dumping and the description of the goods against which the deputy minister assesses a margin of dumping. That calculation or that amount of duty may be appealed on a matter of fact to the Tariff Board or on a matter of law to the Exchequer Court. The same appeal provisions that exist in the present legislation are carried forward into the proposed legislation.

The Acting Chairman: Might I just say to Senator Lang that in essence this proposed bill is to carry out an international agreement to which Canada was a party.

Senator Lang: And which international agreement is aimed at freeing trade.

The Acting Chairman: Which international agreement is aimed at removing things which interfere with the normal channels of trade, and which is applicable throughout all trading countries, and it is deemed to be something that should be, and that we all agree should be stopped whether things are being dumped into Canada or whether Canada is dumping things elsewhere. It is a—perhaps cancer is too strong a word—but it is something that interferes with the normal channels of trade, and all countries recognizing this say "Let us abolish it all on some kind of reciprocal basis." And this was agreed to as part of the Kennedy Round and we agreed as did other countries and now we are called upon to implement the agreement. The effect on any one individual country may be good or bad as between the importer and the exporter, but the overall effect is deemed to be good by all countries that have signed the accord.

Senator Molson: From the point of view of Canadian industry, I don't think there is much doubt that this may ease the flow of trade, but from a protection point of view I would hazard a guess that the protection is reduced because the necessity of proving injury is not going to be simple. It is more complicated than the deputy minister being able to take two prices and say there is dumping and then promptly going on to make an assessment. That may have been an unsatisfactory way of dealing with it, but it was automatic and it was rapid.

Now there are the time and the information required to prove injury, and I think it is fair to say it is a fairly complicated matter that may make it a little more difficult to have anti-dumping duties imposed.

The Acting Chairman: Do you wish to say anything to that, Mr. Arthur?

Mr. Arthur: Mr. Chairman, I would only say that in listening to representations from industry in another committee they did not share your view, sir, that the present arrangement might be, or has been or will be more rapid than that proposed under this legislation.

Again, I think it is fair to say that one of the criticisms that have been levied against the dumping duty arrangements that now exist is that it was automatic and frequently was applied against products which were not in fact produced in Canada, and, therefore, afforded protection when no protection was required. This has been one of the criticisms our trading partners have levied against us. Within the proposed procedures of this bill there is this requirement on the Tribunal to report within three months. I would suggest here the procedures that have been developed, even though now injury needs to be proven, will not prove to be any more onerous—or, at least, it is not anticipated they will be any more onerous than at the present time.

Again, I think a most important feature of this proposed legislation is the fact that it is possible to give protection to an industry commencing in Canada, whereas under the present legislation there must be the 10 per cent production before you can get a "class or kind made in Canada" ruling.

Senator Carter: Mr. Chairman, what are the mechanics of this? When a case comes up, does the person who imports the goods have to pay the full amount, and then get a drawback from Customs? Does he have to pay first, and then get a refund? How does this work? If an anti-dumping duty is imposed, does he pay it all and get a refund on it, or

does he wait for somebody to pass judgment and then pay or not?

Mr. Arthur: The dumping duty is not assessed really until after the fact. Under the proposed bill, if a complaint is made to the Deputy Minister and he, in due course, makes a preliminary determination that there is dumping and that that dumping is likely to cause injury, from the date of his preliminary determination until the date of the order or finding of the tribunal, the Deputy Minister can levy a provisional duty or he can take another form of security.

Senator Croll: But the answer to the question is that the duty is imposed, you pay the duty, and if you win you get it back.

Mr. Arthur: In those cases, yes, where the tribunal did not support the Deputy Minister's contention there was injury. That is correct.

Senator Croll: And the chances of getting it back are pretty well nil, I can advise you on that.

Senator Lang: Mr. Chairman, I am wondering under what law Great Britain imposed the recent restrictions on imports requiring the payment of half the value of the goods on landing.

Mr. Arthur: I believe that was a special measure they took under the emergency powers.

Senator Lang: Which, presumably, would be available to us if we had need of them?

Mr. Arthur: There have been occasions in the past when we have taken emergency action against imports, in times of balance of payments difficulties.

Senator Lang: How do we do that, under what statute?

Mr. Arthur: There is an Emergency Powers Act, but certainly that was not it. I believe it was taken under...

The Acting Chairman: You did it under one of the existing acts, the Customs Act?

Mr. Arthur: Yes, under the provisions of the Customs Tariff.

Senator Lang: The Customs Act itself?

Mr. Arthur: Yes.

Senator Lang: And GATT does not require you to get rid of that provision?

Mr. Arthur: No.

The Acting Chairman: We asked that question of Dr. Annis the other day, when we were dealing with the Customs Tariff. While it is permitted in times of balance-of-trade problems or urgency problems for a limited length of time, under the provisions of GATT, as I understand the answer given the other day, the country imposing it immediately comes under the scrutiny of GATT to see whether any order should be modified or changed or ended, is that correct?

Mr. Arthur: That is correct, sir.

Senator Connolly (Ottawa West): Suppose you get a case of an industry in Canada which is either non-viable or marginally viable, and goods come in which are likely to hurt it further. It may perhaps be headed for bankruptcy anyway, and maybe it is a non-viable industry. I suppose it would be up to the Tribunal to decide whether, in a case like that, material injury was done and, perhaps, taking into account the type of industry concerned and the type of production that is carried on in Canada.

Mr. Arthur: Mr. Chairman, the definition of "domestic industry" is the total production of a product in the country. I was not certain whether you were referring to one company.

Senator Connolly (Ottawa West): No. This is very hypothetical because I had no company in mind. There are industries which are established in the country that ultimately prove to be non-viable; they struggle along for a while, and sometimes they make it and sometimes they go under. In the meantime, perhaps goods similar to those manufactured by them are brought in here and conceivably or obviously at a price lower than they can sell. The question then arises: Has there been material injury to production in Canada? There is nothing in this bill which would indicate that the character of the industry itself or its prospects would enter into the consideration of the board of inquiry—is it?

Mr. Arthur: The Tribunal.

Senator Connolly (Ottawa West): Yes, the Tribunal.

Mr. Arthur: No, there is nothing in the proposed legislation giving any direction to the tribunal as to how it shall determine injury. In the Code it does suggest that there is a number of indeces which the national

authority should look at in their deliberations on injury.

If I might read them to you, this is on page 14, Article 3(b):

> The evaluation of injury—that is the evaluation of the effects of the dumped imports on the industry in question—shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity and restrictive trade practices.

And I think this is a very important sentence.

> No one or several of these factors can necessarily give decisive guidance.

Senator Connolly (Ottawa West): That answers the question.

Senator Burchill: A few moments ago there was mention of the countervailing duty in the matter of subsidy to an industry. What about depreciated currency of the exporting country? Is that covered in the same way or has it ever arisen at all?

Mr. Arthur: I do not believe it has, Mr. Chairman, but I would suggest that if Senator Burchill would take that question and place it before the officials of the National Revenue I think he would get a clearer answer from them.

The Acting Chairman: We will ask that again.

Senator Burchill: It just occurred to me that that would make quite a difference to Canadian currency in import value.

Mr. Arthur: You do convert. You use Canadian currency in deciding the valuation. But I think you said a depreciated currency.

The Acting Chariman: If the franc were devalued, whether or not we would impose some type of countervailing duty, I think that was the word used before, some type of protection as against the depreciated currency, that is the question.

Mr. Arthur: I would think the answer to that would be no, sir. You would not.

The Acting Chairman: In a sense, the 50 per cent deposit required by the United Kingdom was provoked by the uncertainty of the exchange rates, no doubt.

Senator Carter: While we are on that point, Mr. Chairman, some European countries have put on not an export subsidy but some sort of export concession which worked like a subsidy. France is one, and the Common Market countries seem to be doing it with each other. I just wondered how that would be handled? Would that be just the same as though it were depreciated currency?

The Acting Chairman: I would point out that we are getting a little bit beyond the anti-dumping bill that we are supposed to be considering. However, if it is a matter of interest to the committee...

Mr. Arthur: Mr. Chairman, what you endeavour to do is to get a normal value, taking into account the trade levels, taxation and so on, making allowances for all of these. These are provided for in the regulations or will be provided in the regulations that are drafted under this proposed legislation.

Now, on any tax, if the tax is remitted when the goods are exported, then you take the amount of that tax out in determining normal value—in other words, you are determining a normal value less those taxes that are remitted on export.

Senator Carter: But it amounts to what we were talking about yesterday, a two-price system. This is the normal price they have, but, when they export it, the excise tax or whatever is imposed in that country is remitted, or some compensation is paid following it and then that goes out to the purchasing country at a lower price, which is lower than the normal selling price in the country of origin. My understanding is that the United States in particular have regarded this a violation of GATT and have threatened to put on some countervailing tax.

Mr. Arthur: I believe the tax you were talking about, sir, is an import tax, which really applies to imports into the Common Market countries, and that is what the United States are complaining about. They can handle under their existing legislation any export subsidies that are given.

Senator Carter: Even we ourselves have exporting incentives, do we not?

The Acting Chairman: I think I should draw the committee's attention to the fact that the committee of the House of Commons has recommended certain amendments to this draft bill that is in our White Paper, and that that report is before the House of Commons. The amendments are contained in *Votes and Proceedings* No. 60 for Monday, December 9, and therefore when a bill reaches us it might or might not contain these amendments. I think Mr. Arthur might say something to us about the extent or import of the proposed amendments that are not in the White Paper before us.

Senator Lang: I presume any amendments have to conform with the agreement?

Mr. Arthur: With the code, sir?

Senator Lang: Yes.

Mr. Arthur: Oh, yes.

Senator Lang: So these amendments would not affect our compliance with the agreement?

Mr. Arthur: No, sir.

Senator Connolly (Ottawa West): Let us hear Mr. Arthur discuss it, as the Chairman suggested.

Mr. Arthur: Most of the amendments proposed are really matters of clarification of the draft legislation. The main proposal made by the other committee is the deletion in its entirety of section 30, appearing on page 86 of the White Paper. Section 30 requires the tribunal to seek the advice of a panel. The other committee has suggested that that section be deleted in its entirety.

The Acting Chairman: The panel consisting of certain deputy ministers?

Mr. Arthur: The deputy ministers. That is the main change the other committee is proposing.

The Acting Chairman: This would not be in violation of the code?

Mr. Arthur: No, sir. The procedure that the national authorities, as the code says, set up is a matter for the individual countries, so the deletion of this section has no effect on our obligations.

Senator Connolly (Ottawa West): I would think from subsection (3) of section 30 that is undoubtedly true, because the tribunal is not bound by any advice received on any matter from the panel.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): One wonders why the suggestion of a panel was made at all.

The Acting Chairman: It is a hint. It is not something they have to conform with.

Senator Connolly (Ottawa West): No.

The Acting Chairman: Legislatively it is simply a suggestion, is it not?

Senator Connolly (Ottawa West): But that will not in any way violate our agreement under the treaty?

Mr. Arthur: No, sir.

Senator Connolly (Ottawa West): Were there any other amendments?

Senator Cook: I suppose all these departments would have a right to appear and argue.

Senator Haig: Would the complainants have a right of appeal before the tribunal on the hearing?

Mr. Arthur: I would assume the tribunal would want to question the complainants. Of course, it is left to the tribunal to set up its own rules of procedure, but I would assume that in most instances they would probably wish to.

Senator Molson: Does not section 29 (1) cover that?

The Acting Chairman: "All parties to a hearing before the Tribunal may appear".

Senator Molson: The complainant would be a party, I would assume.

The Acting Chairman: I would think the complainant must be a party.

Senator Connolly (Ottawa West): There cannot be any question about that in view of section 13. I still read section 13 (3) as permitting either the department or a complainant to get to the tribunal simply by filing a request to do so. And then there is an appeal on the question of fact from the tribunal. I am referring now to page 60.

Senator Molson: But only on the question of injury. Not on the question of dumping. It is simply on injury.

Senator Connolly (Ottawa West): Yes.

Mr. Arthur: If I may take you through this again, if it is agreeable.

Senator Connolly (Ottawa West): If you have done it before, I can get it from one of my colleagues.

The Acting Chairman: Well, Mr. Arthur can answer the question.

Mr. Arthur: Mr. Chairman, section 13 says that the deputy minister shall initiate an investigation respecting the dumping of any goods on his own initiative or on receipt of a complaint in writing and if he is of the opinion that there is evidence that the goods have been or are being dumped or if he is of the opinion that there is evidence or if the tribunal advises that it is of the opinion that there is evidence, in circumstances where he seeks the advice of the tribunal, then I think the next section...

Senator Connolly (Ottawa West): He can determine up to this point whether in fact there is dumping and/or whether there is injury.

Mr. Arthur: No, sir. It is just the matter of dumping at this point of time. Then going on from there the deputy minister may then decide not to initiate an investigation or not to proceed with an investigation if there is no evidence of injury or retardation. Now if that is the case either he or the complainant may refer the matter to the tribunal but only after there has been a determination of dumping. In other words, the deputy minister must agree that there is dumping, and if he decides there is no dumping, of course, then he doesn't continue his investigation.

Senator Connolly (Ottawa West): Perhaps you wouldn't mind if I interrupt again at this point. Suppose you had a producer in Canada who was convinced that there was in fact dumping and the deputy minister found after his investigation that in his opinion there was no dumping—has a Canadian producer any recourse beyond that?

Mr. Arthur: The only recourse he would have would be to make an importation himself and then appeal that to the Tariff Board, but to answer your question directly, the answer is "No", unless he went through that procedure.

Senator Connolly (Ottawa West): Supposing he isn't going to take a chance on that and he goes on under subsection (3) of section 13 on the question of injury or retardation and he succeeds. Has he then defeated the deputy minister or the department, because in effect if he proves injury or retardation is he not proving dumping as well?

Mr. Arthur: Mr. Chairman, I would suggest that follows, but I would direct Senator Connolly to subsection (3) of section 13 which says:

> (3) Where the Deputy Minister, after receipt of a written complaint respecting the dumping of any goods,...

And these are the operative words...

> ...decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury or retardation...

And so on. In other words, that there has been dumping but there has been no injury. Under those circumstances it is possible for the complainant to appeal to the tribunal or to refer the matter to the tribunal but only on the question whether there is any evidence that the dumping of the goods has caused, is causing or is likely to cause material injury, and so on. But the step that must be agreed, in order to refer the matter to the tribunal is, has there been dumping?—and I think, sir, in the illustration that you gave me, the deputy minister had decided there was no dumping.

Senator Connolly (Ottawa West): No dumping, that is right.

Mr. Arthur: From that decision of the deputy minister, under the proposed legislation there is no appeal, other than as I suggested to you.

The Chairman: Why, then, does the wording say in subsection (3): "The complainant, within such period from the date of the notice referred to in subsection (2)...". Now, that notice is a notice which the complainant received, that the deputy minister has decided not to initiate an investigation.

Mr. Arthur: Mr. Chairman, he decides to do this because he did not consider that there was any injury or retardation.

The Chairman: Subsection (1) says: "The deputy minister shall forthwith call an investigation to be initiated respecting the dumping of any goods...".

Mr. Arthur: Later it says that if he (a) is of opinion that the goods have been or are being dumped.

The Chairman: I see.

Senator Carter: You have to have the opinion in first, before he starts the investigation, is that it?

Senator Molson: He has absolute discretion in the question of dumping and he is the czar of dumping. In other words, no one else can do anything about it.

The Chairman: If he decides there is no dumping...

Senator Connolly (Ottawa West): Let me interrupt right there. If the complainant, or the person affected, still thinks the deputy minister is wrong, that there is dumping, he still has his recourse on that point to the Tariff Board, under the present law?

Mr. Arthur: No, he does not, unless there is an actual importation and he appeals that importation to the Tariff Board.

Senator Connolly (Ottawa West): Could he not do it on the importation claimed of, whoever brings in the goods, the deputy minister says this has been dumped.

Mr. Arthur: If he brings in the goods and there is a finding of injury he could appeal to the Tariff Board.

Senator Connolly (Ottawa West): He does not have to suffer?

Mr. Arthur: Oh, no.

The Chairman: The case we are talking about is that where somebody has been injured by what he thinks is dumping. He is not the importer but somebody else and he is turned down by the deputy minister. The question is, is there any recourse, and the answer seems to be no.

Senator Connolly (Ottawa West): On dumping?

The Chairman: That is right.

Senator Connolly (Ottawa West): On dumping, he would have to bring in an import, and he would have an appeal.

Mr. Arthur: That is right.

Senator Molson: To the Tariff Board.

Senator Connolly (Ottawa West): That is right.

Senator Molson: Which would be an extraordinarily lengthy procedure.

Senator Connolly (Ottawa West): You are out of the poor man's court once you are there.

Senator Molson: You are out of business.

Senator Connolly (Ottawa West): But might he not yet succeed using the tribunal under subsection (3) of section 13 by proving to the tribunal that there has been injury or retardation? Does it not follow that if that happens it comes as a result of dumping and, in effect, the deputy minister's decision on dumping is found to be wrong by the tribunal.

Senator Cook: But he could not get before the tribunal.

Senator Connolly (Ottawa West): If you read subsection 3 you find it provides:

> Where the Deputy Minister, after receipt of a written complaint respecting the dumping of any goods, decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury or retardation...
>
> (a) the deputy minister, or
>
> (b) the complainant... may refer to the Tribunal the question...

The Acting Chairman: I think we have certainly come to the conclusion that on the wording of this act as it is now the deputy minister is the only one who can decide whether there is or is not dumping. There is no appeal from his decision.

Senator Connolly (Ottawa West): Then, I guess my only question, and the thing that is troubling me, is this: If the appeal is made on the ground of injury or retardation, and it succeeds in the tribunal, does not that indirectly disprove the...

The Acting Chairman: It cannot get to the tribunal.

Senator Connolly (Ottawa West): Yes, you can get to the tribunal if you say that there has been injury or retardation. Subsection (3) says that.

The Acting Chairman: And only if there has been dumping.

Mr. Arthur: Mr. Chairman, I should like to refer Senator Connolly again to the wording of that subsection. It is:

> ...decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury...

In other words, the deputy minister has decided that there is dumping, but he has also decided not to go beyond that and not to initiate an investigation by reason only that he is of the opinion that there is no evidence of material injury or retardation, or that he has acknowledged there was dumping but there is not any...

The Acting Chairman: And then the right to go to the tribunal takes effect?

Mr. Arthur: That is right. Then the complainant can go to the tribunal on the question of whether there is any evidence that the dumping of the goods has caused, is causing, or is likely to cause...

The Acting Chairman: What is running through our minds is the question of whether the tribunal should also have the right to determine dumping.

Senator Burchill: There can be dumping, then, without any injury?

Mr. Arthur: That is right, sir.

The Acting Chairman: No doubt this has been considered. Is there some reason that you can give us why the decision on dumping itself is deemed to be best and finally decided by the deputy minister?

Mr. Arthur: Well, Mr. Chairman, there is an appeal procedure on dumping, which is to the Tariff Board, and, on matters of law, to the Exchequer Court.

The Acting Chairman: I see.

Senator Connolly (Ottawa West): This is the poor man's court. Would it violate the treaty, or negate it, in any way if there was an appeal to the tribunal on the question of dumping itself, and the deputy minister's decision that there was no dumping?

Mr. Arthur: Mr. Chairman, to answer that question specifically I would have to say: No. But, there is an established appeal procedure on dumping.

Senator Connolly (Ottawa West): Despite the fact that it is more expensive it is there, and despite the fact that it is lengthy it is there?

The Acting Chairman: The difficulty for a person who might be a complainant to find a way of getting to the appeal board would not be present if he were not the actual importer himself but was complaining about an importer.

Senator Molson: And in practice, Mr. Chairman, the length of time that would ensue before any action could be taken.

The Acting Chairman: I think we have perhaps got into a question of policy here. I would point out that it is one o'clock. I do not know whether we can settle this particular point by any further discussion. Shall we adjourn until the next meeting of the committee, which, I presume, will be on Wednesday next at 11 a.m.

Senator Haig: Could we make it 10 a.m., Mr. Chairman?

Hon. Senators: Agreed.

The Acting Chairman: Very well, 10 a.m.

The committee adjourned.

APPENDIX "A"

Proposed Draft Regulations
Relating to Sections 9 and 10
of Draft Anti-Dumping Bill

1. For the purpose of determining the normal value of any goods imported into Canada, the period referred to in section 9(1)(c) of the Act in relation to the said sale is the period ending on the day of the said sale and commencing (——) days immediately preceding that day or for such longer period, as in the opinion of the Deputy Minister, is required by virtue of the nature of the trade.

2. The sales of like goods, the prices of which are used to compute the normal value of any goods shall be those sales of goods made to purchasers who are at the same or at substantially the same trade level as the importer, and

(a) that are in the same or substantially the same quantities as the sale of goods to the importer, or

(b) in the event that the goods were not sold in the same or substantially the same quantities in the country of export as the sale of goods to the importer

(i) if the quantity sold to the importer is larger than the largest quantity sold for home consumption, that are in the largest quantity sold for home consumption, or

(ii) if the quantity sold to the importer is smaller than the smallest quantity sold for home consumption, that are in the smallest quantity sold for home consumption.

(c) sub-section to the same effect as section 36, subsection 2, para (c) of Customs Act.

3.(1) The normal value of any goods, as otherwise determined, may be adjusted by an allowance for quantity only if

(a) the exporter in the six-month period immediately preceding the date of the sale to the importer has granted quantity discounts of at least the same magnitude with respect to twenty per cent or more of the total quantity of like goods sold for home consumption and such discount had been freely available to all purchasers, or

(b) the Deputy Minister is satisfied that such a discount is warranted on the basis of savings specifically attributable to the quantities involved.

(2) Notwithstanding sub-section (1), where the quantity of the goods sold to the importer in Canada was smaller than the smallest quantity of goods used in computing the normal value of the goods, the said normal value of the goods, as otherwise determined, shall be increased by an allowance to an amount which, in the opinion of the Deputy Minister, reflects the price for which such smaller quantity would be sold for home consumption.

4. The normal value of any goods, as otherwise determined, may be adjusted by an allowance, which, in the opinion of the Deputy Minister, reflects the value of any differences in quality, structure, design or material and any other difference between the goods sold for home consumption and those exported to Canada.

5. The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of any deferred discounts granted by the exporter in connection with the goods purchased by the importer if

(a) the discounts were shown on the invoice at the time of importation of the goods,

(b) the discounts are not greater in percentage and not more favourable in terms than those granted generally by the exporter on the sales of goods used in determining the normal value of the goods, and

(c) the importer has provided the Deputy Minister with an undertaking that he will comply with the terms and conditions relating thereto.

6. The normal value of any goods, as otherwise determined, may be adjusted by deduct-

ing an allowance on account of a discount for cash if

(a) the terms and conditions of the discount are set out on the invoice,

(b) the discount is similar in percentage and terms with that granted generally by the exporter on the sales of like goods that are used in determining the normal value of the goods and

(c) the Deputy Minister is satisfied that the importer has earned or will earn the discount in accordance with the terms and conditions relating thereto.

7. The normal value of any goods, as otherwise determined, may be adjusted by deducting an allowance on account of the cost of transportation from the place of shipment to purchasers for home consumption.

(a) if the like goods are sold generally for home consumption by the exporter in the country of export at a common delivered price (freight prepaid or allowed) to all destinations in the country of export or in that zone in the country of export in which the place of direct shipment to Canada is located, that under ordinary commercial practice of the country of export is considered to be a common transportation zone,

(b) subject to paragraph (c), in an amount not greater than the average cost of freight prepaid or allowed by the exporter on the sales of like goods in the country or zone therein, and

(c) not exceeding the actual charges for transportation of the goods to the importer.

8. In the event that there were not sufficient number of sales of like goods made to purchasers for home consumption in the country of export who are at the same or substantially the same trade level as the importer of the goods but there were a sufficient number of sales of like goods made to purchasers for home consumption at a level subsequent to that of the importer, the latter sales shall be used to compute the normal value of goods and the normal value of the goods so determined may be adjusted by deducting an allowance

(a) not exceeding the discount that is freely available on sales by other vendors in the country of export of like goods, to purchasers for home consumption who were at the same trade level as that of the importer, or

(b) where the information referred to in paragraph (a) is not available, not exceeding such amount as in the opinion of the Deputy Minister represents the cost incurred by the exporter in respect of sales for home consumption for carrying out the functions normally performed at the trade level of the importer provided

(1) the exporter did not perform these functions on sales to the Canadian importer,

(2) the exporter did not carry out these functions in respect of the sale of the said goods in Canada,

(3) the allowance does not exceed the actual cost of carrying out these functions in Canada.

9. The normal value of any goods, as otherwise determined, may be adjusted by deducting therefrom the amount of any taxes and duties levied on the sales of like goods when destined for home consumption that are not borne by the goods sold to the importer in Canada.

10. All computations shall be made at the same exchange rate which shall be the exchange rate prevailing on the date of shipment to Canada.

11. For purposes of section 9(3), a sufficient number of sales with reference to any goods in a prescribed period means sales of those goods during that period in such quantities that, if the quantity of the goods sold to Canada in the period were to be deducted from the total quantity of goods sold throughout that period, at least twenty-five per cent of the remainder would have been sold for home consumption.

12. [Regulation to define sufficient number of sales for purposes of section 9(2).]

13.(1) For the purposes of paragraph (a) of sub-section (1) of Section 10, the "exporter's sale price" means the price at which the goods are sold or agreed to be sold to the Canadian importer less the amount, if any, whether or not included in such price, for (1) any additional costs, charges and expenses, incurred by the exporter incident to preparing the goods for shipment to Canada which are not generally incurred on home market sales, (a) all other costs, charges and expenses by or for the account of the exporter resulting from or arising from the exportation or

after the shipment of the goods from the place described in paragraph (d) of sub-section (1) of Section 9.

13.(2) For the purposes of paragraph (b) of sub-section (1) of Section 10, the "importer's purchase price" means the price at which such merchandise has been purchased or agreed to be purchased by the importer less, the amount, if any, whether or not included in such price, for (1) any additional costs, charges, and expenses incident to preparing the goods for shipment to Canada, over and above those normally incurred by the exporter on home market sales, which are not for the account of the importer, and (2) all other costs, charges and expenses resulting from or arising from the exportation or after the shipment of the goods from the place described in paragraph (d) of sub-section (1) of Section 9 which are not for the account of the importer.

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 13

WEDNESDAY, DECEMBER 18th, 1968

Third and Final Proceedings on the

"WHITE PAPER ON ANTI-DUMPING".

WITNESSES:

Department of National Revenue: R. C. Labarge, Deputy Minister; A. R. Hind, Assistant Deputy Minister; and H. D. MacDermid, Chief, Evaluation Section.

Department of Finance: C. D. Arthur, Deputy Director, International Economic Relations Division.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

29479—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	Macnaughton
Aseltine	Gélinas	McDonald
Beaubien (*Bedford*)	Gouin	Molson
Beaubien (*Provencher*)	Grosart	O'Leary (*Carleton*)
Benidickson	Haig	Paterson
Blois	Hayden	Pearson
Bourget	Hays	Phillips (*Prince*)
Burchill	Inman	Rattenbury
Carter	Irvine	Roebuck
Choquette	Isnor	Smith (*Queens-Shelburne*)
Connolly (*Ottawa West*)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (*Cape Breton*)	White
Everett	MacKenzie	Willis—(49)
Farris		

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois:

That the Standing Committee on Banking and Commerce be authorized to examine and report upon the White Paper on Anti-Dumping dated September, 1968, tabled today; and

That the Committee be empowered to send for persons, papers and records and to print its proceedings upon the said White Paper on Anti-Dumping.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29479—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, December 18th, 1968.
(14)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Leonard (*Acting Chairman*), Benidickson, Carter, Connolly (*Ottawa West*), Cook, Everett, Fergusson, Flynn, Gouin, Haig, Hays, Inman, Irvine, Laird, McDonald, Molson and Thorvaldson.—(17)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

The White Paper on Anti-Dumping was further examined.

The following witnesses appeared:

Department of National Revenue:

R. C. Labarge, Deputy Minister;

A. R. Hind, Assistant Deputy Minister; and

H. D. MacDermid, Chief, Evaluation Section.

Department of Finance:

C. D. Arthur, Deputy Director, International Economic Relations Division.

Upon motion it was *Resolved* to recommend to the Senate the said White Paper and the amended bill as reported in the Journals of the House of Commons on December 9th, 1968. Should Bill C-146 differ materially from the amended draft bill, then consideration of such bill may be necessary by this Committee.

At 11.40 a.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 18th, 1968.

The Standing Committee on Banking and Commerce to which was referred the "White Paper on Anti-Dumping", has in obedience to the order of reference of December 9th, 1968, examined same and reports as follows:

Your Committee has considered the White Paper on Anti-Dumping tabled in the Senate on December 9th, 1968, and in particular the draft bill contained at pages 40 to 100 thereof. Your Committee has also considered the amendments to such draft bill proposed by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons as reported in the Journals of that House on December 9th, 1968.

Your Committee recommends the draft bill, amended as so proposed, to the Senate for its favourable consideration.

If Bill C-146, "An Act respecting the imposition of anti-dumping duty", now in the House of Commons, reaches the Senate in a form materially different from the draft bill as amended by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons, then your Committee recommends that such Bill C-146 be referred to this Committee for consideration.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 18, 1968.

The Standing Committee on Banking and Commerce, to which was referred the White Paper on Anti-Dumping dated September, 1968, for examination and report, met this day at 10.00 a.m. to give further consideration to the White Paper.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we are continuing our consideration of the reference to us by the Senate of the White Paper on Anti-Dumping. At our previous two meetings we have had evidence from Mr. Arthur of the Department of Finance. This morning we have Mr. R. C. Labarge, the Deputy Minister of National Revenue, Mr. A. R. Hind, the Assistant Deputy Minister, and Mr. H. D. MacDermid, Chief of the Valuation Section of the Department of National Revenue. I think Mr. Arthur may be coming later.

If it is agreeable to you, I suggest that we might ask Mr. Labarge if he has some preliminary statement to make to us about the White Paper and the draft bill so far as it concerns the Department of National Revenue, and then we can question him. Is that agreeable?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Labarge, have you something you could give us by way of preliminary remarks?

Mr. R. C. Labarge, Deputy Minister, Department of National Revenue: Mr. Chairman, among the witnesses I had hoped to have Mr. M. T. Keam accompany me, but I understand he is busy helping the Departments of Finance and Justice in connection with things that are happening in the House of Commons.

Mr. Chairman, members of the Senate, I am pleased to know that a representative of the Department of Finance has already appeared before you to give you some of the background of the proposed anti-dumping law now before you. He has undoubtedly explained its importance in relation to our domestic manufacturers, as well as to the countries with whom we trade and who trade with us. This proposed law and our recent tariff changes have joined Canada to the rest of the countries which now subscribe to the objectives and conform with commonly agreed upon rules governing our ever-growing multilateral trade.

I and my colleagues, Mr. Hind, Mr. MacDermid and Mr. Keam, naturally view these proposed changes in a more sensitive and personal way than most. After all, we have to administer these proposals from the moment they become law. We are, as it were, betwixt and between, having to see to the protection of our industries on the one side and not give offence or incite to retaliation those who seek to sell to and buy from us. However, we are not new to this task. Our department has administered anti-dumping laws since 1904. Mr. Hind, the Assistant Deputy Minister for Customs, brings a lifetime of specialization in the field, starting out as a values investigator in Europe. Mr. Keam and Mr. MacDermid have spent their working years since university in the same specialization. They are backed up by a staff of over 87 trained and experienced personnel. Fourteen of these are stationed throughout Europe, Asia and the United States. Behind them the balance remain poised to move to pressure points anywhere at any time.

This does not, however, permit us to be complacent in the face of the challenges this proposed law will present. However, it is not all uphill. There are new features and innovations in the proposed law which will be of considerable help to us as administrators. There are also new burdens and responsibilities, of course. For our Canadian Manufactur-

ers there will be a number of advantages. However, the objectives of the proposed legislation can be fully attained only by an intelligent and responsible co-ordination of our respective responsibilities and efforts.

In so far as we are concerned there will be a definition of "associated persons" which will help us in dealing with non-arms'-length transactions, as well as a provision to deal with compensatory arrangements which affect the values for duty.

Time limits, carefully spelled out, will enable us to push forward with our investigations and reduce or eliminate stalling or delays in our getting information. These time limits, backed by the authority to make provisional determinations, further strengthen our hand. Retroactive application of dumping duties to cumulative or massive dumping could also be applied with authority. This in itself is a further deterrent to dumping on a large scale.

Some of these new powers, if not all, are also to the advantage of Canadian industry. Over and above these is the protection to be given to an infant industry which heretofore has had to battle its way to the point where it had to supply 10 per cent of the domestic market before getting protection. Both established and new industries will be able to avail themselves of this additional protection by an extension of the definition of injury to include threat of injury or retardation. There are also provisions for appeal against the departmental decisions on values as in the past, as well as the right of appeal on questions of injury to the Injury Tribunal.

Another, although indirect benefit of the proposed law will be an understanding of the anti-dumping laws of the other signatories to the GATT code, a knowledge which will stem from the experience of our own legislation and procedures.

I have said that this proposed legislation will work best when all those concerned do their share to make it workable. We have geared ourselves to meet all reasonable expectations. However, fear of the unfamiliar could inhibit our efforts. I say this with a background of experience which has seen us run ourselves into the ground because of cries of "Wolf, Wolf!". It would be most helpful too if those who hope for, and expect the best of service from us carefully studied the criteria for a complaint of dumping—i.e., goods imported at dump prices and injury or threat of injury. If these elements are not evident then the complaint is a false alarm. Naturally we will be on the alert, but it will help no one if we scatter our forces and thus deprive someone who really has need for a quick response and maintenance of his right.

Mr. Chairman, in concluding these remarks may I say that we are most conscious of the new responsibilities that are proposed for us. It is not without pride and a strong sense of commitment that we say that we intend, not only to maintain our good reputation, but to enhance it. And now my colleagues and I would be glad to answer any questions that members of your committee would like to put to us.

The Acting Chairman: Thank you very much Mr. Labarge. I think there may be one or two members of the committee that were not at our other meetings and therefore I should explain again that what we are dealing with today is the White Paper and a draft bill set out in that paper, both of which have been considered by the Finance, Trade and Economic Affairs Committee of the House of Commons. That committee has made a report which is available to us and as a result a bill was introduced last evening in the House of Commons. I understand that some arrangement has been made for speeding the action on that bill in the house by reason of the study that has already been made by the committee.

We, in our turn, have been doing this preliminary work also in anticipation of the actual bill itself, so that at the present time we do not have the bill that has been introduced in the House of Commons which will reach us in due course. In the meantime we have the White Paper, a draft bill and certain amendments to it recommended by the House of Commons. That is the position we are at today. We could, for example, complete our work even prior to the bill reaching us or we can wait until the bill itself reaches the Senate and finish our work at that time. With these preliminary remarks I would now suggest that any questions that you would wish to direct to Mr. Labarge, you are open to do so.

Senator Carter: In the previous studies made we went over this draft bill pretty thoroughly and I think the one thing that stands out is that in Part II the deputy minister becomes really a czar of anti-dumping. I am a little adverse to any kind of czar and

I am just wondering if Mr. Labarge had any comments to make on that.

Mr. Labarge: Certainly. Let me tell you that I do not ever wish to be a czar.

The Acting Chairman: I can assure you that his reputation in the past has shown that he has not been one.

Mr. Labarge: As to the task of the deputy minister, we start out with someone bringing us a complaint. Obviously, he will be satisfied if I take it and put it through the procedure. He may not be satisfied if I say I see no evidence of dumping and that he lacks one of the important criteria. I may say I see no evidence of injury.

In this case, he would be in the same position as all complainants with the department over the years. Naturally, I would ask such a person if he could get something to substantiate his complaint further. He may be a member of an association geared to assist him, or he may have recourse to other people in business and he could ask them for anything which may be helpful.

I do not think it is good enough for him simply to go to some of his salesmen—who may have been unsuccessful in pushing his goods. Many complaints originate in this way, where a businessman calls up his salesman and asks why there are no orders coming in and the salesman says he is being undersold, that there is dumping; then it is reported that "there is dumping", but it is just the salesman who has not been able to compete with the local people or compete with a fair importation.

I would pursue this matter until the man said he had got no more evidence. In the past, it could be said that that would end the matter. However, we have gone further. Although it would seem reasonable to end it there.

Something over 60 per cent of our investigations in the past have resulted in no evidence of dumping, even where there have been cases, which, in the minds of the complainants, have had justifiable evidence. I do not want to give you examples, there are perhaps too many of them. This 60 per cent, as I indicated, caused us to send people in to foreign countries to the exporters, to go through their books, and end up with the situation being a straightforward, honest to goodness sale at proper prices. Therefore, we have no intention of dealing with these complaints on any basis other than that of seeking the fullest information that a man can give.

If he is unable to obtain such information, because the importations were not made by himself, he can of course make an importation himself. This may give him more information; but, over and above that, it gives him a right of appeal to the Tariff Board. In that case the question of fact arises, and we must appear before the Tariff Board to indicate why, in our opinion, there is no dumping. We have a lot of information which is available to these people, too, in the trade journals and other publications which list values of goods in that country. They are advertised nationally and internationally. On the basis of these going prices we may feel that there is no case. We would produce that evidence, but it may be that they would produce more, even if it meant we had to go in and make an investigation, just to confirm.

The history of this indicates that the power to ignore is not used—and it would be a miserable life, not to pay serious attention to people who believe they have a case.

As to someone who has not proven either dumping or injury, he has an appeal on the injury aspect of it to the injury tribunal. If it goes to the injury tribunal and that tribunal says there is no injury, then we are going to follow through on the dumping, to make sure that the other element is there. But we would not have told the complainant that he has no valid complaint—unless the two criteria were really missing.

Senator Carter: When he presents his first evidence—he has to present some evidence to the deputy minister who initiates the investigation and the deputy minister may not have sufficient evidence to warrant that—does not that evidence include both evidence of dumping or underselling, and evidence of injury as well?

Mr. Labarge: It should.

Senator Carter: The deputy minister would act on either type of evidence?

Mr. Labarge: He is supposed to act if the two elements are there. If he is not satisfied that the injury aspect is there he can tell the complainant that the injury evidence is not good, or he can say that the injury evidence is sufficient to have the matter referred to the injury tribunal.

I could first ask the complainant if he has more evidence. We must remember that we are talking about an industry, not about a company. That is why these industrial associations are important. They take a broad look at the industry. The association may tell the complainant "We know how you feel about this but, frankly, in terms of the whole industry, it is just a straw in the wind."

Senator Carter: I think the objection to the Tariff Board is that it takes so long that the man could be out of business before they would get around to considering his case.

Mr. Labarge: They may have, at times, because of various assignments they have had, such as the references. They are pretty speedy now. At times, we have had a difficult time getting cases ready, because they were so speedy.

Senator Connolly (Ottawa West): You are the people that held it up.

The Chairman: I would like to ask a question, to clear my own mind. With respect to the case where you come to a conclusion that the complainant has not proved dumping, that complainant cannot get then to the tribunal—according to the draft bill, as I read it—is that right?

If he has not satisfied you as deputy minister that the evidence constitutes dumping—leaving aside the question of injury—and that you are not satisfied that there has actually been dumping, then he no longer, unless he is an importer himself, which he would not be, he no longer has any further recourse.

Mr. Labarge: Except, as I say, to the Tariff Board, if he feels that his lack of information is due to his not having enough knowledge about the importation—by making an importation himself.

The Chairman: This is the recourse.

Senator Molson: I wondered how often it had happened, Mr. Chairman, that somebody had made an importation himself. It would be like suggesting that Dominion Textile go and buy a piece of material from a textile manufacturer in the States, or something of that sort.

Mr. Labarge: There would be comparatively few cases, I would say. With our 60 per cent over, this could indicate that in going after these we took care of a large portion of them. On the other hand, a man may say, "Well, look, it is up to me to get this information and apparently I don't have enough." He could make these additional efforts. The last thing he might resort to would be the importation.

Senator Connolly (Ottawa West): Suppose he made the second importation—of course, it would be his first, actually.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): And suppose he failed. Then he would be subject to all of the penalties of the dump duty, would he not?

Mr. Labarge: This makes it less attractive, of course.

Senator Connolly (Ottawa West): There is a risk involved.

Mr. Labarge: It would be an unusual thing for a man to say, "I am coming to you so that you can apply the dump to me."

Senator Connolly (Ottawa West): I want to break the law so I can get more."

Mr. Labarge: He does not have to import in very large quantities, though.

Senator Connolly (Ottawa West): I suppose that is so. That would help him.

Mr. Labarge: It depends on how much is at stake.

The Acting Chairman: He does not break the law. He simply comes in and says that these are the facts. He does not really break the law, does he?

Mr. Labarge: No. There is no penalty in this, because really what he is committing himself to is doing what he expects the others to be committed to ultimately, and that is to pay the duty on the fair market value. There is, of course, the dump value which may be applied to him.

Senator Connolly (Ottawa West): I am sorry to ask this question, but what is the dump? It is the difference between the duty on the fair market value and the duty that he claims plus a penalty of a certain per cent, is it not?

The Acting Chairman: There has been a change. This draft of the bill proposes a change from the previous duty or penalty and Mr. Labarge could explain that.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): I am sorry that I was not here for that part, but last week when we had Mr. Arthur here he was talking about a reference to an existing section in the Customs Act where the dump provisions were still applicable.

Mr. Labarge: In the law as it now stands it is the difference between the fair market value and the selling price. A change is coming about that it is important for industry to take note of, and that is that the dump now will be the difference between the normal value as it is defined—not the fair market value—and the exporters' price. The fair market value will still be the figure for ordinary duty purposes, but the normal value is the one which we start off with for dump purposes under this proposed law, and it will be the difference between that and the exporters' price or the purchasers', whichever is the lesser.

The normal value in this case takes into consideration allowances which were not granted or conceded under our present law. In other words, if you have a difference in trade level—say, that he sells to distributors in his country and sells to wholesalers in ours, or the other way around—then there is allowance made for it.

Senator Connolly (Ottawa West): In his favour?

Mr. Labarge: Yes. Also allowance is made with respect to the discounts that prevail in the market, which can be extended according to the purchases made by the Canadian importer. So that in effect we will have a lower price than the fair market value to start with for dump purposes in some cases. It is not necessarily applicable all throughout.

Senator Connolly (Ottawa West): You say a lower price. The importers' or the buyers' price here?

Mr. Labarge: The normal value. I will give you an example using just rough figures. Take the figure of $100 for the fair market value, $90 for the exporters' price to Canada. That is under the old law. Now, the difference there is $10. So the penalty would be the $10. Now we forget the fair market value and we come to the normal value. Supposing we put this normal value at $90 or $100. Put it at $100, since that is the starting point. Now we find that there is an allowance of 10 per cent because of the difference in trade level. So it becomes a difference between $80 and $90. So that $80 is lower than it would have been in the other case and there may be other discounts and allowances.

Senator Hays: Mr. Labarge, could you give us some glaring examples of dumping under the old provisions of legislation and under the new act, and could you follow these through showing how you would deal with them, the time factor, what happens when there is injury, and that sort of thing? Can you give us one or two examples?

Mr. Labarge: If you do not mind, I will pass this on to the people who work out all these details before they get to me in the final issue. Mr. Hind, would you be able to do this, please?

Mr. A. R. Hind, Assistant Deputy Minister for Customs, Department of National Revenue: We have had a number of instances in the past, Mr. Chairman, where we have found dumping. I am not breaching any confidence because this has appeared in the press, but we found dumping of TV receivers from Japan. Under our current law we must look at the value at which the TV receivers are actually being sold in Japan for home consumption. Doing so has enabled us to come up with what Mr. Labarge has properly called the fair market value. These are the terms used in the Customs Act.

Senator Hays: Is it privileged information or can you use some figures?

Mr. Hind: I will use just hypothetical figures, if that is all right. These are not actual figures. We found, for example, that the fair market value in Japan was $100 for a set. We found that the price to Canada was $90. Under our current law we can collect the difference as dumping duty, namely $10. There were two factors involved in this particular case which we were not allowed to recognize under the current law, but which we will be able to recognize under the new law. Mr. Labarge has touched upon this as well. In other words, the best class of trade we could find in Japan was wholesalers; in other words, the manufacturers in Japan sold to wholesalers who in turn sold to dealers and the dealers sold to the consumer. The Canadian importer was not a wholesaler; he was a distributor, a man who buys for all of Canada and who sells in Canada to wholesalers.

Now, in normal business practice this would justify a lower price to that distributor, but the current law, as I said before, does not permit us to make that allowance for that superior class of trade. The new law, however, will permit us to recognize the fact that sales are made to a superior class of trade in Canada to that found in the home market. In the new law we will start with the actual selling price in Japan to wholesalers which would be, say, $100. Then we would have to apply some discount that would seem to be reasonable because of the superior trade status of the Canadian importer. For example, in selling to the Canadian importer, the Japanese manufacturer is saved certain expenses such as salesmen's salaries, warehousing expenses, bad debts and so on. The new law would permit the deputy minister to take into account the savings and come up with a discount that may be recognized in determining what is to be termed the normal value. So, as I said, we start with $100, and it may well be that we find that because of the services of this Canadian importer there is a saving of 5 per cent. Therefore, whereas the fair market value is $100, the normal value would be $100 less 5, which is $95. Now if the selling price in Canada continues to be $90, then the margin of dumping under the new law would only be 5, rather than 10 under the existing law.

Senator Hays: The consumer would be paying $100 for the TV, exactly the same as the consumer would be paying in Japan.

Mr. Hind: No, this $100 figure is the price at which the Japanese manufacturer sells to the wholesaler; and then the wholesaler would sell to a dealer, and the dealer would sell to a consumer and one would expect the $100 figure to increase with each handling.

Senator Hays: So it would be $100 plus something.

Mr. Hind: Yes.

Senator Hays: My next question deals with agricultural products, and the two-price system. Let us take as an example canned pork in Denmark where they have this two-price system and yet they have a great surplus of pork. How under the existing legislation would this be handled, and how was it handled under the old legislation?

Mr. Hind: Mr. Chairman, I am not familiar with this two-price system of selling canned pork in Denmark. Might I be permitted to ask my colleague?

The Acting Chairman: Senator Hays could probably explain it as well as anybody.

Mr. Hind: I just wonder whether Senator Hays has in mind when he speaks of the two-price system, one price for selling in the home market and another price for export. If that is the case, the law remains unchanged. In other words prices for export in a general way are just not considered under the existing law or under the contemplated law. The present law and the new law are based on what happens in the home market to goods sold for home consumption, and we start from this point.

Senator Hays: There would quite likely be a complete prohibition against an import if there was a big variation in price between what the consumer at home would pay and what the consumer in Canada would pay.

Mr. Hind: If the price in the market in Denmark was sufficiently high that the goods could not be landed in Canada and could not sell, it would be the same as a prohibition.

Senator Hays: Also in arriving at the price at which it must be sold in Canada as compared to the price in the home market, the transportation must be taken into consideration.

Mr. Hind: No, sir, transportation doesn't form part of the price for duty purposes. Both normal value and fair market value are based on the price at the point of direct shipment to Canada which in the present case would be the packing plant, I suppose, in Denmark. In other words we don't take into account as part of the computation the cost of moving the goods from Denmark to Canada. Indeed we don't take into account the duty payable in Canada or other handling or brokerage costs, etc.

Senator Hays: You consider it on a C.I.F. basis?

Mr. Hind: No, we work on the basis of an F.O.B. price at the point of direct shipment to Canada ex works.

Senator Hays: Would you give me an example of countervailing duties? In the White Paper you say:

> The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any

bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

I am not quite sure of the interpretation of "countervailing duties" and I would like an example.

Mr. Hind: Mr. Chairman, countervailing duties are something quite apart from anti-dumping duty. It is included in the Customs Tariffff at the present time as section 6 (a). Anti-dumping duty applies when goods are sold to Canada below the price at which they are sold in the home market. Countervailing duties, on the other hand, are special duties that are levied when a foreign government subsidizes in one fashion or another the production and sale of goods. To my recollection Canada has never had to resort to the application of countervailing duties even though this has been in the law now for some few years.

Senator Hays: Is that not a form of two-pricing system as well?

Mr. Hind: It could be.

Senator Hays: Take for example the question of butter in our own country where we subsidize the price of butter to the consumer and yet we want to sell butter. Would that come into this category?

Mr. Hind: It could in appropriate circumstances, yes.

Senator McDonald: Mr. Chairman, I want to come back to the television set that Senator Hays was asking about. You said that the price of the Japanese manufacturer being $100, then in the case of Japan it would go to a distributor and to a retailer so that in the end a Japanese consumer would pay $100 plus $25. Then, in coming into Canada, you said the import price would be $95 and it would be $5 dumping, so that the importer's price would be $100 in Canada. But again this would go through the distributor and the retailer and the price to the consumer in Canada would be $125, for argument's sake, the same as the price to the consumer in Japan. Is that right?

Mr. Hind: Although the law does not permit us to go beyond the actual importation of goods—in other words, the price at which the goods are resold in Canada is beyond approach from the Department of National Revenue—this is not part and parcel, in a general way, of the existing or the proposed law.

Senator McDonald: But would you expect that would be the end result?

Mr. Hind: Yes, I would.

Senator Molson: Mr. Chairman, I would like to come back to Senator Carter's question, which I think was the first of the morning. I do not think, unless there is some other evidence, that the answer there is the right of appeal of any Canadian manufacturer against a ruling that there is no dumping is really a very good one. I do not know we are particularly concerned with that. I think we know that the operation of the department has been an extremely benevolent one, but if we are dealing principally with the matter of the discretionary powers, then certainly they are in the hands of the deputy minister in so far as the establishment of whether or not there is dumping is concerned.

Unless there is some other information we could get, I am not really too impressed by the idea the Canadian manufacturer can rush out and ask the man he wants to get dumping pinned on to sell him goods so he can take a case to the Tariff Board. I do not think this is practical, that it can work, unless the departmental officials can tell us it is. I doubt it very much.

Mr. Labarge: I do not think it is, and I think I have tried to indicate, senator, that it is because of this that we are particularly cautious in saying to a person, "There is nothing here to go on." But, believe me, as I have told you, we have wasted an awful lot of time, I think, at the expense of other people who stood in line with a higher priority. We were chasing around all over the place, to come back with what we suspected from the outset, that there was no information because he did not have any and there was not any in existence to be useful.

The other side is to figure out what kind of appeal you can propose, and this is where your headaches really begin, because the only answer is to run after everything and to go on wild "witch hunts". Do not imagine these investigations are not pestiferous and do not aggravate the foreign traders and their governments. It is not for nothing we must advise the officials of the governments of these matters, and the time that ensues and the resentment that follows our carrying out this useless exercise at the expense of their

appeal, it really gets under their skin and they would be fully justified in taking the same attitude towards us, and we would arrive at this sort of situation, "You throw one, and I will throw one."

Create whatever kind of appeal you like for this fellow, this is the case—and I believe you are a lawyer—

The Acting Chairman: No, Senator Molson is not.

Senator Molson: I am very flattered.

Senator Connolly (Ottawa West): The answer to that is: Yes, after the Rules Committee, he is one.

Mr. Labarge: But in any case, a client coming to a lawyer asks him whether he is going to take his case or not. It depends on whether or not there is anything to his case.

Senator Molson: Would he not be better to go to a chartered accountant?

Senator Connolly (Ottawa West): Boo! Boo!

Mr. Labarge: All right. But taking a man in this position, where we have given him every possibility to get all the information that he has and he still has nothing, how do you expect him to produce more before any other body? I know what one answer is: "He does not have to produce it; you have to produce it." Is this right? Is this what the form of appeal is, because there is no discretion and nothing but credit goods?

Senator Cook: From a practical point of view, every time a case of dumping is established, the department does collect more revenue, does it not?

Mr. Labarge: Yes, but there must be a breaking point, economically, in this. There are lots of ways they could tell us to collect money, but for every dollar we collected we would spend $10, so I do not think it is the kind of legislation I would like by way of revenue collection.

Senator Molson: I think Mr. Labarge's answer is very constructive. This is one of the things we want to make clear. I do not think we are criticizing the way in which the department has operated, or in anticipation of the way it will operate, but I think there is that principle here, that the matter should be well aired.

I think Mr. Labarge has made the point, one I believe is really valid, "All right, what kind of appeal do you want? What kind would solve this problem?" I think that is a very good point, because I do not think there is an easy answer to it.

The Acting Chairman: The only one is the one we already have, that he will have to make the import and try to prove his case that way.

Senator Connolly (Ottawa West): Mr. Chairman, if I could come back to Senator Molson's point, but on another aspect, when you talk about the Tribunal which is to be set up under the new legislation, you refer to the fact that the only basis for appeal to it is damage to the Canadian industry by imports at a level you think is a depressed one.

Just putting aside for a moment the matter of a second importation to establish what the fair market value in the country of origin is, this he has to do if he is to get to the Tariff Board, because he has not the evidence himself at that stage, someone else has done the importing, and the Tariff Board, I rather thought we concluded the other day, was, first of all, overworked and, in any event, the process of appeal is slow and expensive—and it was particularly the expense side we were concerned with. Would there be, first of all, any less expense to allow a man to appeal to the tribunal on a question of whether or not there was damage; and would it not be a faster procedure if that were allowable?

Mr. Labarge: I am dealing with the case of a person presenting a complaint in respect of which we say: "There is not enough evidence here to support dumping", but we decide, however, that there is enough evidence of injury to warrant our doing something about the injury. I am dealing with that portion of the criteria. We would refer that, or he could himself refer it, to the injury board. Now, once the injury board has the matter to deal with it can then find there is either injury or no injury. If it finds there is injury then it can send the matter to me, and I can say: "Go ahead on the dumping."

Senator Connolly (Ottawa West): In effect, when the injury board, as you call it—and I think that that is a good description—finds that there is injury then that is tantamount to their saying: "We think there is dumping."

Mr. Labarge: It is saying: "There is more than smoke here."

Senator Connolly (Ottawa West): Yes.

Mr. Labarge: This is, in a sense, a form of appeal that he has.

The Acting Chairman: But, Mr. Labarge, he cannot get there. He cannot proceed on the question of injury at all.

Mr. Labarge: I am saying that either he can or I can.

The Acting Chairman: But you must first find that there is dumping.

Senator Cook: No dumping, no case.

The Acting Chairman: Yes, no dumping, no tribunal. It is this word "only" that concerns us.

Mr. Labarge: There is one kind of case that I am thinking of, and I should like to talk to my colleagues for a moment.

Senator Molson: What about section 13?

The Acting Chairman: Yes, section 13(3). The use of the word "only" was, in the view expressed to us by Mr. Arthur, and in our own view from reading the section, indicating indicative of the fact that the tribunal did not enter into the matter unless there had been a finding by you of dumping. Before the tribunal can deal with the matter there has to be a finding of dumping by you. This is the point that has been causing us some difficulty.

Mr. Labarge: Yes, dumping is something on which I must commit myself, and really this is where I am of the opinion there is no evidence of injury.

The Acting Chairman: That is right, this is the whole question, and the answer you gave before was that in 60 per cent of the cases you find no foundation for the allegation of dumping at all, and if all of those cases were to be opened up by there being some possibility of going to an appeal tribunal, be it the Tariff Board or this tribunal, then the duplication that would presumably take place in investigation and so forth might mean a tremendous amount of work.

Mr. Labarge: Yes, and cost. Might I ask if Senator Connolly would comment on the matter of costs before the Tariff Board? There was a time when this was a court of easy access, and a court of very limited cost to the appellant. I am not sure that there is even a fee required to appear before the Tariff Board, and if there is one I doubt that it exceeds $10. So, what we are talking about is someone who is coming forward with a battery of expensive lawyers, and so on.

Senator Connolly (Ottawa West): That is where the expense comes in, because these people have to be brought to Ottawa. The Tariff Board does not move around. This can be a very expensive proposition.

Mr. Labarge: Yes, and I am suggesting that in the kinds of cases we are talking about it can be very expensive. If a man has no case; if he has no evidence to provide the people who are going to appear on his behalf, then he may have to send them, or even go himself, to Europe in order to find out what the prices are, and so forth, only to find out that he has no case. On the basis of experience with the kind of people we are talking about, I will say that at the most all they have is a suspicion. If he has any kind of evidence at all upon which we can build then it is a different matter, but if he is without the pertinent information and all the rest of it then where is he going to exercise his right of appeal effectively?

Senator Connolly (Ottawa West): That is true, except that he would not be asking for an appeal, or wanting a further investigation, unless he is confronted with a situation in which these goods which have been brought in from abroad are actually underselling his goods.

Mr. Labarge: But, there are so many cases in which people can enter our market on the grounds of greater efficiency. You just have to read the reports that have been made on some of the—

Senator Connolly (Ottawa West): I have discussed situations like that with your officials, and it was proved that the efficiency or the productivity in the country of origin was so great that certainly there was no evidence of dumping.

Mr. Labarge: And not only that, but there are industries in Canada which have been criticized for the high cost of their operations, and which they are able to continue because of lack of competition from more efficient producers. You have to think of the consumer as well in this light.

Senator Connolly (Ottawa West): Of course, we are concerned only with this small point of enlarging the jurisdiction of the injury board to enable such a man to go before it in the same manner as a taxpayer may now go

very informally before the Tax Appeal Board and plead his case, and sometimes plead it personally without the assistance of a lawyer. Let me put it this way: Would you comment on whether or not it would be of benefit to Canadian businessmen for them to be able to go to the injury tribunal, as it has been described, to discuss not only the question of injury but also the question of whether in fact there is dumping?

Mr. Labarge: Well, they have the alternative of building up a complete staff to go and investigate dumping, or referring it to us, so we are back to where we started. They are not geared for that. They are not going to pass any opinion on dumping; it is injury that they are concerned with.

Senator Connolly (Ottawa West): But they will have investigated dumping in order to conclude injury.

Mr. Labarge: No, no.

The Acting Chairman: The point Mr. Labarge is making is that in order to determine dumping evidence from other countries throughout the world will be needed, for which the Department of National Revenue is equipped with a staff, and when it comes to a tribunal which is set up to try to deal with the same matter, either it has to accept the evidence put before it by the Department of National Revenue or have some kind of organization.

Senator Connolly (Ottawa West): Of dumping.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): Perhaps I am very obtuse about this, and maybe the obtuseness is in my own mind. The injury tribunal will proceed after the deputy minister has found evidence of dumping. Under this proposed law, will the deputy minister of the department be required to give evidence before the injury tribunal of why he found dumping?

Mr. Labarge: No.

The Acting Chairman: That is assumed. The tribunal cannot deal with the matter unless there has been a finding of dumping.

Mr. Labarge: Anyway, my finding of dumping is subject to appeal.

Senator Connolly (Ottawa West): To the Tariff Board?

Mr. Labarge: Yes.

The Acting Chairman: That is right.

Mr. Labarge: There is quite a difference between that and the income tax case you talk about, because a man goes there talking about his own affairs, his own transactions.

Senator Connolly (Ottawa West): That is right.

Mr. Labarge: Whereas in the other case we are talking about who somebody, some time, at how much, may be.

The Acting Chairman: Are there other questions?

Senator Hays: To go back to the TV case, when they approach you what is the actual procedure? How is this done?

Mr. Labarge: In the TV case it was first one complainant.

Senator Hays: We sent you a written complaint?

Mr. Labarge: A written complaint.

Senator Hays: To the deputy Minister or to the Tariff Board?

Mr. Labarge: It was addressed to the deputy minister, containing considerable information, with a request for an appointment to discuss. We discussed this fully and said, "Obviously you have given us enough to warrant an investigation", so we proceeded with the investigation and found the situation where, as we say, the price over there should be higher because it is sold to wholesalers. What was happening was that the Japanese suppliers naturally, being businessmen and thinking as ordinary businessmen, said, "The man we are selling to in Canada is undertaking a great deal more by way of selling these, distributing them, et cetera, than is the wholesaler. Therefore he should be entitled to a price which compensates him for these extra costs."

Senator Flynn: In other words, the suppliers is making practically the same profit.

Mr. Labarge: Yes.

The Acting Chairman: If that were the whole case your finding would be that there was no dumping.

Mr. Labarge: Under our law as it has been we have said, "You cannot do that here,

because at home you only sell to wholesalers, so you have got to use your wholesale price." They said, "Are you guys crazy? What kind of business sense does this make?" This is one of the reasons why our law has been so criticized, apart from other reasons, and that is why I say that when we now have this new term "normal value" it permits an allowance for this kind of thing.

Senator Hays: So this is a great improvement over our old system?

Mr. Labarge: If you look at it in terms of reasonable business.

Senator Hays: How long did it take you to deal with that case from the time you received the first complaint?

Mr. Labarge: It took us a while, not because we were not working on it but because we had to receive delegations—Government representatives, trade representatives from Japan, the Canadian man who was affected by it. Again it shows that we do not bull our way through these things. I think six Japanese came to our office, and we investigated 18 manufacturers.

Senator Hays: How much injury was done to our people before there was a decision?

Mr. Labarge: There was no question of injury, because we do not look into that. We look into it simply, as the law says, to see whether there is a dump or not regardless of whether there is injury.

Senator Hays: How long did it take you? A week, a month, two months?

Mr. Labarge: This would take a few months.

Senator Hays: It took a few months?

Mr. Labarge: Oh, yes.

Senator Hays: In the meantime the importations were still permitted and there was still injury being done.

Senator Connolly (Ottawa West): Still dumping being done.

Mr. Labarge: We were not certain enough of our facts. We had to await the results of the investigation.

Senator Hays: But in the meantime there was dumping?

Mr. Labarge: Yes, if you want to put it that way.

Senator Flynn: If the finding is conclusive the duty has to be paid.

Mr. Labarge: But not retroactively. This is one of the new things.

Senator Flynn: This is retroactive?

Mr. Labarge: We can put in a provisional determination. When we can say we are satisfied there is a good chance that it is dumping we put in the provisional dumping and they pay the dump. If in the end we find there is no dumping it would be reimbursed. We do not have to apply it if it is this way or that way provisionally, but they are committed to pay if we find dumping, retroactive to the time of the preliminary determination.

Senator Hays: To take an example, this act has nothing to do with sour cherries from Michigan coming into Canada.

Mr. Labarge: If there is undervaluation, yes.

Senator Hays: They come in in a hell of a hurry because the sour cherry season is over in two weeks. How do you handle this? When they are ready to pick you have to pick them.

Mr. Labarge: It is extraordinary how many people stand watching first the blossoms and then the cherries. We usually get some warning, and then crop notices are published.

Senator Hays: You use the value for duty in these cases and it can be done in a hurry?

Mr. Labarge: Yes.

Senator Everett: When the importer is not a distributor or wholesaler but is a large retailer, or a number of retailers, what do you use as the fair market value?

Mr. Labarge: The equal level, the normal value from retailers in the country of export.

Senator Everett: Then that would likely be higher than, say, the wholesaler's value?

Mr. Labarge: Yes, and higher than the distributor's again.

Senator Everett: Would that not force a retailer like Eaton's, who would normally buy direct from the manufacturer, perhaps on the same basis as the distributor, to go through a wholesaler or distributor? I wonder whether under the new act consideration would be given to their buying power in the domestic market. They would be accorded at least the wholesaler's price, and often the distributor's

price. In the domestic market they would be accorded at least wholesale prices if not distributor prices.

Mr. Labarge: I misunderstood. You normally find the same condition existing in the country in which this happens. There are manufacturers who sell directly to the large buyers and if they are getting discounts on large buying, large purchases which are sufficient for them to make their profit on, that is up to them. They do not seem to have suffered under it, but certainly we would look at the level at which these same goods are sold by manufacturers, the same manufacturers here and we would find that they are selling to chain stores in large quantities.

Senator Everett: I can suppose a situation in which a manufacturer in a foreign country had a structure for the distribution of its goods composed of a distributor, a wholesaler and a dealer and in that country it would, by the very nature of the structure that it had put together, be forced to go on the different price levels through those various stages of distribution, but it might be that in exporting its goods it found it as advantageous to go directly to a giant retailer or one or two retailers and would enjoy as much distribution as it would if it set up this massive—

Mr. Labarge: This is one of the reasons for the new law.

Senator Everett: Would the new law take that into account?

The Acting Chairman: The definition of normal value in section 9 seems to make allowances for all of these kinds of factors that may influence price between one country and another country.

Senator Everett: Would it be true to say that under the old law that would not be taken into account and under the new law the deputy minister would take that into account?

The Acting Chairman: Are there any other questions?

Senator Hays: I would like to get back to examples again, Mr. Labarge. Under the provisions of the new act, besides the 10 per cent which we speak of and which existed under the old act, which is a definite improvement . . .

Mr. Labarge: Made in Canada?

Senator Hays: Yes. What other advantages do you see over the old provisions we had to deal with.

Mr. Labarge: I think I touched upon those in my opening remarks as much as I could. For instance, with this 10 per cent not being a factor any more, you can have a new infant industry protected against injury. This has always been a sore point because fellows come in to me and ask when we start to protect the "baby"—when it is a baby or when it grows up and takes care of itself. That is the way this law has been operating. Then you have the protection against threat of injury.

Senator Hays: Which we did not have before.

Mr. Labarge: We did not have it before; it had to be a proven thing.

Senator Hays: And infant industries.

Mr. Labarge: Infant if they are injured or retarded.

Senator Hays: Which we did not have before and the 10 per cent.

Mr. Labarge: Yes, the 10 per cent goes out.

Senator Hays: And threat of injury. These are the main points.

Mr. Labarge: Yes.

Senator Hays: Under the old existing legislation you had to come to the deputy minister in any event. This really has not changed.

Mr. Labarge: No.

Senator Connolly (Ottawa West): This is supplementary, Mr. Chairman, just following Senator Hays question—is this really in effect protection for the Canadian industry in certain respects?

Mr. Labarge: In certain respects. You have a counter-balancing here in this. There are other things such as we have mentioned, the definition of "normal value" for instance. I think this is something which makes it impossible for people to sell to Canada from abroad on terms which suit the levels of trade at which they sell here and are not restricted by conditions which prevail in their own country because of their geographical compactness or whatever you like. For instance, in a small country like Japan or Great Britain why create all these levels when you are only a step

away in either direction from where you are manufacturing to either the wholesaler or the retailer?

These people say "this is imposed upon us and meanwhile what are we competing against?" You see we are competing against other countries and particularly the United States. The United States sits all along the border and it could put distribution and service agencies all along there, whereas if we want to give quick service we have to put that on our side of the line, and at what cost? We do not have to do that in our country, because we just supply it.

Senator Connolly (Ottawa West): Therefore we make an allowance to you on price so you can do this.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): I would like to get back to Senator Hays' illustration about the T.V. sets. What will be the impact of this legislation now on the electrical appliance industry in Canada? My recollection is that this is an overprotected industry, the duties, surcharges and taxes and when you add them all up it is over 50 per cent.

I put a question on the Order Paper some time ago and got the details, and I think 50 per cent is an exhorbitant protection for an industry. Will this enable foreign imports to compete more freely with this industry or will it make the local industry more efficient or will it have the effect of bringing down prices in the local industry? How will it affect this tremendous protection the electrical appliance industry enjoys in Canada?

Mr. Labarge: I would only be guessing if I gave you an answer to this. Perhaps if I read their brief backwards I might see what they were concerned about. This might give me some indication of what they are worried about. Obviously it is an industry which has always sought protection against dumping, because they have been dealing in some very major items. These call for a great deal of complex engineering for what is a limited market and we have a market here in Canada which justifies their engineering skills to a certain extent, sufficient for them to go into it, but I would say that the competition from abroad has been very severe in some of these major items. I would also say that some of it has apparently been dumping. If that went on you could see that they would feel that they are going to lose all these highly skilled people and would not be able to develop with the country in the area of transformers, etc.

We also have an excellent case. Without being too specific I will indicate to you a case of a manufacturer of electrical cables. You ask what kind of evidence constitutes an indication of injury. For some months past, foreseeing this, when people came to us with a complaint on dumping, that was all they had to prove. We asked them to wait for a while, so that we might see what kind of thinking was in this presentation and what the element of injury might be.

First of all, on the dumping question, they were really clear. They did not have all the facts concerning the prices of goods sold in Canada, but they did know the price at which apparently they were selling them to exporters and at which they were being offered to exporters. They figured out the cost of the materials in Canada. There is very little difference in the material, because these exporting countries do not have the raw metals and so on from Canada.

They arrive at these figures and point out that it is not possible to take the ingredients alone and came out with so low a price, when all the production costs, profits, and so on are added.

Senator Connolly (Ottawa West): And royalties.

Mr. Labarge: Yes. Then we looked into the question of injury. And they showed that two per cent of their market had been lost in one year. I think it had gone up to three per cent the following year and it was up now to five per cent. I remarked that I was not sitting on the injury tribunal, but I question whether a five per cent loss of the market would constitute an injury to that industry. I add that if the injury tribunal were to examine this, they would see the increase in these importations—and I ask at what point the complainant would say this would constitute an injury to the whole industry. I ask them: "Are you just saying, 'step in now, because if you do not step in now, it will be worse' "? But is "worse" injury, and at what stage is it?

We would consider that exercise to show how these people are prepared, by the statistical analysis, to deal with these cases.

As to your general question, I do not think I could hazard. I think it is sensitive in many areas.

Senator Carter: It seems to me that any industry which requires 50 or 60 per cent protection cannot be very efficient.

Senator Hays: The textile industry?

Senator Carter: Electrical goods, radios, appliances, television.

Senator Hays: Are these negotiations not done, in so far as the tariffs are concerned, for the protection of all these electrical industries?

Mr. Labarge: The rates are but many of these have a sales tax, an excise tax, a duty in them. That is not protection, that goes for both the imports and the domestic.

Senator Carter: If it is protection, you cannot import it without paying 50 per cent more for it than you do in the country where you bought it.

Mr. Labarge: If that 50 per cent is made up of domestic taxes, that has to be for both.

Senator Cook: Do I understand that, as a result of the anti-dumping code, our exports will get the same protection in other countries as we are giving the importers here?

Mr. Labarge: It is the same basic code that they have agreed to.

Senator Cook: You might say that the anti-dumping legislation will be more or less uniform?

Mr. Labarge: There will be differences in the procedure, as to whether it is done by legislation in the form of an act, or by regulations; but it is clear that the terms generally are the same. Mr. Gray has made an excellent presentation on that.

Senator Cook: Would Canada have the right to complain if we felt the anti-dumping legislation was not within the spirit of the code?

Mr. Labarge: That is right. It is the same as they have been complaining about us. That was one of the troubles with the Japanese. One must understand how other people feel about it. They had the code in effect in July. We had not. We had our law. They said that we could at least inject the spirit of the agreement into the law. That is why we were in an extremely delicate position, because we really could not bring these things to bear, but we had to be reasonable. We spent a lot of time explaining to them why our law insisted on this.

Senator Connolly (Ottawa West): Therefore, it is important to get this legislation through?

Mr. Labarge: I think it is important, in our multilateral trade.

Senator Hays: It has been said that "today's solutions are tomorrow's problems." What countries are introducing the same sort of legislation? I suppose it all becomes possible because of the Kennedy Round. Do you anticipate that we will have many more complaints due to the change in tariffs and the GATT negotiations in future? I am thinking of countries which may not be quite as ethical as Canada and which may try to get around the lowering of tariffs.

Mr. Labarge: If you are talking about complaints from abroad—

Senator Hays: From home, because of abroad.

Mr. Labarge: I would hope not. This is why I feel that our conduct always counts for something. If we are carrying out the law in a proper and just fashion, without extreme annoyance and frivolous pestering of people, and without having used the big stick too often, we will be in a situation where they will reciprocate. That will be easier than some of the situations we ran into earlier because of the automatic dumping.

Senator Hays: Can you give the countries which will be introducing similar legislation?

Mr. Labarge: There are many. There is the United States, the United Kingdom, Scandinavia.

Senator Hays: With the same legislation?

Mr. Labarge: Based on the same code.

Senator Hays: Is this the legislation which you were speaking about, that was put into effect on July 1?

Mr. Labarge: Yes.

Senator Hays: But, previous to that, these countries were not together in this?

Mr. Labarge: In other countries we had differences but on the whole there were none of them that had as automatic—

Senator Hays: So our trading partners will all be the same now, as regards anti-dumping?

Mr. Labarge: Yes, I do not think many have been left out.

Senator Connolly (Ottawa West): In regard to the two-price system—the domestic price and the export price—I shall start with an example. The figures I use are hypothetical. I understand that on the west coast, when gas is exported to the United States, the price in Vancouver is, let us say, 43 cents m.c.f., but the export price in the American northwest is 27 cents.

Mr. Labarge: The export price of Canadian gas?

Senator Connolly (Ottawa West): The cost of the Canadian gas to the American importers is 27 cents. Let us say for the sake of argument we are talking Canadian dollars here. This is the result of a contract. There is no bonus. There is no tax adjustment or concession. It is simply a contract. There may be other cases of the two-price system. Perhaps there is on wheat, is there?

Senator Hays: No. We compete. There are no subsidies.

Senator Connolly (Ottawa West): Well, in this case in the United States, would there be ground under this act for your opposite number down there to say that that 27-cent price is a dump price?

Mr. Labarge: It would, of course, be under U.S. law.

Senator Connolly (Ottawa West): I know, but assume that they have this law.

Mr. Labarge: Suppose it were working the other way, you mean?

Senator Connolly (Ottawa West): What about our own exports?

Senator Hays: This is hypothetical.

Senator Connolly (Ottawa West): Purely.

Mr. Labarge: It is really hypothetical and, number one, I am not sure that I would be expecting this kind of an arrangement to have been arrived at on an international basis with such a commodity without all the producers in Canada being somehow or other in it in a way in which they would benefit. There must be a reciprocal benefit. Number two, I would not expect them to claim injury or expect them to make a complaint of dumping.

The Acting Chairman: Basically, the law in the United States would still require two things: evidence of a dumping, a difference between the normal value in the country of export and the value at which it is being imported in the United States, and, secondly, injury. Those two principles will still be applicable to anything.

Senator Connolly (Ottawa West): I understand that this is actually done. They cannot sell that gas unless they sell it at a lower price than the domestic price.

Senator Hays: This is an actual case.

Senator Connolly (Ottawa West): Yes.

Mr. Labarge: We are talking about international agreements, and governments do not enter into these on behalf of the industries concerned, I am sure, without there being some overall policy to which they abide in their own interest. So I think we are going rather far.

Senator Connolly (Ottawa West): There may be some other provision of law. Let me take another concrete example. Suppose Great Britain, who are trying to correct their balance of payments situation so desperately, gave tax concessions or bonuses for export and some of these goods came to Canada. Would you be looking at those concessions when looking at the problem of whether or not the goods were being dumped?

Mr. Labarge: This is not new to us. This is old hat, because we have had to do it. There are only certain kinds of taxes, for instance, that can be extracted from the home market price for the purposes of export sale. Now, into this kind of thing you can bury all other kinds of taxes which are not eligible for this kind of refund because they are not taxes that apply to the goods. And depending on what the exporting government does, it can even add, apart from the remission of these taxes, certain other incentives for export. Well, that does not wash, if it is a subsidy or if it is an overdeduction in a class which is permitted up to a degree and under certain conditions and by the nature of the tax. So there is where we talk about countervailing duties. Perhaps you recall what happened when the French Government was going to remit certain taxes: immediately, the United States said that if this went too far they would apply countervailing duties. So this is where you have the same answer.

Senator Connolly (Ottawa West): They can do that despite the fact that this was in effect.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): And we can, too?

Mr. Labarge: Yes.

The Acting Chairman: If there are no other questions, I have a draft report that the committee might like to hear.

Some hon. Senators: Agreed.

The Acting Chairman: The draft report reads as follows:

> The standing Committee on Banking and Commerce to which was referred the "White Paper on Anti-Dumping" has in obedience to the order of reference of December 9, 1968, examined same and reports as follows:
>
> > Your committee has considered the White Paper on Anti-Dumping tabled in the Senate on December 9, 1968, and in particular the draft bill contained at pages 40 to 100 thereof. Your committee has also considered the amendments to such draft bill proposed by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons as reported in the journals of that House on December 9, 1968. Your committee recommend that the draft bill, amended as so proposed, to the Senate for its favourable consideration.
>
> All which is respectfully submitted.

Now, we did have at our previous meeting, which we have not discussed today, the proposed amendments made by the House of Commons committee. I am not aware whether or not those amendments have been put into the bill. There is one particular amendment that I did not agree with, if I understood it correctly. I would like to ask Mr. Labarge a question about it. It is the definition of "associated persons". It reads:

> Associated persons are persons associated with each other; persons dealing with each other at arm's length, within the meaning of subsection 5 of section 139 of the Income Tax Act.

I do not find any definition of associated persons in that subsection. There is a reference to "arm's length" to say that it is a question of fact. I would have thought that in any event associated persons were those who were not dealing at arm's length rather than persons who were dealing at arm's length. If this appears in the bill that comes to us, I will have something to say about that.

Mr. Labarge: You are absolutely right, Mr. Chairman. The word "not" has been left out.

The Acting Chairman: If we can treat that as being only a clerical mistake, perhaps the wording in this report, then, would still cover the amendments as we understand them. If we want to leave it, this still leaves the Senate free when the actual bill does come to us.

Senator Flynn: We do not know whether the bill that was introduced last night is exactly in the same words as this draft. Could we not say that, if the bill that is going to be sent to us by the house is in the same terms, we will recommend it? And if there are any changes we can suggest that these changes be considered by the committee in due course. It is rather late to go out on the limb and say that we recommend this when perhpas there will be some changes in the bill as presented to the house or as it reaches us.

Senator Connolly (Ottawa West): Mr. Chairman, I am not the Leader of the Government, but I wonder whether Senator Flynn and the committee would accept the following suggestion as being a wise course to pursue. I understand the bill received second reading in the other place last night.

The Acting Chairman: I understand there is agreement among the parties—originally for two days—and now there is one day left.

Senator Flynn: They will probably finish with it there today.

Senator Connolly (Ottawa West): Before you put your report in, might we not have a short meeting of the committee again to see if in fact the situation is as the proposed report suggests?

Senator McDonald: Mr. Chairman, if I might make a proposal; the purpose of referring the White Paper to the committee rather than waiting for the bill was to avoid the situation arising where we would be asked to give first, second and third reading to the bill at short notice, which is a situation to which many honourable senators have objected in the past. The present report is a report on the draft bill and the White Paper, and I would suggest that we proceed with this report, and if when the actual bill comes before us we

find that its terms are the same as what we have been dealing with, then there will be no need to send the bill to committee. But if we find that the bill is substantially different, then I would suggest that the bill itself would have to come back to this committee.

The Acting Chairman: If we were to add a clause to this report to the effect that if the bill reaches the Senate in a form different from the draft bill as above amended, the committee believes that such bill should require further attention, or words to that effect. If that is acceptable to the committee I would suggest that the actual wording could be settled upon as between Senator McDonald, Senator Flynn and myself. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): This has been very helpful.

The Acting Chairman: Any other business?

May I thank Mr. Labarge, Mr. Hind and Mr. MacDermid for their kindness in coming before us and for the great help they have given us.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 14

WEDNESDAY, JANUARY 29th, 1969

First Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

WITNESSES:

Department of Finance: A. B. Hockin, Assistant Deputy Minister.
Department of Insurance: R. Humphrys, Superintendent.

THE QUEEN'S PRINTER
OTTAWA, 1969

29481—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29481—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, January 29th, 1969.
(15)

Pursuant to notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Haig, Hollett, Inman, Kinley, Macnaughton, Molson, Thorvaldson and Walker. (21)

Present, but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-17.

Ordered: That the Clerk arrange to have the proceedings of this meeting printed and distributed as quickly as possible.

It was further ordered that any briefs now in the hands of the Committee be distributed to the Senators in advance of the parties submitting same appearing before the Committee.

Bill S-17, "An Act respecting Investment Companies", was read and considered and the following witnesses were heard:

DEPARTMENT OF FINANCE:

A. B. Hockin, Assistant Deputy Minister.

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

It was agreed that clause 8 be discussed at length at the next meeting of the Committee.

At 12.15 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 5th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, January 29, 1969

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators we have before us today Bill S-17, which is regarded, I think properly so, as a very important piece of proposed legislation. I think we should have a *Hansard* report, so may I have the usual motion for printing 800 copies in English and 300 copies in French.

(*Motion agreed to*)

The Chairman: I should like to make this suggestion. These sittings are likely to go on for some time, because we have had a number of inquiries, and many organizations and associations have written in. Some of those letters have indicated certain points of view which are not in accord with what is in the bill. In one instance we have a brief, and quite an extensive brief. The chairman has been taking the position, expecting your support, that any member of the public who wishes to be heard, who is touched or affected in any way by this bill, will be given the opportunity to be heard before we finally conclude our hearings. I have consulted with authorities in the other place and this is a view which they support, that they want full public participation to the extent that the public wish to participate in the deliberations and consideration of this bill.

I therefore think that the *Hansard* report of each meeting should be available at the next hearing, and as the wish or instruction of the committee I would ask the *Hansard* reporters to take note that it is desired by the committee to have the report of one hearing available at or before the time the next hearing takes place. The Clerk of the Committee, Mr. Jackson, has shouldered that responsibility, so he is the one to insure that that is done, even if he has to do some of the typing himself!

Let us pass to how we should proceed this morning. The officers immediately concerned who have duties to perform under the proposed bill are here this morning. Mr. Humphrys, of course, we all know, the Superintendent of Insurance. By title of position he is mentioned quite often in the bill and is given specific duties. We also have Mr. Hockin, the Assistant Deputy Minister of Finance, and Mr. Treuil, a research officer in the Department of Insurance is here. I understand there are some observers present today, I think on behalf of people who may subsequently make representations.

The plan as I see it at the moment would be to discuss the contents of the bill with the departmental officers, and then with that background hear all the public representations, during which the departmental representatives would be present. When we reach that stage we can consider if there are any deficiencies in the bill, if the bill goes too far, or if there are matters of substance that should be changed. We can look at it at that stage when we have the full information.

With that in mind, I would like to invite Mr. Humphrys, Mr. Hockin and Mr. Treuil to come forward, and then we can carry on.

Senator Thorvaldson: Mr. Chairman, can you give us any idea now how many persons or groups have requested to appear before the committee to make representations on the bill?

The Chairman: We have had seven different organizations plus two or three who are wavering as to whether they will appear or not to make representations, but they will follow the proceedings and it depends on how

they develop whether they appear. There are one or two who have not reached the stage of advising us of their position, but I have learned that they are proposing to prepare a brief.

Senator Thorvaldson: You referred to one brief being in. Is that the Massey-Ferguson brief that has been sent to all senators?

The Chairman: The brief we have is a submission by the Association of Canadian Investment Companies, with the support of a group of Canadian corporations concerned with investment. This is the one that has actually been filed. We have had a communication from the Canadian Bar Association at various points—Toronto, Vancouver, Montreal. The communication of Alcan Aluminum was addressed particularly to the definition of the "Business of investment" and "Investment company". In their letter they proposed certain exceptions to any broad definition. Whether or not they will appear, I am not in a position to tell you yet because I acknowledged their letter and indicated when we would be sitting and that we would be prepared to hear any representations they wanted to make.

Then there is the Industrial Acceptance Corporation, Molson Industries, the Chartered Institute of Secretaries. Then there is a lawyer in Quebec City, André Verge, and these additional ones which, I think, until they commit themselves maybe I should not put their names on the record, but we know they exist and are contemplating appearing.

Senator Croll: Those people who are likely to appear and have briefs, I think it would be well if we saw those briefs a little ahead of time.

The Chairman: That is what we have indicated, and we have one now which we propose to distribute. I wondered where the senators wanted the brief delivered. Usually we distribute copies to senators, and they get to their chambers, and then the senators come to the sittings and have not the brief with them. Then we run out of copies. We have been furnished with only so many copies.

Senator Croll: I think we should have an opportunity to read or glance through the brief before they appear; otherwise it is very difficult to get the context.

The Chairman: We will see to it that the brief now in is distributed; and there is a second short one. As quickly as others come in they will be distributed. Any of the correspondence not reaching the stage of a brief, which contains suggestions, we will make copies of and distribute.

Are there any other generalizations before we start?

Senator Connolly (Ottawa West): I take it you are going to hear the officials this morning, Mr. Chairman. Is there any way of knowing how soon the general report will be available? Perhaps that might cut down on some of the representations made.

The Chairman: I have been trying to analyze that, and on the basis of our sitting our usual time each week, and realizing we will have other bills we must consider, it would appear that between now and the end of February, say, there might be the opportunity for at least five meetings that might each run two or three hours in the day.

My own feeling is that we will use most of that time, and if there is any adjourning or delay, which might be for the purpose of consideration by the departmental officers of all the submissions that have been made and their determination as to how far they would suggest going in the way of change, that will only be a guide to us and would not bind us in any way.

Senator Connolly (Ottawa West): My question was really on the other side of the coin, Mr. Chairman. It occurred to me that perhaps some of the explanations given today, for example, might cut down the number of briefs. If the answers given by the officials satisfy some people who think they might want to come, these people, after what they see, might not wish to attend. It is only a suggestion I make, that although you cannot control it, perhaps the Senate committee officials might see that we get the transcript as early as possible.

The Chairman: I raised that in the beginning, and our clerk has been instructed and has undertaken the responsibility to see to it.

The Clerk of the Committee: I have also undertaken to provide copies of these proceedings to people who wrote in.

The Chairman: Yes, so that they will be well armed.

From discussions I have had with those charged with the responsibility of planning in a forward manner legislation to come forward

in the Commons, it has been indicated that the important thing, and the most important thing here, is that the bill be fully considered and that every member of the public who wants to be heard, and has any representations to make, is heard and that his submissions are considered; and whatever we do in the way of changes, if any, that is our business.

Certainly, speed is not the essential thing. In other words, there is not underwritten in this that time is of the essence. The time here is the time it will take to do as good a job as possible, having regard to what can be done in what the bill proposes.

Senator Molson: Mr. Chairman, could I just ask, of the organizations who have expressed interest in appearing, how many briefs have actually been received?

The Chairman: Two.

Senator Molson: So far?

The Chairman: Yes. There have been two, and I mentioned the letter from Alcan. Whether they will actually appear I suppose depends on how this hearing unfolds itself. Their letter appeared to be directed to the scope of the definition of "business of investment" and "investment company".

Senator Molson: I think this may be the problem in many of those.

The Chairman: I think it will be. For the ones who think they should not be included and that the definition is too broad, that will be their approach; and for those who feel that, in any event, they are going to come within the scope of an "investment company," they might suggest there should be better guidelines than authority by regulation, for the Superintendent of Insurance and the Minister to have the broad authority by regulation which is proposed in clause 22 of the bill.

Senator Desruisseaux: It is my understanding that Power Corporation also are sending in a brief.

The Chairman: I would say this, that Power Corporation was the first organization which was in touch with me after the bill was introduced, and even before you gave the explanation on second reading. They have been in touch with great regularity since. I do know this, in regard to the brief that we have had from the Association of Canadian Investment Companies, that the secretary of that association is from Power Corporation, so that Power Corporation has, in some way, had something to do with the preparation of this brief, and we must take it, until they say otherwise, that their views are incorporated in this brief of the association.

Senator Macnaughton: Mr. Chairman is it anticipated to sit on Wednesday morning and afternoon?

The Chairman: I am not sure it is anticipated today. I did not think we should plan for a full day today. The committee can make its own decision afterwards, but there are other committees sitting, and I did not feel, without the view of the committee, that we should take the whole day. I think that if we have two, 2½ or three hours today, we will have some more information than we have now.

We have three able representatives here. Have you agreed among yourselves which one is going to carry the load in the first instance?

Mr. Humphrys tells me that he is going to make the first presentation.

The second question is that I thought that before we get into any questions that are directly on the bill or arise out of that, that we might ask Mr. Humphrys to rationalize the purpose—what is the area that is sought to be reached by this bill and what prompted it; what, if any, participation did the public take as a result of which this was put together. Are those sufficiently broad terms of reference, Mr. Humphrys?

Mr. R. Humphrys, Superintendent, Department of Insurance: Yes, Mr. Chairman.

The Chairman: Then will you take over?

Since this is not in the nature of a prepared statement or brief, such as would be the case if Mr. Humphrys were addressing himself to the bill, as long as we do not interrupt him between words, and as little as we can between sentences, certainly he should expect questions between paragraphs.

Mr. Humphrys: Thank you, Mr. Chairman.

Mr. Chairman and honourable senators, the purpose of this bill is to establish a system of reporting and inspection for companies that are engaged in any aspect of the business of a financial intermediary, and in due course to establish a system of control for those companies that are in a weak or dangerous financial condition.

As you all know, we already have quite an extensive system of supervision, reporting, inspection, and control for the major classes of companies that are acting in some respects as financial intermediaries. These are banks, insurance companies, trust companies, and mortgage loan companies. There is, however, another group of companies that are engaged in borrowing money on debt instruments and using a significant proportion of their funds for investment purposes, as distinct from purposes relating directly to commercial and industrial activities. This group of companies is not now subject to any regular system of reporting, supervision, or control.

The companies concerned in that federal field are for the most part incorporated by Letters Patent. They have certain obligations under the Corporations Act in respect of reporting, but the reporting requirements there are not of the type designed to measure financial solvency, financial condition, or otherwise to regulate their activities except, perhaps, in so far as they are required to remain within their corporate powers.

It is true also that companies of this type that borrow in a significant way in the public market are required to comply with the requirements of the securities acts in the several jurisdictions that have such legislation in force, and in which the companies are operating.

The companies, however, that are covered by the proposed legislation are federally-incorporated companies. They may or may no be operating in jurisdictions that are subject to securities regulation, and they may or may not be operating in circumstances and in terms that make them subject to securities regulation. In any event, it must be recognized that securities legislation is essentially disclosure legislation, which really leaves it to the investor to make his own decision on the basis of the information that is made available to him.

In one philosophy it might be argued that this is sufficient; that if there is enough information available, the Government at any level need not be concerned about losses that investors experience as a consequence of their own action, whether they understood the information that was available or not. We have, however, observed in the last few years—quite recent years—collapses of groups of companies that were in the financial intermediary business in one fashion or another. While one may have sympathy, or lack of sympathy, for those who lost funds in those collapses, no one can deny, I think, that those events have had a very damaging effect on our financial community, on the confidence of investors, and even an effect on investors outside Canada.

The Chairman: Mr. Humphrys, on that point, I recall—and I am sure the members of the committee do—the names of the companies involved in, and the circumstances of, a number of those major collapses. It appears to me that quite a number of them were provincially-incorporated companies. Is that right?

Mr. Humphrys: Yes, Mr. Chairman, that was, in fact, the case.

The Chairman: Have you any record of the number of federally-incorporated companies operating in this area which have been the subject of any such collapse in, say, the last five years?

Mr. Humphrys: I am not aware of any federally-incorporated companies that have been involved in difficulties of that type.

The Chairman: Of course, our jurisdiction here is limited to federally-incorporated companies?

Mr. Humphrys: Yes, Mr. Chairman, that is correct.

The point I wished to make was that notwithstanding the disclosure type of legislation that has been in effect through the securities acts, trouble did come and collapses did occur, and the damage spread not only to the investors but beyond, and had its effect on the whole financial community.

Federally-incorporated companies which are the subject of this bill are not now subject to any regular supervision, inspection, or reporting on the part of federal officials. It becomes an important question whether companies should be incorporated at one level of government, and given permission to operate throughout the country, which is the essential power of a federally-incorporated company, and engage in the business of borrowing from the public for investing, without the Government that created those corporations assuming any responsibility, at least, for determining what the companies are doing, and the state of their financial solvency and strength.

Now that, Mr. Chairman...

The Chairman: I think Senator Gelinas wants to ask you a question, Mr. Humphrys.

Senator Gelinas: Mr. Humphrys, do you know what the ratio between federally and provincially-incorporated companies is?

Mr. Humphrys: Senator, I cannot answer your question, but I am just coming to a point that I think bears on it and which is significant. I am referring to the definition that appears in this bill of the types of companies to be covered.

Senator Burchill: Mr. Chairman, may I ask a question?

The Chairman: Yes.

Senator Burchill: Has the Province of Ontario—to take one province—any legislation similar to what we are discussing here for its provincially-incorporated companies?

The Chairman: No.

Mr. Humphrys: Not precisely similar, senator, but they have adopted special regulations under their Securities Act which are aimed at finance companies, within the definition in the regulations, and at investment companies. But, it is still within the concept of securities legislation which requires certain types of reporting to the Securities Commission for the purpose of public disclosure. The Commission can regulate through that information the right or the ability of a company to float securities in the jurisdiction covered by that provincial legislation.

The Chairman: I think in the Ontario Securities Act the jurisdiction that is exercised by the Securities Commission is such that at any time, in relation to any company that has been the subject of qualification of its securities, investigators from the department may move in and check the records and operations.

M. Humphrys: Yes, that is correct.

The Chairman: They assume that broad power and—well, it is difficult to challenge it because you have a *de facto* system where its continuance depends upon the continuance of the qualification.

I am sorry, Mr. Humphrys, If I have diverted your thoughts.

Mr. Humphrys: That, Mr. Chairman, is the general background. I should add to that the fact that, because of the absence of a regular system of reporting and inspection, we simply do not know how many federally incorporated companies are active in this general field which I have been discussing, that is, raising funds on the basis of debt instruments and using a significant proportion of the funds for investment. We simply do not know how many companies are in that business, we do not know the variety of companies, we do not know all the ramifications of their particular type of operation, and we do not know the financial strength. We know some, some prominent companies, they are well known to anyone concerned with financial matters; but we have no regular or reliable body of information that permits us to answer the very question that you posed to me.

Part of the concern of this bill is to establish a system where, initially at least, we would obtain information on a regular basis and have it flow into a particular administrative setup, whose job it would be to analyze it and become knowledgeable about it, to analyze the different companies and be in a position to advise the Government as to what special legislative structures might be appropriate, what special adaptations to rules and regulations might fit different types of companies.

One of the very important and very difficult problems, and perhaps the main problem that faces one, and that faced us when we first began to consider this, was: what are we dealing with, how many companies are involved? The principal reason for the broad definition, that I am sure strikes everyone forcibly when they first pick up this piece of legislation, is to enable us to get a regular flow of information, so that we can answer the very question that you posed and we can be in a position to make worthwhile and sound recommendations to the Government as to regulatory provisions that may be appropriate for different types of companies. We recognize that in this definition, the very broadness of it, it covers a great variety of companies, not only companies that people normally think of as investment companies but it goes far beyond that. That was recognized and it was intended for the purpose of gathering the information.

The Chairman: Is this a fair layman's statement, if I can get myself into that position, of the purpose of this bill—that is, that it is to acquire knowledge of, and to control, if necessary, and supervise the use to which money is put by an investment company, which money has been raised through the sale of shares or the sale of securities?

Mr. Humphrys: Mr. Chairman, I do not think I could answer that question categorically. I would say that this bill does not propose to regulate or restrict the general classes of investment, the general uses that an investment company will make of its funds, with the exception of clause 8—which is aimed at transactions that are within arm's length. It does not propose to lay down classes of eligible investment, in the manner that, say, the Insurance Companies' Acts do, and the Trust Companies Act does.

In preparing the bill, it was recognized that the variety of companies were so great that no one set of investment provisions would do—and indeed, it may not be appropriate at all to have prescribed classes of investment for companies of this type.

The main emphasis has been on gathering information; but the emphasis on gathering information and supervision is aimed at companies that borrow on debt instruments as distinct from companies that raise the money only on the sale of shares. If a company raises its money only on the sale of shares, it would not be subject to this act.

The Chairman: Now, just a minute. I think it is too early to get into the legal aspects of this, but I think there is a serious question as to whether, legally, in the language of your definition, that that is a correct interpretation—because proceeds of the sale of securities may be something less than the use of some or all of the assets of a company. For certain investments, the assets would include proceeds from the subscription for shares.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: Now, this is the language that you use. True, you are not subject to this bill and the provisions, unless you borrow money.

Mr. Humphrys: That is correct.

The Chairman: So you can be wild and carefree, if you want to, and have that risk nature, as long as you just have subscriptions for shares.

The moment you borrow money, that is one of the conditions which brings you under the scope of the act—no matter what you use afterwards to make your investment.

Mr. Humphrys: That is a correct analysis, Mr. Chairman. The philosophy is that, if a company raises funds for investment solely through the sale of stock, that the purchasers of that stock become participants in the success or failure of the company. They are members of the company and the question of determining the solvency of the company or its obligations to the public does not arise. The people who have put the money into the company through the purchase of stock are members of the company and in purchasing those shares they undertook to abide by or to live with the fortunes of the company. As a consequence, the whole class of mutual funds, for example, would not be subject to this legislation.

Senator Molson: So far as the protection of the public is concerned, is that because they buy shares, they need less protection? I think of some of those beautiful mining promotions, and things like that. Do you think those people are adequately and completely protected?

Mr. Humphrys: They may not be, Senator Molson. The approach in this legislation is aimed at areas where their abilities to meet obligations to the public can be measured in terms of their financial statement. If a company has raised money only through the sale of stock, as opposed to, say, any investment company or a mutual fund, it is not possible to determine a solvency provision in relation to the stockholders, because their right as respects the stock is what is in the company. You cannot measure a solvency question in the way you can when a company has a fixed dollar obligation to the public.

The Chairman: Is not this what you have been doing over the years in the various statutes under which you have inspection and control in relation to investments? For instance, in the Canadian and British Insurance Companies Act, the Trust Companies Act and the Loan Companies Act there are provisions outlining the kind, qualification and conditions of investment in preferred shares and in common shares. Yet when all this reporting comes in to you, in your capacity as Superintendent of Insurance it is part of your task to evaluate or appraise the value of those things to see whether they come within the conditions and satisfy those conditions, and secondly as part of your overall appraisal to see whether the relationship between the assets and liabilities of the company is getting out of line. In doing that you have to appraise the value of the stocks as well as the value of the bonds, the real estate and the other items, so in that connection, and in order to outline the conditions of investment in those statutes

I have referred to, they do extend so far in some fashion to deal with stock positions.

Mr. Humphrys: In a secondary fashion they do. The primary purpose of these statutes, however, arises from the fact that those companies have fixed dollar obligations to the public, either through insurance contracts, through deposits accepted by trust companies, through investment certificates issued or through debentures issued. The legislation is aimed at protecting those people and it regulates the use the company can make of the funds they gather from the public and the use they can make of the funds they get from their shareholders, all with a view to maximizing protection to the policyholders, debenture holders or depositors.

In this bill we have not proposed to lay down particular classes of authorized investments, for two main reasons. First, there is such a variety of companies that at this stage we are simply not in a position to make any sound recommendation as to eligible classes of investment. Secondly, there is a question whether the technique of specifying particular classes of eligible investments should be carried over to those classes of companies.

It is quite appropriate for certain classes of companies, for insurance companies and the other types I have mentioned. However, when we get to banks, there is very little in the Bank Act as respects specification of eligible investments, and for these types of companies, at this stage at least, there is no proposal here to try to restrict the general classes of investments.

The Chairman: Would you agree with the statement that generally speaking those who subscribe for bonds are more knowledgeable than those who subscribe for shares, with respect to investments?

Mr. Humphrys: I think I would have to say that I do not know. I would not make a categorical statement.

Senator Giguère: How would you classify a company that raises capital from the public with the issue of convertible bonds, bonds that could be converted into equity in a certain period of time?

Mr. Humphrys: Within the concept here they would be regarded as raising money on debt instruments and would be covered until it is converted.

Senator Giguère: Until such time as it is converted into common shares and really be controlled?

The Chairman: Yes.

Senator Croll: Mutual funds are of great importance and growing very rapidly. I have listened to you and gathered that there is nothing in this bill which could reach mutual funds in any way. Is that correct?

Mr. Humphrys: That is correct.

Senator Croll: Can you say how they are supervised and why we take no action with respect to them?

The Chairman: You mean why he has eliminated them from consideration in the bill.

Mr. Humphrys: First, in an attempt to arrive at a category of companies, broad though it may be, this bill singles out the companies that borrow on debt instruments and stops at that. Part of the reason lies behind the point we have just been discussing, whether the eligible classes of investment should be specified or not. If we were to take the view that we wanted to increase the protection for shareholders as well as creditors, then I think we would have to emphasize to a greater extent than this legislation does the asset side and the eligible assets. That is the first point.

The second point is that there is a federal-provincial committee now engaged in a study of the whole subject of mutual funds. The committee has almost finished its study, and I believe a report will be forthcoming within a short time. I think all the governments concerned are awaiting that report before proposing legislation in that field.

The Chairman: I think too that in the consideration Mr. Justice Hughes is giving in the Atlantic Acceptance case, where judgment may come out within the foreseeable future, the different problems that arise—which I think you have even referred to as making it necessary or advisable to have some measure of control—may all be found in that situation?

Mr. Humphrys: It could well be.

The Chairman: Therefore, there may be some benefit to us in this report in considering legislation.

Senator Carter: I should like to confirm my understanding of what Mr. Humphrys has said. If I understood him correctly, this bill is designed to set up machinery in an endeavour to protect the public in two ways. The first way is to keep an eye on what companies do, what use they make of money they borrow from the public, and the second is to step in somewhere if it is found that a company is getting on thin ice, to be able to take some action to prevent disaster.

In the second case, at what point, and what machinery do you have for stepping in? What powers do you have? To what extent can you interfere with management or managerial decisions in the running of that company? At what point do you feel you should step in and take some action? And, when you have decided that time has arrived, what powers do you have to alter managerial decisions?

Mr. Humphrys: The proposals in this bill in that regard are contained in Part II, which is the second phase, and they have been modelled, in principle, on the powers and authority that exist under legislation such as the Insurance Companies Acts, the Trust Companies Act and the Loan Companies Act. They are spelled out here in somewhat more detail than in those acts, but the essential procedure is that the Superintendent of Insurance, being the administering official, is expected to be closely in touch with and well informed about the financial position of those companies on a continuing basis, as a consequence of regular statements filed with him, as a consequence of auditors' reports, and as a consequence of inspection by his own staff, if necessary. If he forms the view, to use the wording used in this bill, that the ability of the company to meet its obligations is inadequately secured, he is required to report that fact to the Minister of Finance, who is the responsible minister; and he is also required to inform the company of the action that he has taken. The minister then...

The Chairman: Wait a minute, then. That is as far as Part I goes.

Mr. Humphrys: This is in Part II.

The Chairman: Part I goes so far as...

Mr. Humphrys: ...reporting and inspection.

The Chairman: Yes, reporting and inspection.

Mr. Humphrys: But it contains no powers.

The Chairman: I am not talking about powers, but Part I goes as far as you have described, where you have gathered your information voluntarily or by inspection, you have made your report to the minister...

Mr. Humphrys: No, there is no report to the minister in Part I, Mr. Chairman. Any action on the basis of information gathered is spelled out in Part II only, so that the implementation of Part I puts us in a position to gather information and to inspect, but it does not put us in a position to do anything about it.

This might seem odd, that the power to act is in Part II, which will not come into effect, under the terms of the bill, for at least two years after Part I is in effect. But the reason for that is that...

The Chairman: May I interrupt for a moment? I had in mind in Part I, subsection 6 of section 5, which deals with the annual statement that is required under this bill, not the annual statement of the company. Subsection 6 of section 5 provides authority for you to require additional information, other than what you may get by the annual statement furnished and by what your inspectors produce. The purpose of it is, as you may consider necessary to enable you to ascertain the financial condition of the company and its ability to meet its financial obligations.

Part I takes you that far, so I would assume that at that time you are in a position to say and to recommend, if you had authority, at that stage to the minister that this company has distorted its relationship between assets and liabilities. But Part I stops short of any action resulting from your determination of the information you get.

Mr. Humphrys: Yes.

The Chairman: And yet it is proposed to have Part II, which is the sanctions part, not come into force for two years.

Mr. Humphrys: Yes, Mr. Chairman. As I think you mentioned in your speech, Mr. Chairman, the reason for that is our inate caution. We know there is a wide variety of companies dealt with in this bill. We know it would take some time for an administrative team to gather information, to become knowledgeable about the companies, and to reach the point where we were in a position to make an intelligent analysis of the company and undertake the heavy and serious responsibility of doing all the reporting and controlling under Part II.

We do not think that until we have had a chance to gather this information and become thoroughly knowledgeable in the field, and to understand the operations of the various companies concerned, that we should put the minister or any Government minister in the position of having to issue a certificate or having to withdraw a certificate. These are important powers which should not be exercised until there is enough knowledge and sound enough administrative machinery to give confidence to the Government, to the public and to the companies concerned that such powers are going to be exercised with intelligence and with discretion.

The Chairman: But in a particular case, as a result of that method of proceeding, you may be sitting with all that information you have gathered under Part I, and on the basis of that may have concluded the company is in a precarious position.

Mr. Humphrys: Yes.

The Chairman: Surely, should we pass a bill that would permit that situation to occur, and then there is no authority anywhere to do anything?

Mr. Humphrys: Mr. Chairman, that is indeed a difficult point, and one that has caused a great deal of discussion.

It was thought it would be a mistake to lead the public to think that Government officials were in a position to certify or otherwise take responsibility for the financial condition of any of these companies, until the point is reached where they know enough about them and about the complexity of some of the operations to exercise that judgment in an intelligent way.

If Part II were to come into force immediately and certificates had to be issued right away, I do not think it could be done in a manner that would provide the kind of atmosphere and the kind of supervision that is aimed at in this type of legislation, because what is aimed at here is the creation of a climate within which reasonable, justifiable and intelligent supervision and communication between the Government and the companies can be established, all with a view to creating investor confidence and a better climate for the companies to operate in. If the legislation and administration of it does not accomplish that, then either it should be changed or the administration should be changed.

Senator Molson: I think what Mr. Humphrys has just said makes very good sense, Mr. Chairman. However, I cannot help but think of all the work that is going to be done by all these companies over these two years to provide all this information. We all know how much work and what staff is required in companies today to answer all the requirements of Government. It seems to me that this broad definition will cover perhaps thousands of companies most of which can never be deemed to be investment companies. Every one of them is going to have to employ the staff necessary for the making of these returns, and have that staff sitting there while the Government approaches the matter wisely and with some precision. I think we should also take into account what these demands will mean to the businessmen.

The Chairman: But then, Senator Molson, you have a power to make all of this investigation and to gather all of this information under Part I, which is going to come into force right away. When Part II comes into force the department has no more authority and power in regard to inspection than it had the instant before it came into force. Part III is to come into force now, and one of the features of Part III, which we may discuss later, is section 22 which provides that the Governor in Council may make regulations.

Am I to assume that even though Part III comes into force you will not venture into any regulation under section 22 until you have a full understanding of the climate?

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: I point out that "climate" was your word; not mine.

Mr. Humphrys: Yes, Mr. Chairman, that was the intention.

The Chairman: So there will be no regulations for two years?

Mr. Humphrys: Not necessarily for two years, but there will be no regulations until we are in a position to recommend the regulations that seem to be appropriate. The kind of procedure that we have in mind in that regard is to consult with the industry and the various classes of companies. The kind of rules and regulations, if any, that are adopted under that section would be those that are really modelled on the practices of the better run companies. We will seek the advice and co-operation of the industry with a view to establishing rules and regulations that protect

not only the public but the better run portion of the industry from the activities of those companies that carry on in such a way that is damaging.

The Chairman: One of the things that disturbs me, Mr. Humphrys, is that you could under Part I ascertain all the facts at the end of the first year of operation of Part I, and not having sanctions under Part II in force you would sit there doing nothing. I do not think that that is in the interest of the public.

Mr. Humphrys: It is not a comfortable position, Mr. Chairman, but the point is a difficult one, and the responsibility for stopping a company from operating, or, indeed, permitting it to operate, is serious. It is considered that a start had to be made at some place, and that the best thing would be to start by learning about the operation, and gathering information about the companies, their operations, their problems, and the inner workings of their business, before taking on this responsibility. It is a first step, but it was thought it would be perhaps misleading to the public to let the public think that by passing such a law, the next day there would be some administrative team, expert in the wide variety of companies covered by this legislation, at work.

The Chairman: But you realize what would happen in that situation, do you not? The security of the bond holder might be deteriorating. The position of the creditors behind the bond holder necessarily would be deteriorating. The company while it is still operating may attract more creditors. You will present that situation to the public at some time in the future, and say: "All of this information, or at least enough of it, was in the possession of the Superintendent of Insurance, and nothing was done about it." I think we have to find some way of getting around that. That is my own personal view.

Senator Carter: May I ask a question, Mr. Chairman?

The Chairman: Yes.

Senator Carter: I am concerned about the mechanics of the procedure. The first step in getting information is this reporting of financial statements?

Mr. Humphrys: Yes, sir.

Senator Carter: That will occur at the end of the companies' fiscal years?

Mr. Humphrys: Yes, sir.

Senator Carter: Does that mean that on a certain date in the year you are going to be flooded with thousands of financial statements?

Mr. Humphrys: It depends. There probably would be a concentration, since the ends of financial years tend to be concentrated at the end of the calendar year, but it is not proposed to lay down a particular filing date. It would depend upon the financial years of the companies concerned. At the present time in our administration we get all the statements in on the 1st March.

The Chairman: Mr. Humphrys, I made a suggestion the other day as to a system of reporting quite apart from the filing of annual statements—something akin to the reporting that an insider must make in the months following his sale or purchase of shares of a company. Is that a practicable sort of thing? In that way you would detect earlier the course of investment, the changes in investment, and the volume of the changes. Therefore, you might be in a position where you could be more helpful to the creditors and the shareholders.

Mr. Humphrys: I think, Mr. Chairman, that such information would be very valuable to the supervisor. However, we are very conscious of the costs to companies in meeting the requirements, and we have always attempted to keep the reporting to the minimum that we think necessary to keep ourselves informed. We learn quickly about the pattern of operation of companies. When we have a group of companies to supervise it does not take too long to know from which ones we have to seek information on a monthly basis, and the ones in respect to which we can confidently rely on the annual statements. This bill gives the administrator the authority or power to call for additional information when he wishes. In our present administration under other acts we frequently call for monthly statements if we encounter a condition with which we want to keep in close touch. So it is a question, Mr. Chairman, of the volume of the flow of reports as against your assessment of the position of the company, and the necessity of the supervisor's keeping in touch on a day-to-day or a month-to-month basis.

Senator Carter: When the reports reveal that a company is, or half a dozen companies are, getting on thin ice, you then propose to

develop some regulations which will correct their financial circumstances? You have a big stick here with which to enforce the regulations. Do you envisage that under those regulations the minister, or someone, will be able to say to such a company, "You are holding certain shares that you should have never bought. You must get rid of them", or something of that kind? Just what do you do after that?

Mr. Humphrys: No, senator. If that power to make regulations is exercised the Governor in Council would enact regulations setting down certain rules within which all companies would have to live. The regulations would not be of a type aimed at requiring a particular company to change a particular transaction into which it had entered. The reason why that provision is in the bill—and I recognize that this is a broad type of power—is that at this stage, we are not in a position to propose appropriate rules to be enacted in legislation.

Secondly, we know that there would be a wide variety of companies covered by this bill and that one set of regulations might not be appropriate for them all.

Thirdly, it was thought to proceed without any power to lay down broad operating rules, might leave affairs even less under control than the chairman has called attention to.

Therefore, it was thought that this provision, this power, would be appropriate so that the sound operating rules could be enacted, if they appeared to be necessary. I would myself contemplate that, if that action were taken in due course, rules that were so enacted might will be placed in the legislation.

Senator Carter: These bad situations that demand action, would not these be the result mainly of poor managerial decisions, poor judgment on the part of management, rather than any attempt to do something illegal or to defraud?

Mr. Humphrys: I would think that would be the main classification of companies, yes.

Senator Carter: In that case, if you are going to set up a framework of rules which everyone has to operate inside, are you not going to curb, are you not going to fetter the companies that have good management and do not need that regulation?

Mr. Humphrys: Good management is perhaps usually reflected in the pattern that the company follows, for example, the volume of debt it assumes in relation to its capital and surplus, matters of judgment such as that, where good management adopts sound practices and sound rules.

Where the trouble comes is where bad management goes beyond those guidelines that are voluntarily used by well managed companies.

The proposal for regulations that might be adopted under this type of power would be aimed at trying to put a check or some kind of limit on the extravagances of judgment of poor management.

The Chairman: I did not understand that to be Senator Carter's question. What I understood it to be was—and your answer was—that regulations which would be enacted would be general in their application, applying to the whole scale and yet the persons to whom it would apply, some of them may be poor managers and have poor judgment as directors in charge of an investment company; others may have vision and judgment, and ability to read existing facts and make projections that come true; and the third category would be those which are out to fleece the shareholders.

Now, when you introduce a general regulation, you are putting the limits of the regulations, whatever they may be, on all those categories. It may be that the ones who belong in the fleecing class need some different kind of regulation, and, it may be, regulations that would put them out of business. But this encroaches far on the real purpose of investment companies, and the benefit to the shareholders of the judgment of responsible and capable directors, and if they are going to have to heel, it is like getting a suit from a shelf that is made to the general size on a certain basis, otherwise you get a tailormade suit that is moulded to your own figure—or at least, in theory, it is supposed to be. Have you any comment on that, on the idea of general regulation?

Mr. Humphrys: If the general regulations enacted were such as to interfere with the activities of well managed and sound companies, then I think the regulations would be wrong. I think that any regulations that should properly be proposed under a power such as that, would be regulations that are really derived from the accepted practices of the well managed companies.

How else could anyone judge what rules are sound? I do not think persons administering this act are in a position to substitute

their judgment for the business judgment of sound, successful, well managed companies. I think one would have to go to those companies and say, how is it that they are sound, how is it that they are successful, what practices do they follow, should we not ask other companies to live according to the same kind of rules, to live within the same areas of judgments that these have found have led to their success?

The purpose of this kind of rule would be really to set up a kind of outside limit and say, well, beyond this everyone accepts as being dangerous: within it, it may or may not be dangerous—but no set of general rules can distinguish so precisely as to say that if you are on this side you are fine and if you are on that side you are in trouble.

The Chairman: This is a speculation, as to how the Governor in Council may function under clause 22, but the regulations that are in existence today may be changed in three months. Economic conditions are such, and the judgment of the directors, to the extent that it is interfered with by the regulations, will not permit them to do things which in their judgment is good business to do, notwithstanding the then economic situation. That is why, on regulations which may be here today and changed tomorrow, you may be influenced by the economic pattern. The directors, those who are well informed and capable, who have a broad view, may say "we can ride this out" and then they need a regulation in the meantime. For instance, in the Canadian and British Insurance Companies Act, there is some recognition of that in a provision which says that when you go to appraise the value of securities in the light of a depressed situation that exists, you do not necessarily have to appraise at the value that you might strike, at that very instant; you must not take a lower value than what it was in the last financial statement, and the idea of this is to prevent yourself from swinging too far, because of the then existing depressed condition, and you may do more harm than benefit to the company.

My own view, of course—you know what my view on regulation is—is that a regulation should be purely administrative; and under one or two instances here where we have gone with the idea of permitting the regulation, when we thought it was substantive law, we provided that in a certain period of time, whatever the regulation or definition was at that time, it then had the force of law and could only be changed by statute—and I think these are really substantive things that really should be in the legislation.

Senator Connolly (Ottawa West): Mr. Chairman, if I may interrupt at this stage, I understood Mr. Humphrys to say, at the end of one of his statements, that if we got into a question of providing regulations, if they were broad enough in scope, if they were to be broad in their scope and to have teeth in them, that they should be put in the legislation rather than in the regulations. In other words, I infer from that that he contemplates this legislation being modified, after experience has been gained and amendments made to it, to have general application to special categories within this broad field which you define in section 2. I take it you contemplate the possibility of amendments to the act to replace things that you could now do only under section 22.

Mr. Humphrys: Yes. I think I could say that as far as my own views are concerned, if we knew enough about the companies that are being dealt with here to propose sound rules I would recommend that they be written into the law. But we do not, and this at least provides machinery for enacting rules if they are thought to be necessary. It also provides the other side of the coin that the chairman mentioned, the ability to change them more rapidly, which we have found from experience is frequently desired by the companies affected as long as they have confidence in the use of that power, because it enables them to adapt more readily. It works both ways. It may be dangerous on the one hand if you want protection against administrative recommendations. On the other hand it may be advantageous since it permits them to be adapted more readily to what will be, for time anyway, a fluctuating situation.

Senator Connolly (Ottawa West): I apologize for asking these questions, because I think we have got away from the prescription the chairman laid down at the beginning.

The Chairman: I think I contributed to it.

Senator Connolly (Ottawa West): Perhaps I could be permitted to ask this one further question. There is such a thing as having a certain prescription in an act and that can only be changed by act of Parliament. This is an inflexible thing almost because of the difficulty of getting amendments. There is such a thing as having a regulation, which can be arbitrary, which can be inadequate,

which can be discriminatory, which can be fluctuating for a company, and then it is a matter of that section of the industry persuading the officials that a regulation of that character should be changed, or if you are writing it that it should be written in a certain way.

Then there is the other authority, I think, which you would probably have under section 22, to issue rulings in certain individual instances. For example, you might be confronted with a practice. You talked about companies' practices and the practice within industry. You say you would like to know more about what their practices are and how good and sound these practices may have proven to be in fact. You may be required at times perhaps to issue a specific ruling that you can do a certain thing at a certain time and still be within the ambit of the act and not offend the regulation.

The Chairman: On the point you are making, I think the provisions of the bill go this far. The company gets a certificate of registry and if any of these situations develop which you envisage in the proposition you are putting forward the minister does have the power to suspend the certificate of registry and immediately to issue another certificate, so that the people are not out of business. However, they do not call it a ruling; they call it "with conditions" in the certificate. If you are prepared to adhere to the conditions you can still operate, because the moment your certificate is cancelled you cannot operate. That is a correct statement, is it?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Having asked the question, I appreciate what you have said and I should like to suggest, Mr. Chairman, that we return to the original idea you enunciated.

The Chairman: Mr. Hockin has something he wishes to say first, and then we can get back on the rails.

Mr. A. B. Hockin, Assistant Deputy Minister, Department of Finance: The comments I want to make are really addressed, I think, to the question you raised, Mr. Chairman.

Senator Kinley: Mr. Chairman, there is one question I should like to ask.

The Chairman: Mr. Hockin has a statement to make, then we will get back to your question.

Mr. Hockin: The comment I wish to make relates to the desirability of being in a position to take some action when you began to know that a company was in difficulty and the criteria that you use for knowing whether the company was in difficulty. I think the problem Mr. Humphrys faced in trying to draft the bill as it appears before you was the very one he has emphasized, that the development of modern financial institutions, or modern institutions generally, has been very rapid in the last few years. The nature of their business has been developing rapidly, has been capable of change within the well known patterns of behaviour of corporations, and the whole sophisticated financial community is having difficulty in understanding all the thrust of these movements, let alone the unsophisticated investing public.

Certainly the attempts that have been made in recent years within the financial community to understand more about the nature of the activities of some of these companies and what is considered sound practice and what is considered unsound practice lies, I think, behind what has been described as caution in this approach.

I think we have been very much aware of studies that have gone on, for example amongst the investment dealers in connection with the activities of finance companies. The investment dealers themselves have tried to work out certain rules of thumb as to what they consider to be sound practice. Some of them wanted to have agreement amongst themselves on what paper they would handle having regard for the kinds of practices that were being followed by the companies, but these are very difficult things to be sure about. Perhaps this area is one in which more work has been done in the financial community than any other.

There are others in which the corporations involved are quite unique; each one is unique; each have their own particular interest, their own particular expertise, and it is very difficult for anybody to be able to say what is sound practice and what is not. Therefore, as Mr. Humphrys has said, the whole thrust of this legislation at the beginning is to find out what companies do.

The question that you posed to Mr. Humphrys is, "Are you not in a very difficult situation if, as a result of your inspections, your gathering of information, you know that a company is in a dangerous position, and you can do nothing about it until Part II comes into play?" I think Mr. Humphrys' reply real-

ly is "I doubt that before the two years are up we would really be in a position to have a judgment ourselves as to whether they are in a dangerous position or not."

There may be an occasional exception to that, but the knowledge, certainly of the administrators within the public service and, I would suspect, in the financial community, at this stage, of what is sound practice and what is not, and what is a dangerous position and what is not, is so imperfect that we would all be very chary about passing judgments until we knew a great deal about the operations of the company.

The Chairman: Just on that point, I was wondering, before you are through, if you would address yourself to this question, if you need any regulation or power to regulate at all, except for administrative practice.

Mr. Hockin: The question of whether we would need it eventually or not is an open question, I think, Mr. Chairman. I would suspect that the performance of the financial community in trying to reach certain rules of performance which they thought justified—say, for investment dealers from agreeing to handle the paper of companies—suggests there may well be certain rules of performance and standards of behaviour, along the lines of those referred to in section 22, which will eventually become desirable.

I would think too—and this you may wish to hear from some of the companies concerned—you may well find some of the better regulated companies really feel the whole reputation of their industry would be improved and that their own ability to attract investors in a confident way would be improved if they were able to say that the operations of their type of institution were in fact regulated in some way, not merely that they reported statistics, but also that they operated within a particular pattern that had been agreed upon.

Senator Connolly (Ottawa West): Which can shift.

Mr. Hockin: Yes, which can shift, that is right. It can shift very quickly.

There was one other point I wanted to make, and that is that we are talking here about a wide range of companies. The spectrum goes from companies whose operations are perhaps of longer duration, that people are more familiar with—perhaps such as some of the finance companies—through to other types of companies that perhaps have just sprung into existence in the last five years and whose operations may be quite different. So, when we talk about regulations, it is quite conceivable that regulations might have to distinguish between different types of companies.

At this point we are not even in a position to say what types of companies there are, what families of companies; whether there should be one set of regulations, three, five or whatever it is. It may well be there would be quite a different set would be appropriate for different types of institutions. But at this stage we are really still so ignorant about the manner in which these companies operate that we are not in a position to say what types of regulations would be necessary, or how many types.

The Chairman: You say that until your sanctions come into force in Part II, you may need regulations in order to deal with situations that require attention. What I was asking you to address yourself to was the question of the need or necessity for regulations other than simple administrative practice, for this reason, because the moment I get a certificate of registry, that is my franchise, my right to do business. The minister can recall it; he can cancel it; he can suspend it.

Senator Connolly (Ottawa West): You cannot get that for two years.

The Chairman: Under Part II.

Mr. Hockin: Yes.

The Chairman: So at that stage the minister has all the power without any regulation as to type of investment at all. I say that because he has a report, he studies the report and says, "This company must do something or it should not continue to operate." So he cancels or suspends, and he may reinstate with conditions. The conditions form the "club" that he uses for the company's operation.

With that set of provisions in the statute, why should not there be a more or less general freedom in the companies to invest? Possibly there are some more transactions, prohibited transactions, you could put in, because the prohibited transactions you have put in so far have no relation to the quality of the investment, but are only against certain classes. You could have prohibited transactions in relation to certain investments, as to the percentage for mortgage loans or individual loans, or something of that kind.

But what is the objection to freedom of investment, with control by shutting off the right of these people to operate at any time which is by suspending or cancelling their franchise?

Senator Connolly (Ottawa West): Mr. Chairman, are you not anticipating something, namely, the revocation of the certificate of registry? Part II, under which this certificate is issued, will not come into effect for two years.

The Chairman: But we are approving of it now.

Senator Connolly (Ottawa West): But the sanction cannot be applied for two years, and in that time, as both Mr. Hockin and Mr. Humphrys said, they are powerless to use Part II because they are still going to be gathering information.

I was wondering whether part of the reason for suspending Part II for two years also did not arise from the fact that no federal company, as was said at the beginning of this hearing, is getting experience of any of the difficulties that have been experienced by some provincial companies that have gone under.

The Chairman: It did not appear. There may be some in the corridors or in the wings; we do not know.

Senator Connolly (Ottawa West): Do you get any consolation from the fact the two years' suspension is warranted partly because you have not had any trouble or there has not been any trouble with federal companies?

Mr. Humphrys: We should certainly get some consolation from that. I would not like to leave the impression, if I have, that there is some imminent situation, just around the corner, we are frantically trying to take care of. That is not the case, but in the light of what has happened, it seems desirable to establish an appropriate system. In this regulation part we do not contemplate the kind of action you describe, where a ruling or an enactment of the Governor in Council would be aimed at a particular company, to try to tell it to do or not to do something. We are thinking rather of the pattern that Mr. Hockin described where a particular family or group of companies engaged in the same type of business—it may be a fairly homogeneous type of business—may have developed useful guide lines that they are complying with, and that they only wish that other companies that are now in the field would also comply with. We could consult with that group of companies, and we felt that by having the power to make regulations we could move earlier than would be possible through legislation.

Senator Kinley: I should like to ask if there is any degree of government security in this legislation.

Mr. Humphrys: There would not be any guarantee by the Government of, or any obligation assumed by the Government for, the financial positions of companies.

Senator Kinley: Well, there is insurance, is there not, on an investment of $20,000 in a trust company?

Mr. Humphrys: The plan of deposit insurance insures deposits in banks, trust companies and mortgage loan companies.

Senator Kinley: There is nothing like that in this legislation.

Mr. Humphrys: No, senator.

The Chairman: Mr. Humphrys, is there any type of investment that you have not reached out to cover in your definition section?

Mr. Humphrys: No, there is nothing that we deliberately left out.

Senator Connolly (Ottawa West): I wonder, Mr. Chairman, if you would repeat your question. It is an important question, and I did not hear it clearly.

The Chairman: I asked if there is any type of investment that has not been included in the list of investments that would be subject to this statute. I am referring to the enumeration in section 2.

Mr. Humphrys: It was not intended to exclude any particular class or type, Mr. Chairman.

The Chairman: I notice that you have included Government bonds, and bonds that are guaranteed by a government or a municipality. Do you see the kind of situation where it might be necessary to supervise the operations of an investment company that confines its investment to this area, or to the extent that it invested in this area?

Mr. Humphrys: Perhaps I should let Mr. Hockin from the Department of Finance answer that, Mr. Chairman. Subclause (C), is in for completeness only, since subclause (A)

talks about bonds, debentures, notes or other evidences of indebtedness of individuals or corporations. If there were a company that borrowed money and invested solely in Government bonds . . .

The Chairman: It would still be required to comply with the provisions of this act?

Mr. Humphrys: Yes, it would still be covered by this legislation, but it is unlikely that any such company exists.

The Chairman: And it would have to pay its share of the cost of administration. You say it is unlikely, but I do not know about that. There may be many of these industrial companies which limit their portfolios to investment in bonds.

Senator Dessureault: Mr. Humphrys, I should like to have your views on the definition of "subsidiary company". It might be a subsidiary of a provincial company or a foreign company. How can you cover such a company by this legislation?

Mr. Humphrys: This legislation might require the parent company to present a consolidated statement, including the operations of its subsidiaries, but it specifically excludes from any requirement of reporting or inspection a company that is not federally-incorporated. The section says:

> For the purposes of this Act, a corporation is a subsidiary of an investment company if it is controlled, directly or indirectly, whether through another corporation or corporations or otherwise, by the investment company and, for the purposes of section 6, only if it is a corporation incorporated by or pursuant to an Act of the Parliament of Canada.

Section 6 is the section that leaves a company open to inspection. So, the investment company might be required to provide information about its subsidiaries, but this would not reach out to make a subsidiary do something if we had no jurisdiction over it.

Senator Giguère: Mr. Humphrys, do you know if there is similar legislation in existence, or in the planning stage, in some of the provinces?

Mr. Humphrys: No, I am not aware of any legislation precisely of this type, senator. I think that a number of provinces are giving consideration to this type of problem because of the failures that have occurred, but I am not aware of anything that is actually in the proposal stage.

The Chairman: I can tell you, Mr. Humphrys, that I have made some inquiries. In Ontario it would not appear that there is anything similar to this in contemplation. They introduced a year ago a bill called the Business Corporations Bill, which is more or less unrelated to the aspect that we have in this bill. That bill has had public distribution, but has not been proceeded with. I think what they are awaiting are revisions that may be made by members of the public who are concerned. It may become law this year or in another year. Otherwise, in Ontario, although they have a committee sitting that is dealing with the various aspects of corporate law and disclosure, and such things as that, there is nothing that touches this aspect. I do not object to that, as long as it has value.

Mr. Humphrys: Ontario has greatly strengthened its authority through revision of its securities legislation.

The Chairman: Oh, yes.

Mr. Humphrys: And also some other countries have legislation of this type. For instance, in the United States they have an investment companies act which, although it is not exactly the same as this, does have a similar basic purpose.

Senator Phillips (Rigaud): I should like to direct your attention, Mr. Humphrys, to section 22 where reference is made to the fact that that power is given to make regulations pertaining to levels of paid-up capital and surplus, and ratios of outstanding debt to paid-up capital and surplus.

Mr. Humphrys: Yes.

Senator Phillips (Rigaud): Do you envisage the appropriation of authority to insist on the liquidation of outstanding indebtedness in whole or in part even if there were no default, and even though the bondholders, or the trustee representing such bondholders, raised no question?

Mr. Humphrys: I do not think that it could possibly be contemplated, senator, that regulations would be enacted that would have such a slashing effect.

Senator Phillips (Rigaud): What is meant then by the words:

> . . . without restricting the generality of the foregoing, may make regulations per-

taining to levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus...

Let me give you the intent of my question. Suppose the paid-up capital and surplus of a corporation is $1 million, and the outstanding indebtedness is $500,000, and you come to the conclusion that the outstanding indebtedness is dangerously high in relation to the paid-up capital and surplus. Suppose also, that the directors of the company, the management, and the creditors of the company, have no objection to the set-up, having regard to the particular nature of the business of the company, and having regard to the length of maturity of the indebtedness. Suppose you conclude that an indebtedness of $500,000 is too high in relation to the paid-up capital and surplus of that company. I think you have the right to determine that an outstanding indebtedness of $500,000 is too high, and that you have the right to order that company to reduce its indebtedness by $100,000, even though the management, the shareholders, the trustee, or the bondholders have no objection to that particular ratio in respect of that particular company. But, why do you ask for authority of such a broad nature when it is not likely that management and others in interest may not have any objection to such ratio.

That is my first question, and with your permission, Mr. Chairman, may I put a second question while I am on my feet?

The Chairman: Yes.

Senator Phillips (Rigaud): You have asked for authority to deal with regulations in respect of these subject matters, under Part II, until such time as you have studied the effect during the two years. You propose measures under Part I and then come back to Parliament and ask for particular powers which may be more restrictive in their nature and based upon your study of the subject matters.

Mr. Humphrys: On the first question, the interpretation suggested, was certainly not the interpretation sought here. The kind of regulation that would be contemplated on the ratio of debt to capital would be arrived at in a particular type of company, where, in consultation with the companies, from observing the practices followed by the better run companies, it might be determined that perhaps for that type of company in the general type of business that that company is in, it should not borrow more than say ten times its capital and surplus. If that were considered to be a good guideline accepted by the pattern of companies, then we might proceed and recommend to the Governor in Council that they enact such a regulation applicable to a defined type of company, and then they would all have to live within that.

The Chairman: If you stop at that, then you are doing something you said that was not intended, when I asked you about the regulations being general in nature, as distinct from being regulations that dealt with individual situations, or even with a group of situations in one category.

It seems to me that the first thing that we have to settle is, what is the concept of the authority that you are asking for, what do you intend it to cover? It is most general, and you are getting it so general that, within that structure, you can still have regulations that will apply only to some aspects of investments and to some companies.

Now, immediately you get that kind of freewheeling—and this is no comment on you, I am discussing the Superintendent of Insurance function here, in an objective way, because if you are any person else could give me an assurance of continuity in the office of Superintendent of Insurance of a certain gentleman whom we have known for years and respect, we might proceed a little differently, but we cannot do that, there is no way of legislating on that. Why take this broad power and then have the concept of individual applications?

Mr. Humphrys: If I have made a statement that is incorrect and misleading, I want to correct it, because we did not have in mind in this section enacting rules that would apply to specific companies only. They would be regulations of general application. But, because of the variety of companies that would be covered by this proposal, it might well be, and I think it would inevitably be, that the companies would break down into a number of classes or groups, in the light of the particular type of business that they do and the kind of guideline for financial management that might be appropriate for one type of company would not be appropriate for another.

But any regulations that were sought under this section would be of general application to a group of companies that would be of sufficient homogeneity to make a single rule useful and significant in relation to their operation.

The second question that Senator Phillips raised was, if we really feel the need for regulations, why not put them in Part II, ask for the power in Part II, and wait until Part II comes into force. It is a very valid comment, and it is a possible line of procedure. It was put in Part III to come into force when Part III came into force, since it was considered quite possible that the companies, or some groups of them, covered by this bill, might wish to have guidelines appropriate for their broad type of activity, or it might be generally in the interests of that group of companies to adopt certain rules before the expiration of the two-year period, or whatever additional period may be needed in the circumstances.

That was the reason it was put here, rather than in the other; but it is a point of view that is I think essentially a matter of judgment as to where it goes, one place or the other.

I should say, too, that while the administering authority would no doubt generate the proposal to the Governor in Council, the decision is not in the hands of an administrative official. It goes to the Governor in council and there is a far greater formality than a ruling by an appointed official.

Senator Connolly (Ottawa West): Again I apologize, because I think we are pretty much away from the main track.

The Chairman: It is pretty hard to stay on the track. It may be that I laid down a rail that was too narrow.

Senator Connolly (Ottawa West): I do not think so, but time is getting on and it may be that Mr. Humphrys will have to come back to complete the general discussion.

Before a regulation is enacted governing a group of companies in a certain area, would you contemplate consulting the industry, before you made the regulation?

Mr. Humphrys: Very much so, senator. It would be quite defeating to the purpose of the bill, and the public purpose that was served, if any administrator, or if the Governor in Council, came out with regulations that really had not had the most thorough consideration in discussion with the people who would be affected by them. This has always been the pattern that we have followed in our supervisory activities.

It has been my experience that regulation, and indeed legislation, usually follows the good practice rather than cuts in to make massive interference with normal practices in soundly run companies.

Senator Burchill: We have been talking about preparing regulations. Would regulations cover the type of investment, or the percentage of the type of investment that a company should invest in?

Mr. Humphrys: It was not so contemplated, senator. This was not an attempt to lay down categories of investment.

The Chairman: While a lot of questions occur to one, Mr. Humphrys, maybe we should try to get back to the general guideline that we laid down as to the various sources from which information and material came as the result that we have this bill before us, and what consultation was there with those who might be affected, if any; and of course to the extent that a broad form was the result of a policy decision, we are not asking you to deal with that; we can form our own judgment. Therefore, on the genealogy—will you finish with that?

Mr. Humphrys: To get back on the track—I am not just sure what the station was that we got off at—there have been discussions from time to time with companies that would be our types or that would be covered by this bill—not in terms of specific legislative proposals but in general terms as to the point of gathering information, of possible inspection of what might be done within some reasonable legislative structure.

The main impact of this bill is, as I have emphasized, gathering information and providing for inspection, and subsequently control provisions as respects companies that are weak. In Part II the certificate of registry technique is adapted from that used in the legislation administered by the Department of Insurance already. It contemplates the possibility of conditions being imposed in the certificate and the ultimate withdrawal of a certificate as a final step. However, I should emphasize that on the basis of our experience these are steps that are very rarely taken, but it is important in any supervisory control to have a series of steps that supervisors can take to get things done when they are faced with companies that are in a bad situation, and where you may be faced with the refusal of the management to do things that need to be done to improve the situation.

I think it would be less effective to provide no intermediate stages between that of per-

suasion and that of execution, because in a supervising pattern no one wants to be faced with a situation of having to withdraw the certificate and the consequences of that, which would almost inevitably be termination of the company. This is a stage that is reached only after all possible efforts have been exhausted to save the situation, and it arises only in the most unusual circumstances.

The Chairman: On the general provisions, the principle you seem to have followed here was to have this bill cover every type of investment under your definition of "Business of investment" and then to provide a procedure for exemption.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: In the Investment Companies Act in the United States they provide a general definition of "investment", and they provide substantially by way of exception, the exceptions which are not included. The difference is, of course, that the person under this bill which you have would have to apply for an exemption, and the minister could grant the exemption but could recall it at any time. Did you consider the question of a general definition and exceptions?

Mr. Humphrys: Yes, Mr. Chairman. The reason the bill was set up in this way is the one Mr. Hockin has described, that the variety and complexity of companies in this field is such that it was thought the best course was to try first to find out what companies are operating in this broadly defined type of business, where they are incurring the obligation of debt instruments and using a certain proportion of their funds for investment. Recognizing that in casting the definition so wide it would certainly sweep in companies where the borrowing and investing activity is incidental only to the main operation, it would be important to provide machinery for exemption when the various companies are looked at, and a judgment can be formed on that basis.

Senator Connolly (Ottawa West): When you are talking about exemption, what section are you talking about?

Mr. Humphrys: Section 3, subsection (2), on page 3 of the bill.

The Chairman: Had you thought of providing a general definition, exceptions and exemptions?

Mr. Humphrys: We found it difficult to arrive at a positive definition. We can arrive at definitions at certain classes of company, but by reason of the fact that at this stage we are not sure how many companies exist and the variety of businesses or practices they are following, we thought that as a first cast we should try to learn of all companies in this broad category, and then to follow the exemption technique for companies that are clearly not of a type that we wanted to carry through with the rest of the machinery or procedures.

The Chairman: What I have in mind—and I am sure this knowledge is in your department, or is available in the corporations branch—is that you would have companies that are industrial companies or commercial companies which would have borrowings on the security of their assets in relation to these manufacturing and commercial operations. In addition to that, it may be that some of their money which is not immediately needed for purposes of the business, or some of the money when they have a special flow of money at certain times of the year, is available, and in order to make it work in the interests of the shareholders they invest.

Let us assume the investment might temporarily exceed 25 per cent of the assets. Is that not the type of company where exception should be provided in the general definition either one way or the other, with a condition which must exist in order to bring you into the business of investment so that the borrowing is in relation to financial transactions. If the borrowing is a borrowing for construction of plant and equipment, or financing your inventory, then that should not be correlated to the investment in larger or smaller amounts as we have the separate moneys available from time to time. Should that be intended to be covered? Is that not an exception that you have to state in any event?

Mr. Humphrys: First there is the problem of tracing the dollars. You can never be sure which dollar is used for what. We attempted to deal with the problem in two ways. One was to provide the 25 per cent, to say that unless the investments were at least 25 per cent of the assets they were not in. Admittedly 25 per cent is an arbitrary figure, but it is a figure to try to mark a point where the investments become a significant part of the operation of the company as distinct from its industrial commercial activity.

Thirdly, it would provide for exceptions if it can be shown that the borrowing or investing activity is incidental only. In a company that is essentially an industrial or commercial company, if its pattern should be that from time to time, it has a flow of cash or funds that result in more than 25 per cent of its assets being in investments, such a company would likely apply for, and would almost certainly be granted, an exemption because it would be a situation where it is not essentially raising money for the purposes of investing; the investing activities are incidental only to its main purpose.

Now, there will be cases where it is a question of judgment, but I would be surprised myself if there are many cases that are so close to the particular borderline that they would give rise to difficulty as to whether an exemption should be granted or not.

The Chairman: I could enumerate, on a moment's reflection, maybe as many as half a dozen companies that are exactly of the type I am talking about, large industrial operations which have a flow of cash quite apart from the requirements of their business operations, and who have borrowings secured on the fixed assets, machinery and equipment, maybe, for those purposes; and this extra money which comes in from their operations is invested, as good management would do, from time to time. Why should it even be contemplated that these people are subject to the act and should apply for exemption? You say there is no difficulty in getting it, but you never know that when you apply.

Mr. Humphrys: You cannot describe the companies in a clear category. There is a great variety of them, and one of the difficulties in this kind of field is we know that companies change their direction. They may start off as an industrial company; the pattern may change and, ultimately, they wind up as purely an investment type. They move back and forth and, consequently, we sought this particular power, at least initially, so we could start in by having a look at them and be in a better position to judge and recommend the kind of definition the Chairman is describing.

Mr. Hockin: Mr. Chairman, might I comment briefly on this? I think there is no suggestion that the intent of the bill is to catch companies whose business, on a regular basis, in their normal operations, is not with investing, but the investment really comes about incident to their flow of cash which they may have at times for the purpose of their regular business, be it industrial or commercial. The intent of the exclusions which Mr. Humphrys has described, and as he has said, is to take that company out of the ambit of the act.

The Chairman: What intent? Whose intent?

Mr. Hockin: It is the intent of the drafters of the legislation to make sure they are not caught.

The Chairman: Is not what we are governed by the bill as it passes, what it says? Under the definition, these companies of the character I have described would be investment companies.

Mr. Humphrys: The would only be within the ambit of the bill if their investments were over 25 per cent of their assets, and if it could not be shown the investments were only incidental. There would be a range of categories. At some point the investing activity becomes a major activity of the company. What that point is, is a matter of opinion and judgment. It has been suggested that once it passes 25 per cent, then the company, if it wishes to be exempt, should take the initiative to show that notwithstanding the fact that more than 25 per cent of their assets are investments, their investment activity is still incidental.

The Chairman: Why, if they have not borrowed any money in relation to these financial transactions?

Mr. Humphrys: I would have difficulty in determining whether they had borrowed money in relation to those transactions or not. If they had debt outstanding, some dollars flow into the corporate enterprise to be used, and whether they are used for one purpose or another, I do not know whether it could be established.

The Chairman: Let us stay on general, substantial things. Say you have an industrial company that is proposing to construct a new plant, and it borrows money on the security of its fixed assets, equipment and machinery, say, for that purpose, and the provisions for advancing the money coincide with progress on the construction, so you know very well where the money has been used; or in the case of other companies by studying the company's growth and development, you can see where borrowing has been utilized on the fixed assets of the company, and their

earnings are good and they have built up a surplus and they are not paying it all to the shareholders, but they must, as good managers, make it earn money, so they invest it. Those things are not difficult to determine, and what I say is, why should they be brought in, for one instant, in the definition of an "investment company", if their borrowing, which they must have in order to meet the definition of "business of investment", has no relationship to the financial transaction?

Senator Connolly (Ottawa West): Even if it is more than 25 per cent.

The Chairman: Oh yes.

Senator Connolly (Ottawa West): If you put the 25 per cent provision in.

The Chairman: The test is 25 per cent or more.

Senator Connolly (Ottawa West): Where would you put the 25 per cent limitation in if you did put it in—in section 3(2)(a)?

Mr. Humphrys: It is in now, Senator Connolly, in paragraph (f) of subsection 1 of section 2. That is on page 2. It states:

> (f) "investment company" means a company... (ii) that carries on the business of investment and at least twenty-five per cent of the assets are...

invested.

The Chairman: That gets you back to the old question, the difference between proceeds of borrowing and the use of 25 per cent or more of the assets of the company. They may be two distinct things. The proceeds of borrowing on bonds, etcetera, may be substantially less than the assets of the company. That may only be part of the assets of the company and may be in the form of fixed assets, such as equipment and machinery.

Mr. Humphrys: The general approach or philosophy here was based, again, on the idea of first trying to learn about the companies; then adopting the kind of definition or distinction or classification the Chairman has described.

The Chairman: I notice that in the Investment Companies Act in the United States they follow the method of having a general description of investment companies. Then they deal with both exceptions and exemptions. We might not have just that situation they are encompassing, but they have a general definition. I was wondering whether you would care to comment on it. Their general definition of an investment company is:

> Any issuer which has or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

That is pretty general.

Senator Burchill: Why not leave it at that?

The Chairman: And then put in your exceptions and the right to qualify for an exemption?

Mr. Humphrys: It would be an approach to propose this type of legislation on a specifically defined class of companies. It would then leave us in a position where we would know of the companies that are in this broad class. We are not now in a position to say to the Government, or to a committee such as this, what kind of definition would cover the companies that, in the public interest, should be subject to a piece of legislation such as this. That is why we have adopted this rather broad beginning of first saying, "Well, let us first cast a broad definition and grant exemptions."

The definition that the chairman has read is in the investment companies act of the United States, which was enacted in 1940. I believe with the kind of problem we are facing now, with the developing complexity of companies that are in the financial intermediary field in one fashion or another, is quite different from what it was then. We feel that it is important that there be some source within the Public Service where knowledge of this broad category of companies can be put together, at least in an initial way.

I recognize the point that the chairman makes, that it is a bit repugnant to make this apply to a company that pretty obviously would be granted an exemption, but it seemed that the difficulty there, or the inconvenience that some companies would be put to, would not be of too serious a proportion, and it would put us in a much better position to make useful recommendations as to more specific definitions, and to answer the kind of question that the chairman has put to us, namely, "Would such a definition be sufficient or appropriate to deal with the kind of company that the public interest suggests?" This

is really the reason and the rationale of this approach. Whether anybody agrees with it or not is another matter.

The Chairman: Yes, that is a decision we have to make at some stage. It is clear that investment practices and the kind of investment, have changed materially over the years. I agree with that. But, an investment is still an investment, and while the form and character of it may change you have drawn your terms of investment in such broad terms that when asked if you had left out anything you said, with a twinkle in your eye, "Not with knowledge". So, you have drawn it in a way to cover what may be today's type of investment. I am not criticizing that, although I am wondering why you bring in Government bonds. I am opposing it from the other point of view of bringing in on the basis of borrowing companies that do not use the borrowing for any financial purposes. You use that as satisfying the condition that if they have investment of 25 per cent or more than they are subject to the provisions of this act, unless they can beg off on an exemption. I do not think they should be put in the position of begging off. I think it should be one of the exemptions. They should not be brought in.

There is the point that they may shift back and forth, and I think Mr. Hockin or Mr. Humphrys said—or perhaps it was both of them...

Senator Connolly (Ottawa West): Would it be fair to ask you at this point, Mr. Chairman, how you would exclude them?

The Chairman: Yes, I have a draft of a form of exemption which, I can tell you quite frankly, was proposed in a letter written to the chairman of this committee by Alcan Limited, which has a range of operations and which borrows and lends money in areas that are what they call non-financial. They consider that those are real areas that can be determined by examination, and that should be excepted.

Senator Connolly (Ottawa West): I had no company in mind when I asked the question.

The Chairman: Well, there are other companies that we have incorporated by special act over the last number of years in which there is a consortium of banks and industrial businesses. They have borrowed money on the security of bonds, et cetera, and they have loaned that money. These are not operations of the character that seem to me should be included in the business of investment for the purposes of this bill.

Senator Connolly (Ottawa West): Would it help if the 25 per cent level were raised?

The Chairman: I do not think so.

Mr. Humphrys: I think it would definitely indicate a change in the emphasis of the activities of the company.

The Chairman: If they had 50 per cent—yes, I suppose it would.

Mr. Humphrys: It would indicate that the business of a company is shifting.

The Chairman: Well, would it?

Mr. Humphrys: Well, if you get to 100 per cent then you have obviously reached...

The Chairman: There are some companies that have a variety of businesses, and it is the sum total of them in respect to which they have to account for tax purposes. They may have a variety of businesses. Some of these investments may be in subsidiary companies that are carrying on some phase of their operations, and yet as between the subsidiary and the parent that would be an investment.

Mr. Humphrys: Yes, Mr. Chairman.

Senator Macnaughton: Does this mean that if I have short term money I cannot invest it quickly on a good security without first obtaining consent?

The Chairman: This is what it looks like, if you have been the borrower.

Senator Macnaughton: But perhaps the opportunity has gone.

The Chairman: If you have been a borrower and 25 per cent or more of your business—there are some industrial companies which will lend perhaps not 25 per cent but close to it over a weekend. It is short term money.

Senator Macnaughton: Is it physically possible to get consent within 25 minutes, say, by means of a long distance telephone call to the Superintendent of Insurance? If it is not, then my opportunity has gone.

Mr. Hockin: May I say a word here, Mr. Chairman?

The Chairman: Yes.

Mr. Hockin: As I said earlier, the intent is not to catch a company that happens to have

that kind of money for a short time. there are some companies that have quite marked seasonal fluctuations in their cash positions. I do not think the intent is to catch those. It may be that we can work out some sort of wording that would catch the idea of "regularly employed" that would answer this particular question.

But, I would also like to raise the question with you about the types of companies which I think you had in mind, Mr. Chairman—those companies which are industrial companies. Let us take as an example a company that began as a manufacturer of widgets at a time when the widget manufacturing business was very good. They gradually acquired some financial reserves which they thought they would invest. Their first thought would be to invest in something ancillary. They may go down to buy a source of supply of some of their raw material, or to buy a retail outlet, or what have you. There is a kind of channel there of corporate interest which—

The Chairman: A vertical flow of operations.

Mr. Hockin: That is right. But, you may also get into companies which I guess are called now the big conglomerates which are not involved in just that sort of thing. They say: "Let us buy something that has nothing to do with widgets", and they buy something that is really involved in the manufacture of whosits. They might buy, for instance, a hotel chain in the Caribbean. If that happens you can get a whole family of companies.

Are the people who are buying the bonds of the parent widget company buying the expertise of the management—the demonstrated expertise in manufacturing widgets—or are they really putting themselves in the position of entrusting their money to people who are investing in a wide variety of things? What is the difference in the function of that company from that of a company that declares itself to be in the business of investing in good opportunities wherever they occur?

The Chairman: Let me stop you right there. If the company does invest in conglomerates, or various unrelated types of manufacturing operations; if their investment is of a nature which puts them in effective control of those companies, then what the parent company is really doing is carrying on an industrial operation, but it has used this vehicle of acquiring effective control to do it. The question is whether that should come within this definition of investment.

My concept of investment, not as a matter of law but just as the concept that the public might have, does suggest that you are buying into something for income or for capital gains and therefore you are relying upon the ability of the people whose shares you buy, that their view is that it is a good operation. If it is a financial operation, there is no question about it being the business of this house. If it is basically a commercial or industrial operation, if we want to look at it—and again, because I said I do not agree with this or that, Mr. Humphrys, I am not prejudging or making a decision as to what we eventually will do.

Senator Molson: There is also a degree to which any company invests. If a company goes out and gets three or five or 11 per cent of an investment company, it is making an investment, but a lot of those companies you are speaking of, whose main objective is industrial or manufacturing, as a rule would tend to invest in a very, very substantial minority, or probably more often a majority position in those companies. And if they have a majority position, where they have responsibility then, their primary objective is manufacturing and is not financial. If it is manufacturing, it is a widget company we are discussing, unless it is a company in the financial sector.

The Chairman: I am not sure what a widget is.

Senator Molson: I think they sell very well, Mr. Chairman, if the price is right.

Mr. Humphrys: This raises quite an important point on the holding company with wholly-owned, or controlled subsidiaries.

The Chairman: I used the words "effective control" because that could be less than 50 per cent.

Mr. Humphrys: This proposal would treat a holding company, if its assets were shares of subsidiaries, as an investment company. It is recognized that the definition covers such a company.

The important point is that, with the growth of the holding company technique the conglomerates under holding companies, you may have a wide variety of companies under it—is there a public policy to be served by

getting some information on that company and on its holdings in relation to its debt obligations?

Now, this contemplates that it is important, that there is a public interest to be served by getting information on such holding companies, even if the family that they have are a series of manufacturing or industrial companies—and financial enterprises as well.

The Chairman: That may be an interesting calculation, but why do you say the public, as such? They might be interested in getting it, but until you justify that they should get it—

Mr. Humphrys: I do not say that the public should get it, but I say, is it be in the public interest that that information should be gathered by public officials in this country and be subject to this kind of analysis.

Views may differ. Some views may be that if it is not merely investment it should be excluded; other views may be that because of the rapid growth of holding companies and the associated conglomerates they should be included, and that the body which created the company should have a flow of information about it and what it is doing. I wanted to open up that particular issue, because it is an important one.

Senator Molson: Why do we pick out conglomerates? It seems to me that under this heading you are going to have a great many of the operating companies of Canada—companies who have borrowed some money and who have used that money to buy shares, and so on. For exemple, I think of the big breweries, and of the investment companies.

The Chairman: The word "conglomerates" came in, but in the examples that I was using I was thinking of an infinite variety of industrial and commercial operations.

Senator Molson: But it goes wider than that. It seems to cover practically every company in Canada, which will be sending in these nice returns to you. I think you will have to get more staff and I wonder what the Glassco Commission Report says about this?

The Chairman: On the general line of discussion which we started out on this morning, Mr. Humphrys, and all the factors that take part in the creation of this thing, or your relationalization of it, are there some aspects that we have left? There are one or two I think of and it would take only a few minutes, but are there any that you think of?

Mr. Humphrys: As respects the general background, I think that we have covered it, without going into details on the bill.

The only other point I would like to emphasize is that, at this stage, it is essentially a reporting and inspection stage, with the exception of clause 8, which deals with certain prohibited loans and investments. That is perhaps a question that should be discussed in terms of the clause.

The Chairman: We have to look at Part II, because when passing the bill we pass Part II as well. The only thought I have there—and I will try to make it general—is that you have provided very elaborate machinery for the minister, when he made his decision on the basis of your report. You have provided that an interim receiver may be put in right away; you have provided for the proceedings in regard to the winding up of a company under the Winding-Up Act; you have provided for direct intervention in any bankruptcy proceedings which may be launched; so you have provided for all these proceedings which, in their scope, exceed the remedies and the authorities that are available to the minister, in relation to other companies under other acts, the Loan Companies Act and the Trust Companies Act and the Canadian and British Insurance Companies Act. Then you go on, and in clause 26 you realize you have a problem, because you provide that:

> Nothing in this Act affects any right or remedy of a person who lends money to a company to which this Act applies on the security of bonds, debentures, notes or other evidence of indebtedness of the company.

I expressed a liking for the provisions in the Trust Companies Act and the Loan Companies Act that is, the minister, when this situation appears and the minister is satisfied that it does, the certificate of the company is suspended momentarily and it must cease to do business, but almost incidentally the minister may issue a certificate permitting it to carry on, with conditions. It is recognized in the Trust Companies Act and in the Loan Companies Act that there is a good purpose to be served by that. The conditions may stipulate a period of one, two or three years to remedy the situation. That time may be allowed, on the representations of the company, so that it may negotiate a sale on better terms than they would get in bankruptcy proceedings or winding up.

Why all these alternative or cumulative provisions for bringing disaster, and terminating the existence of the company—because, first, if you have secured indebtedness, this happening on which the minister purports to act, is in any trustee that I know of, the event of default, which would trigger the trustee into action, and he could go into possession, or an interim receiver could go in. Then the interim receiver who is in there under the trust deed is in the preferred position, and the only way you could move him out of it would be by paying him off. I am not satisfied at that stage the government would want to use government funds to move in and push out of the way the secured creditors with 100 cents in the dollar.

It seems that we have gone too far out and provided too elaborate machinery to deal with this situation, where really all you want to do is to stop these people from carrying on business and incurring more losses, but you are not going to shut them off from operating under conditions, because that is in the interests of the creditors, it is in the interests of the shareholders and therefore in the interest of the public. This is something I would like you to look at, and if you have any comments I should like to hear them.

Mr. Humphrys: Your points are well taken, Mr. Chairman. It was intended in this bill, and it is intended in the provisions of section 15, to make available exactly the same procedures as are available under the acts mentioned. After a special report is made by the superintendent to the minister, where there is trouble the minister can hear the company and he then has a series of courses open to him. He can prescribe a period within which the company should improve its financial conditions and affairs. He can withdraw the certificate and issue a conditional certificate for such terms and subject to such conditions as he considers appropriate, which is something to which you referred, or his final power is to withdraw the certificate.

The idea is to allow a series of steps, depending upon the stability of the situation, depending upon the progress being made by the management in taking action necessary to protect the ability of the company to discharge its obligations. The provisions that are new here and are not found in the other legislation, permitting the minister to apply to a court for the appointment of a receiver or to apply for a winding up order, are in here as a consequence of experience we have had in situations where you impose conditions and tell the company to do something or not to do something and it does not comply.

What then do you do? If you then take the next step and withdraw the certificate, that puts them out of business. The circumstances may be such that under the trust deed there is certain machinery set up so that the minister does not have to take this action, in which case he certainly would not. The idea of permitting the minister to apply to a court for the appointment of an interim receiver is to have an additional supervisory tool which makes it possible to conserve the assets or get certain things done if you are faced with the situation where the management will not or cannot take reasonable steps to conserve the assets and restore the affairs.

We have been faced with a situation such as this and we believe that some power such as this is necessary at the initiative of the supervising authority. Certainly it would make no sense to use this kind of power in a dispute with receivers who might be appointed under other circumstances. In any event it is only a power granted to the minister to approach a court. The court is surely in a position to judge whether the receiver should be appointed at the instigation of the minister, or the representations of other interested parties should be heard as to whether the receiver should be appointed at all. This is only proposed as a right of the minister to approach the court.

Senator Connolly (Ottawa West): You say it is a safety valve?

Mr. Humphrys: It is an interim stage.

The Chairman: Under the Trust Companies Act and the Loan Companies Act if the company does nothing to improve its position, even though it has been granted a conditional certificate, the minister withdraws the certificate and the company is then solvent.

Mr. Humphrys: That is right and I think that is a defect.

The Chairman: Why?

Mr. Humphrys: Because in those institutions now, when they are so deeply involved in a deposit-taking business, one of the vital things you have to look at is the confidence of depositors. You might get into a situation where some action is taken that gives rise to

alarm on the part of the depositors and you might have a run and collapse of the company, at a time when if you could step in through a receiver and get certain things done the company could be restored and preserved.

The Chairman: The appointment of an interim receiver rings the alarm bell too, does it not?

Mr. Humphrys: But not as much as closing the company, and withdrawing the certificate closes the company.

The Chairman: Except that the company requires action at once, and if you say the company is insolvent it triggers the trustee under any secured issues.

Mr. Humphrys: In those cases it is far better to be able to have an intermediate position if necessary, in order to initiate a possible sale or takeover of a going institution as compared with that of a defunct institution, which is a consequence of closing.

The Chairman: I would think the interim receivership power, if you are going to provide anything as a safety valve, is all that is necessary. The thing will resolve itself then. Then I would shut out any proceedings under the Winding Up Act, and certainly under the Bankruptcy Act, because you know what happens when people apply under the Bankruptcy Act. There is quite a distribution of the moneys of the company, which go in directions that are not rewarding to the shareholders.

Mr. Humphrys: I think it was for that reason that they provided the power of the minister to intervene in such proceedings, since if action were taken it might be in the interests of the general body of creditors to have some different disposal of the bankruptcy petition, or the appointment of some other trustee in bankruptcy. It was thought that the minister should have the right at least to intervene because of his responsibility for the company.

The Chairman: I would think to intervene only to stop the bankruptcy proceedings.

Mr. Humphrys: Well, to intervene to place before the court considerations that the minister might think are desirable the court should consider in acting on the petitions.

The Chairman: An interim receiver would do that.

Mr. Humphrys: If an interim receiver had been appointed.

The Chairman: That is why I say that if you are going to provide any of these things in the expectation there may be a necessity for it in one of these cases, appointing an interim receiver would appear to be the most helpful and hopeful way of doing it.

Mr. Humphrys: We would think this would grant the best opportunity for salvaging the situation.

The Chairman: And simply prohibit or stay any proceedings.

Senator Connolly (Ottawa West): If the certificate is withdrawn and an interim receiver is appointed, is there any possibility of his conducting the affairs of the company under a conditional certificate?

Mr. Humphrys: It is provided that the interim receiver would have the power to take conservatory measures and dispose of property that might depreciate rapidly

> but the interim receiver shall not unduly interfere with the company in the carrying on of its business except as may be necessary for such conservatory purposes or to comply with an order of the court.

Senator Connolly (Ottawa West): Does not the appointment of the interim receiver imply the certificate has been withdrawn?

The Chairman: Yes.

The Humphrys: No, at any time after a special report has been made the minister could apply for the appointment of an interim receiver even though the certificate had not been withdrawn. The idea would be that when trouble comes and the Superintendent has had to report, circumstances may exist where the company can continue to operate, but the management maybe, in effect, have abandoned the company or refused to act, and this provides the machinery for keeping the company in operation.

The Chairman: The way the bill takes care of that is, I suggest, if an interim receiver is appointed the certificate may be withdrawn and a conditional one issued, and the condition might be that there is an interim receiver.

Senator Connolly (Ottawa West): Yes.

The Chairman: It seems to me we have taken a fair run at this this morning, in an

attempt to rationalize the situation in relation to the form of the bill, and I would suggest that we adjourn until our next regular meeting day, next Wednesday. In the meantime the transcript will be available.

It may be that Mr. Humphrys and Mr. Hockin, who are set to go to another appointment, will take to heart some of the discussion that has taken place and realize there are areas in which we might usefully make some changes. If so, they do not have to commit themselves next time, but we will either, or maybe both, go into a consideration of the bill and/or hear public representations, because we will notify these various people that they are entitled to attend the next meeting, if they wish, and make their submissions.

Senator Connolly (Ottawa West): I was wondering whether it was contemplated they should come back. It seems to me that section 8, on prohibited loans and investments, is one of the general application. Perhaps we would like to have some discussion about some of the features of that section.

The Chairman: We had some today. You mean section 8?

Senator Connolly (Ottawa West): Yes. Has it been mentioned about Mr. Humphrys returning?

The Chairman: Let us aim at this. We will have the particular discussion on this clause next time and, depending on whether there are representations to be made by outsiders or the public, if there are, we will go on hearing them. If they are not available to come in next time, we can go on looking at the sections and see what we think about them.

The committee adjourned.

First Session—Twenty-eighth Parliament

1939-40

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 15

WEDNESDAY, FEBRUARY 5th, 1930

Second Proceedings on Bill S-17,

Intituled:

"An Act respecting Investment Companies"

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Department of Finance: A. E. Hockin, Assistant Deputy Minister.

THE QUEEN'S PRINTER, OTTAWA, 1940

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 15

WEDNESDAY, FEBRUARY 5th, 1969

Second Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Department of Finance: A. B. Hockin, Assistant Deputy Minister.

THE QUEEN'S PRINTER, OTTAWA, 1969

29483—1

THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29483—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, February 5th, 1969.
(16)

At 11.40 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies", with particular reference to clause 8.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gélinas, Macnaughton and Molson—(9).

Present but not of the Committee: The Honourable Senator Phillips (*Rigaud*)—(1).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

DEPARTMENT OF INSURANCE:
R. Humphrys, Superintendent.

DEPARTMENT OF FINANCE:
A. B. Hockin, Assistant Deputy Minister.

At 12.40 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 12th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 5, 1969

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting investment companies, met this day at 11.20 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, when we adjourned last Wednesday we were considering what we might deal with when we resumed, and Mr. Humphrys suggested he would like to deal more particularly with section 8 of the bill, and I would expect that now he has some rationalization of that to give the committee. Is that right, Mr. Humphrys?

Mr. R. Humphrys, Superintendent of Insurance: Yes, Mr. Chairman.

Senator Molson: Before we proceed, Mr. Chairman, I should like to correct the record of last Wednesday's meeting.

The Chairman: Yes, at what page?

Senator Molson: At page 186 I am reported as saying:

> For example...

and that is the word here

> ...I think of the big breweries, and of the investment companies.

I am sure that what I said was something like:

> For example, the big breweries would be considered investment companies under this legislation.

The Chairman: You have called this to the attention of the committee, and *Hansard* has noted it.

Senator Carter: May I ask a question, Mr. Chairman?

The Chairman: Yes.

Senator Carter: I think at the last meeting of the committee we were discussing the question of regulations which would affect all varieties of companies that come within the ambit of this legislation, regardless of whether they merited it or not. In reply to a question, Mr. Humphrys said in framing those regulations they would take into account the good companies.

I think that, before that, I had pointed out that what separated the good companies from the bad was really the judgment exercised in making decisions. The successful ones were able to make good managerial judgments; the unsuccessful ones, that we are trying to protect the public against, got into their predicament largely through poor managerial decisions.

I think Mr. Humphrys replied to the point I raised by saying that the regulations when framed would embody the practices made by the successful companies. I did not find his answer entirely satisfactory. It was good as far as it went, but it occurred to me that this was a special kind of company.

We are talking about a company that borrows money from the public for the purpose of reinvesting it in other enterprises, and we want to protect the public from people who make bad investment at the expense of the public, in such a way that the public will be the loser. It occurs to me that when you boil it down to the matter of managerial judgment, there are two elements. One element is the selectivity. A manager has money to invest and he has a wide variety of options upon him, and of those options he will select one or two but he will select good options or he may even be able to have his options decided by computer, so that he can compare the value of each option and select the one which the computer shows to be the more favourable.

But, in addition to the judgment of the selection, the element of the judgment of

selection, there is an element of judgment which refers to the timing in which he makes his selection or puts his selection into action. After contemplating Mr. Humphry's point, I could not understand how he comes to put it. My problem was how one would frame a regulation and embody those two factors of judgment.

The Chairman: There is a third factor, the timing of the sale.

Mr. Humphrys: Mr. Chairman, I think I can comment on that point. Certainly, the point is well taken, that you cannot legislate business wisdom or investment wisdom, nor can you create that by a set of regulations. If it is impossible to determine in any particular class of companies a set of rules or guidelines that would distinguish at least in a broad way the difference between wise and imprudent managing, borrowing, investing, and unwise —then regulations could play no part.

But we contemplated that, in this group, in the large number of companies that would be swept within this definition, that there would be companies of many different types. We contemplated, too, that they would break down into groups of similar activity. We know already, in looking at the activities of companies of certain types, that they do follow general guidelines in some aspects of their operation. For example, they may have certain guidelines as to the relationship between secured debt and unsecured debt, or they may have relationships between their capital, the amount of their capital and the amount of debt that they assume.

They may have rules or guidelines concerning the relationship of the maturities of their investments on the one hand, and their debt obligations on the other. So there are rules or guidelines that do exist in certain types of enterprises that can usefully be adopted by all companies that are operating in that field.

I think we can observe, too, in some fields where lenders, banks, or investment dealers will themselves have general guidelines or checkpoints in mind, in considering whether or not to underwrite the issuance of securities or to lend money to a particular class of companies. These are the kind of rules or guidelines that would be embodied in regulations. should it appear to be possible and desirable to adopt such rules. But I agree with you completely that it would be quite a hopeless task to try through legislation or regulation to work in the field of the type of investment judgment that you have described. Does that answer make the point?

The Chairman: I would add this on the point. It is a question, from what you are saying, whether you are going to practice preventive law or regulations, that prevent certain types of investment, or whether your concept of protection is that you determine from time to time the state of a company in the exercise of its judgment and the investments it has, and then you ring the bell if the position has got out of line with sound practices and if there is a deficit in assets as against liabilities. You ring the bell—if you think they are going in that direction.

In this act, it seems to me you may be trying to cover all aspects, that is, to cover the aspect of guidelines for investment and therefore there must necessarily be some guideline as to when you sell, and the progress a company is making from time to time.

I thought there was inherent in the word "protection" more the sense of watching the development of a company, not what it may invest in but watching the results, and if you see the results, then to ring the bell? Where does the scheme fit in that?

Mr. Humphrys: We have to have a bell to ring, but we would hope that the events or the problems could be solved or the difficulties corrected before it is necessary to ring the bell, as you say, Mr. Chairman, and to resort to the specific sanctions that are specified in this bill.

The Chairman: Then you mean, by laying down guidelines for investment?

Mr. Humphrys: I would not term it as laying down guidelines for investment, since we do not propose in here, nor by way of regulation, to classify or prescribe authorized classes of investments. But the kind of thought we had in mind was the type that I tried to describe a moment ago, being rules concerning the relationship of maturities, which are relevant for liquidity purposes, rules concerning the capital margin in relation to the volume of loans. We have those rules in some other legislation. For example, in the Trust Companies Act there is a rule saying that the company cannot assume liabilities in excess of fifteen times its capital

and surplus. This is set up as a broad guideline, saying that in Parliament's judgment no company should operate with a capital surplus margin of less than 6¼ per cent of the assets. There are also rules about liquidity, requiring certain liquidity reserves. These are the types of thing, and the only types of thing, that I think could be dealt with by regulation.

Senator Molson: I am rather puzzled, because as I understand it my impression is that most people understand the purpose of this legislation is to prevent the kind of debacle we had with the Atlantic and Prudential finance companies, which would not have been caught had we had it because they were both provincial, if I am not mistaken. The rule that Mr. Humphrys is discussing would be suitable for these sorts of situations.

To return to the thing that has been hammered quite often, namely the definition of the kind of company which will get into this, these rules do not mean very much at all. What has concerned me, and I think nearly everybody, is the fact that as it is defined today almost every big company, or a very large number of the big companies which operate as holding companies and so on, will be designated investment companies and go through all this exercise, when, with respect, I do not think the judgment of the department is any better than that of the board of directors in their own boardroom. Although with insurance companies, trust companies and loan companies I think the department has done a magnificent job, handles the matter well and is extremely competent, once you come to legislation encompassing most of the big companies in Canada—and we have heard of Alcan and Massey Ferguson, great big colossal companies—I do not think their place is in reporting to the department in the way suggested. I do not think these definitions can tell the boards of directors of those companies how to protect their shareholders' interests.

The Chairman: I think all Mr. Humphrys was doing was relating Senator Carter's question to the scope of the bill. He was not at that moment dealing with the scope of the bill as such. We talked about that last time and said a lot of things about it, and I fancy that before we are through we shall have a lot more to say about it. Mr. Humphrys was, in the context, answering Senator Carter's question, and inferentially, of course, what he said about the kind of regulations which might be in force would be applied to anything to which the act applies.

Mr. Humphrys: Yes, with this qualification. We know the breadth of this definition would cover a great variety of companies, and we did not for a moment think that any one set of regulations, if any, would be suitable or could reasonably be made applicable to all the types of companies that would be covered. We thought that when we begin to find out the variety of companies that are under this, or could be under it, what they are doing, and are in a position to begin to classify them in some logical or sensible way, then in consultation with the better run companies in each of those classifications it might be possible, and indeed desirable, to establish rules and guidelines, not from the point of view of a government department or government officials suggesting that their wisdom is greater than that of the people running the company, but because it might be desirable, in consultation with people in the industry who know the industry and want themselves to be protected from the dangerous and unfavourable activities of other companies in the same field, who through bad actions damage not only the public but also the better companies in the field, to have these rules, when the companies themselves would consider circumstances existed in which they might be desirable. This is the general type of rationale of it.

Senator Connolly (Ottawa West): Let me just follow up Senator Molson's point. We have had a great many briefs sent to us, and I suppose in due time many of those who have circulated these documents to the committee will appear here. I thought Senator Molson's point was made very effectively in two submissions that I have been able to read, one from Massey Ferguson Limited and the other from Dominion Textile Company Limited. I would hope that when we come to section 8 of the bill, perhaps of our own motion we might at least be able to discuss Senator Molson's point with Mr. Humphrys and relate it to the section itself.

The Chairman: Mr. Humphrys indicated at the close of the last sitting that he would like to elaborate on section 8. We had some discussion, and I think I was provocative and put forward some suggestion about the situa-

tion in which they might find themselves under section 8 for a period of two years when they had not real sanction. I gather this is one aspect that Mr. Humphrys will deal with. I think that when these people come and present their briefs they will address themselves to these sections, and I expect Mr. Humphrys will be here.

When you refer to representations, I can tell you that even since our last meeting I have had a letter from the Industrial Acceptance Corporation, who indicate that they wish to appear and submit a brief. They say it will not be possible for them to appear before February 26. I am presuming, unless the committee says otherwise, that it would certainly still be working on this bill on February 26. Then the Canadian Pacific Investments Limited and Canadian Pacific Securities Limited have written saying they propose to make a joint submission in relation to this bill; they say the brief is being prepared and will come forward as soon as possible. I do not know whether I have already indicated this, but there is a letter from the Federated Council of Sales Finance Companies who wish to make a submission. The thing is therefore reaching out and attracting the interest of a great many different sorts of companies.

Senator Connolly (Ottawa West): Have Massey Ferguson and Dominion Textile asked to be heard?

The Chairman: What they said was that their more detailed and specific objections to the provisions of the bill are being made in the submission to the committee by a group of Canadian corporations concerned with investment and they concur in their comments. We have that brief.

Senator Connolly (Ottawa West): Those who prepared that brief will presumably come?

The Chairman: Yes.

Senator Connolly (Ottawa West): If it will not interfere with the proper conduct of this morning's proceedings, I wonder if I could ask Mr. Humphrys at this stage a more general question with reference to one particular industry that I dealt with in the speech I made to the Senate on January 22.

The Chairman: Is your question on clause 8? I do not like to hold this down.

Senator Connolly (Ottawa West): No, it is not.

The Chairman: Could we finish up with Mr. Humphrys' preliminary remarks so as to keep a continuity? Then we could go back into the general review.

Senator Connolly (Ottawa West): Certainly, so long as I have an opportunity to talk about this point.

The Chairman: At that stage you will be right there.

Mr. Humphrys: Mr. Chairman, honourable senators, clause 8 of the bill is an important one from two aspects. First, it is the only provision of the bill that would have an immediately regulatory effect. Otherwise, Part I requires companies to report and provide the machinery for examination. But that is all that it does. Clause 8, however, imposes certain limitations on investments and loans.

The second reason that it is important is that it attempts to deal with a class of cases within which have been found the reasons for a number of financial difficulties that have occurred in recent years. Essentially, the rationale behind this clause is to attempt to eliminate investments and loans where there is a conflict of interest. That is, the purpose is to avoid a conflict of interest on the part of those who are making the investment decisions or who are in a position to exert a significant influence on those decisions. The conflict of interest that this aims at is their interest in their capacity in making those decisions on the one hand, and their interst in companies in which the investment company may invest funds or to which it may lend its funds.

What has been attempted here is, first, to classify or describe a group who either have the responsibility for making investment decisions, or, can be presumed to have a significant influence on those decisions. This group has been described as consisting of officers and directors, their immediate families and any major shareholder, or, as the bill says, any substantial shareholder. Substantial shareholder is defined as the shareholder who owns 10 per cent or more of the voting stock. This is a directly or indirectly beneficial owner of 10 per cent or more than 10 per cent of the voting stock.

This is the group of people who have been defined in the bill and, in the carrying out of this concept, they are presumed to have some influence on the investment decisions of the investment company.

The rule, then, says that the investment company cannot make loans to any of those people or make investments in the shares or obligations of any corporation that is found within that group on the one hand, and, on the other, the investment company cannot lend to or make investments in any other corporation, if any person in that defined group has a significant interest in this other corporation, and significant interest is defined as owning, that is, having the beneficial ownership, directly or indirectly, of more than 10 per cent of the stock of this other corporation.

The provision goes on to provide some exemptions to look after cases where it can be established to the satisfaction of the Minister that where an investment would be barred by reason of the significant interest on the part of a major shareholder, the prohibition can be lifted, if it can be shown that the major shareholder does not, in fact, take an active part in the management of the investment company, and if the investment does not involve his interest in a significant way.

That, Mr. Chairman, is the line of reasoning that lies behind this provision.

The Chairman: May I add this, Mr. Humphrys, that in opening I made some reference to some statements that I had made to you the last day as a sort of preface to your presentation on section 8. I was wrong in mentioning section 8. I had addressed myself to section 5, subsection (6), with the few suggestions that I made. I just want the record to be straight.

Mr. Humphrys: That is additional information?

The Chairman: Yes.

Mr. Humphrys: I would like to add, Mr. Chairman, in this preliminary comment, that legislation in this area is extraordinarily difficult. If one attempts to block every possible channel through which an ingenius person could use funds of a company for his own interest, one would have such a jungle of legislation and regulations that those administering them could probably not interpret them, and those who were subject to them would not know where they were at.

What has been attempted here is to go far enough to establish and lay down a general principle, and yet to try to limit the scope of the legislation to a point where it is reasonably understandable and is not so complex as to leave the situation such that the investment managers do not know whether they are doing what they should be doing or not.

We recognize that there are still ways that a conflict of interest could arise, where one could find one's way through the prohibitions here. We think, however, that it goes far enough to deal with the main classes of cases that have given rise to difficulty.

One more point: Since the bill was introduced, we have had some discussions from persons who are concerned and a few points have arisen and a few questions have been asked. I would like to say by way of clarification that it was not intended that investments or loans by an investment company to its subsidiaries would be barred. It was intended, however, that direct or indirect beneficial ownership would enable the ownership to be traced down through a chain of corporations so that the purpose of the prohibition would not be defeated by interposing corporations between the major shareholder and the company that is in question.

Senator Molson: May I ask my question now, Mr. Chairman?

The Chairman: Yes.

Senator Molson: In section 8(1)(a)(i) provides:

> No investment company shall knowingly make an investment
>
> (a) by way of a loan to
>
> (i) a director or officer of the company . . .

I do not know whether an investment company is different from any other company, and I do not know whether this particular provision is in any other act—I am not a corporation lawyer—but right away I see here the elimination of a practice which I think is a good one, and which is a common practice, namely, that when an officer of a company, for the sake of argument, in any line of business is moved he usually gets a loan from the company for purposes of housing. As I read this provision, such a loan is prohibited. I point out that it is a very common practice. There is nothing hidden about it. It is not at all similar to some of the manoeuvres in connection with yachts, and other such loans made by famous finance companies. This is an above board practice which in some cases is necessary to the business in order to be helpful to people who are asked to do certain things for

the benefit of the company. Such a practice would be prohibited under this particular provision.

Mr. Humphrys: Yes, Senator Molson, you are correct. It would be prohibited. This is exactly the same provision that applies to insurance companies, trust companies and mortgage loan companies.

Senator Molson: We are getting into all types of corporations here, and this, as I have said and said many times, would not be at all objectionable, or present any problems, to these companies if it merely required that they be told that they are such companies, and that therefore they are prohibited from doing this.

The Chairman: Of course, you have the provision in section 193 of the Canada Corporations Act that no company shall lend any of its funds to any shareholder.

Senator Molson: Yes, but that is to a shareholder.

Senator Phillips (Rigaud): There is also section 15 of the Canada Corporations Act.

The Chairman: Yes.

Senator Connolly (Ottawa West): Could section 15 be put on the record?

The Chairman: Section 15(1) provides:

> A company shall not make any loan to any of its shareholders or directors or give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by any person of any shares in the company.

This is another type. Then there are exceptions, and subsection (2) provides:

> Nothing in this section shall be taken to prohibit:
>
> (a) the lending of money by the company in the ordinary course of its business where the lending of money is part of the ordinary business of the company.
>
> (b) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling or assisting those persons to purchase or erect dwelling houses for their own occupation...

This deals with employees, and not directors.

Senator Molson: Officers.

Mr. Humphrys: The Canada Corporations Act would permit a mortgage loan to an officer, but not to a director.

Senator Connolly (Ottawa West): Would you repeat that?

Mr. Humphrys: It would permit a mortgage loan to an officer, but not a director. Under the other acts I cited mortgage loans to employees would be permitted, but not if they are officers or directors.

Senator Phillips (Rigaud): May I put a question, Mr. Chairman?

The Chairman: Yes, certainly.

Senator Phillips (Rigaud): I should like to ask Mr. Humphrys whether in his opinion section 15 of the Canada Corporations Act, to which we have just referred, would supersede the provisions of section 8 of this bill that is now before us, or whether under a fundamental rule of law—I will not quote the Latin because I do not want to appear learned when I am not—a special statute would supersede a general statute.

Mr. Humphrys: I think the committee should probably pose that question to the representatives of the Department of Justice in order to get a definitive answer. I will say that in my own view there is not a conflict, and that the prohibition proposed in this bill would be effective.

Senator Phillips (Rigaud): It would be effective?

Mr. Humphrys: Yes.

The Chairman: I think the reason for that, Mr. Humphrys, is that it is stated in this bill that if there is any conflict between it, when it becomes law, and any other Act of the Parliament of Canada, the provisions of this bill shall prevail.

Mr. Humphrys: No, I think not, Mr. Chairman. I think that that provision deals only with the question of conflict between this bill and the act of incorporation of a company.

The Chairman: I thought it went further.

Mr. Humphrys: It is:

> Where any conflict exists between any provision of this Act and any provision of

an Act incorporating an investment company or any amendment to such Act, unless that Act or amending Act by specific reference to this Act provides to the contrary, the provision of this Act prevails.

Senator Phillips (Rigaud): To what section are you referring?

Mr. Humphrys: That is subsection (5) of section 3. It is at the top of page 4.

The reason for my answer to your question, Senator Phillips, is that the Canada Corporations Act says that a company shall not make any loan to shareholders or directors. There is a prohibition, but it says that this section shall not bar certain other things. If a parliament adopts this rule then Parliament will then be saying it is barring certain other things.

Senator Phillips (Rigaud): I agree with you that this bill supersedes the provisions in section 15 of the Canada Corporations Act.

Mr. Humphrys: I should not have used the word "supersede", but in their connotation both would apply.

The Chairman: Well, it becomes a matter of interpretation because if there is conflict between the letters patent or the supplementary letters patent of a company that are issued under the provisions of the Canada Corporations Act, and to which such company is subject—do you not have to take it in that context when you are looking for conflict between this act and...

Mr. Humphrys: This subsection deals with conflict only with an act of incorporation, so you would only be dealing with...

The Chairman: But, if it is a letters patent company, the act of incorporation is under the provisions of the Canada Corporations Act, and it says so right in the statute. It is broader than just reading the objects of a letters patent company, and reading what you have provided here. For instance, in a letters patent company I have ancillary powers by virtue of the fact that I get letters patent, and one of those ancillary powers, even though it is not specifically set out in the letters patent, is that of investing moneys of the company not immediately required for the purposes of the company. There may be a conflict between that power which I may exercise, and some of the provisions of this investment companies bill. Do you say in those circumstances that the investment companies act would prevail?

Mr. Humphrys: That was the intention of this subsection, Mr. Chairman.

The Chairman: Then, you see, you are bringing in a conflict in relation to the Canada Corporations Act as well as to the letters patent which proceed under that act, because you will not find the ancillary powers of investment, for instance, ordinarily set out in the letters patent. They flow from the fact that you have got the letters patent.

Senator Connolly (Ottawa West): You get them from the statute—I do not know whether it is section 14 or not.

The Chairman: I think it is section 17.

Mr. Humphrys: The intention is that both this act and the Corporations Act will apply to companies that are registered pursuant to the Corporations Act.

If there are conflicts where it is impossible to resolve them, this bill does not by its terms override. We believe that the two could be read in conjunction, and would not give rise to conflict.

Senator Connolly (Ottawa West): Just to clear up the point—the section giving ancillary powers under the Corporations Act is section 14?

The Chairman: Section 14 is the section.

Senator Connolly (Ottawa West): And these are very extensive?

The Chairman: Yes.

Mr. Humphrys: This bill would impose certain additional duties on the kind of companies subject to it, over and above the duties imposed by the Corporations Act. It would also have the effect of amending certain provisions, so far as section 8 is concerned, so far as affecting the investment.

Senator Connolly (Ottawa West): In other words, you agree with what was said?

Mr. Humphrys: Yes.

The Chairman: You will remember that last week I suggested for your consideration that you should have a good look at section 5(6) on the basis that, since Part I comes into force on proclamation, and Part III; and Part II does not come into force for two years, and

Part II is the part that gives you the sanctions—that you could have a situation, under section 5—and I am particularly looking at subsection (6)—you could have a situation where the superintendent and the minister would be in possession of information which might show that the company was in a sound financial position, but you would be without authority specifically in the act to do anything about it.

Senator Connolly (Ottawa West): For two years.

The Chairman: For two years. And I said that was a rather anomalous position for the Government, or any department of the Government, to let itself get into. Because if the company did proceed to fail, and you are in possession of this knowledge, I can imagine the newspaper columns and the public who might be affected by this failure, the criticism that would arise. I suggested to you that you consider how you would deal with that situation up until the time that you got your sanctions under Part III.

Mr. Humphrys: Mr. Chairman, it is a very real problem and one that gave us a great deal of cause for consideration. I do not know that I can add much to the comments I made a week ago. We felt that in launching this program, if the bill is passed, we could not conceivably be in a position to recommend the issuance of certificates or even the refusal to issue certificates for some considerable time. It is a new field. We have no one on our staff that we can propose as being expert in all the fields here. I do not think there is anyone is the Government service who could take this on overnight. It will take some time to obtain information, to become knowledgeable, to sort matters out and see what companies should remain within the scope, and which ones should be exempted. Until that time is reached, we felt we really could not implement the machinery in Part II.

The Chairman: But there is a gap there.

Mr. Humphrys: There is a gap. Though we are faced with the dilemma of how to get started. We do not want to bring Part II into force right away, because we could not recommend certificates, and as we started in and examined companies we might be issuing certifices, day by day or month by month, so some companies would have a certificate and others would not.

We thought, to get started, there was really no escape from this situation that the chairman describes, where we might be in possession of information and not be able to do anything about it in the sense of specific legislative sanctions.

We thought it was better to face that possibility than to carry on without knowing, without getting started in some fashion. It is dangerous to know and not be able to do anything, but I cannot really feel that the public interest is better protected by refusing to know.

I think that if we did know of such a case and if there were real danger to the public, we would do our best to see to it that the company revised its affairs or stopped floating some loan issues, we would be able to go to the Securities Commission, we would be able to do quite a bit, I think, in the way of influencing the direction. It is a dangerous situation, it is unsatisfactory, but we really could not find a way to escape from it.

The Chairman: I might that it may be that, by an addition to this bill, and maybe by an addition to the prospective sections in the Canada Corporations Act, that in those circumstances you would be authorized to convey this information to the Companies Branch; and the Companies Branch would have authority to require an amended prospective. Then the thing gets out in the open. I am looking at the disclosure. I would rather have the disclosure given at the time when the department has knowledge of it, than to have it given when the failure has taken place and the public have been rooked, maybe even more in the period of time between the time it came to the knowledge of the department and the time the failure occurred.

Senator Connolly (Ottawa West): Would something along these lines cure the situation—that where it is provided here that these two years should prevail, that there should be an additional clause, to the effect that, notwithstanding the two year delay, if the superintendent has the information which he has just described, that he shall have power to take such action as he sees fit to protect the public? He may not withdraw the certificate, because there has been no certificate; but there may be other avenues that he can proceed along, mentioned by him, mentioned by yourself, Mr. Chairman, that there may be other sanctions that are available to

him and a "notwithstanding clause" might assist.

The Chairman: Have you anything to suggest, Senator Phillips (Rigaud).

Senator Phillips (Rigaud): I have an alternative suggestion. I thought we had moved away from the straight path of section 8 and I would like to go back to section 8, with respect.

I think the superintendent will realize, with regard to my speech in the Senate, that I am somewhat schizophrenic: I am strongly in favour of Part I; and my views on Part II are reflected in my remarks.

I previously expressed strong approval of section 8 with respect to prohibited loans and investments. Incidentally, many organizations that were against this bill seemed to have been critical of me and felt that I went too far. I only mention that fact en passant as it is too much to expect from responsible organizations in respect of this bill.

Coming to section 8 I would like to make an observation, that any reaction to section 8 in my humble opinion will depend on the final analysis, on the ultimate decision arrived at in respect of the definition of investment companies. True we are proceeding by way of water-tight compartments. We have discussed the definition of "Investment company" and we are moving on, but in the final analysis we will deal with an integrated bill, and one's reaction to section 8 will depend to a considerable degree, when we come to definitive conclusions, on the definition of "Investment company". I for one would strongly support section 8 subject to one or two designations of the definition of investment companies. Not knowing what the outcome will be there, I will confine myself to section 8 only.

If an offence is committed under section 8, if I remember rightly, there is the imposition of a penalty not to exceed the sum of $5,000. I do not think we had an indictable offence for a loan, but I think that under section 27 there is fine on summary conviction not to exceed the sum of $5,000.

The Chairman: That is right.

Senator Phillips (Rigaud): I should like to make a suggestion on section 8. I am in complete sympathy with the difficulty of the Superintendent and the department in defining how to deal with loans. I notice that under section 8 in dealing with the exemption you draw a distinction between a substantial shareholder and a significant interest concept, and I am trying to simplify the situation as a lawyer. The order of exemption is applicable to a substantial shareholder concept rather than dealing with a situation where the significant interest is involved. To my mind this reflects the difficulty of dealing with this situation from the point of view of providing flexibility and some relief.

This is my suggestion. If we were to leave the prohibited loans and investments in the form it now is, should we not impose upon companies that come under the jurisdiction in Part I the obligation to report such loans. If in the section, instead of dealing with exemptions with respect to substantial shareholders as distinct from significant interests, we stated, instead of it being a prohibited loan, if the loan is made it must be reported immediately, not later than seven days from the time of the making of the loan, and if in the opinion of the Superintendent of Insurance such loan is not in the interests of the company and the shareholders, and all the rest of it, it shall be deemed to be a prohibited loan or a prohibited investment, if it is an investment, within the meaning of section 8, you have the advantage of knowing at once when the loan is made, and the further advantage that you would be under an obligation, say within a week, ten days or a month, depending on the time you in your judgment think would be necessary in the final drafting of the statute, and you say, "This is a loan we do not like. We declare this loan to be a prohibited loan. We declare it to be a prohibited investment. We call upon you to cancel out the loan, to cancel out the investment. In any event, it is an offence under section 27 and you are subject to a fine".

The Chairman: This is in line with a suggestion Senator Molson was feeling his way on a few minutes ago.

Senator Phillips (Rigaud): I did not quite catch the significance of Senator Molson's suggestion.

The Chairman: That loans of this character covered by section 8 should not be generally and absolutely prohibited, but they should be reported.

Senator Phillips (Rigaud): I am sorry I missed that. The very fact I did not pick it up indicates that there may be at least some merit in it if two people think so.

Senator Connolly (Ottawa West): Could I ask Senator Phillips to elaborate?

The Chairman: Senator Phillips carried it further.

Senator Phillips (Rigaud): I am carrying it further. If information is within seven days given to the Superintendent we get after these dishonest people immediately instead of waiting for the power of inspection; we get it right at the beginning of the litigation.

Senator Connolly (Ottawa West): If you get into the grey area where it is doubtful whether it is a prohibited loan or not, it is recorded as you suggest, if the company undoes it at the instance of the Superintendent you would still suggest that the fine should be imposed?

Senator Phillips (Rigaud): No, I retraced my steps on that. I said unless it was undone. If it is done with dishonest intent in the opinion of the Superintendent...

Senator Connolly (Ottawa West): Then he can go to the court.

Senator Phillips (Rigaud): I would still bring him to court for having done it. If it is not in the opinion of the Superintendent done with dishonest intent, the undoing would be sufficient, without subjecting him to a fine. An immediate report brings you in control of the situation with the finance and loan companies that we are after right at the start.

Senator Connolly (Ottawa West): That is right.

Mr. Humphrys: What we were trying to do here, and what we thought was the best thing to do in this field, was to try to set down rules that were clear and that people could interpret, so they would know when they made the investment whether or not it was in violation of this requirement.

I fear that with the kind of rule Senator Phillips described the position of investment managers would be very uncertain. I would have thought they would be very upset about being in a position where at the discretion of some official they would be required to undo an unwise investment. It puts an enormous responsibility on the official concerned. Speaking as Superintent of Insurance, I do not think I would want to be in a position, and I do not think I could be in a position, to say to a company, "This is an unwise investment". I can certainly define "significant investment". We can all look at the extreme cases which are obviously unwise, but there would be a whole range here where I had thought it would be not appropriate for an official to try to impose his judgment over the judgment of the company. We tried to define a class of cases that swept within it the general field that had given rise to difficulty and yet was not so far-reaching as to interfere in a serious way with legitimate and proper investment activity.

Another thing about the suggestion, that stems from our own experience, is that when the loan has been made, when we find out about it, there is often nothing we can do. We would like to get it reversed, but that may not be possible. We are faced with a bad loan, or even an illegal loan, or an investment, and you just cannot get it back. You would love to, but if shares have been purchased or mortgage loans have been made and funds have been dispersed, the deed is done. I hope it would be possible to arrive at rules that would meet the point I described, that would define the class of cases where the worst abuses occur and yet would not be so far-reaching as to constitute a serious impediment to general investment activities.

Mr. Humphrys: I know that any such rule is going to cut in on some investments, but if it is not too extensive, it seemed to us that it was better to have definite rules than to have a discretion. I know, too, that in the United States in their Investment Companies Act they have quite very elaborate provisions on this point, and they have discretion with the Securities Commission. This is an extremely complex procedure. They have very complex, lengthy hearings on these things, and it becomes almost administratively unworkable.

The Chairman: First of all, Senator Phillips (Rigaud) was suggesting that if you offered the equivalent of an amnesty, by saying that, when this act comes into force, if you report the loans which offend and regress the situation, then there is no penalty.

Mr. Humphrys: I have no objection to removing the penalty. In fact, that general penalty provision at the end was not aimed at this particular point.

The Chairman: No, but it applies to it.

Mr. Humphrys: Really, in Part III we were thinking, in respect of the sanction, that the Superintendent would have the authority to

remove that particular investment from the financial statement. That was as far as we really intended to go in any sanction, because we felt it was quite difficult to establish the rules and we thought it not reasonable to impose penalties or sanctions of any harsh character because of the difficulty of really drafting appropriate legislation and the inevitable cases that will arise where, in spite of our best efforts and everybody's best efforts, there will still be some uncertainty.

The Chairman: It is now 12.30. I suggest that in respect of this bill with which we are now dealing, we adjourn until the next regular meeting of the committee, which, in the ordinary way, would be sitting next Wednesday. I would think by that time some of the people who wish to make submissions will be available. My own feeling is that when they come in we should hear them and then we can correlate that afterwards with the information Mr. Humphrys has provided.

Senator Connolly (Ottawa West): Mr. Chairman, before we hear the representations from any segment of the industry, there are two matters of general concern that I would like clarified by the department.

The Chairman: We were prepared today to listen to a submission, and we were going to fit that into our schedule here. Likewise, if there are still specific questions on any aspect of the bill on which you want to get some information from Mr. Humphrys, that will be the first order of business next Wednesday.

Senator Connolly (Ottawa West): The two areas that I would like to do some questioning on are, first of all, the question of acceptance companies as defined in the Ontario Securities Act, and the matter of upstream and downstream loans within a corporate organization, which is referred to in a number of the briefs that we have had. I dealt with both these matters in the Senate. They are of general rather than specific character, and I would like to have that opportunity even before we go into the clause by clause consideration of the bill.

The Chairman: In respect of the hazardous substances bill, I hope you will remember that the committee has adjourned to the call of the Chair. In respect of this bill now before us, as I mentioned earlier, we are adjourning until the next regular meeting of the committee.

Senator Molson: I move that we adjourn.

The committee adjourned.

First Session—Twenty-eighth Parliament
1958-59

THE SENATE OF CANADA

PROCEEDINGS
OF THE
SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 16

WEDNESDAY, FEBRUARY 25th, 1959

Complete Proceedings on Bill S-27,
intituled:
"An Act respecting The Quebec Savings Bank"

WITNESSES:

Department of Finance: W. E. Scott, Inspector General of Banks.
The Quebec Savings Bank: Jacques de Billy, Counsel.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1959

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

PROCEEDINGS
OF THE
SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 16

WEDNESDAY, FEBRUARY 5th, 1969

Complete Proceedings on Bill S-27,
intituled:
"An Act respecting The Quebec Savings Bank".

WITNESSES:

Department of Finance: W. E. Scott, Inspector General of Banks.
The Quebec Savings Bank: Jacques de Billy, Counsel.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

29696—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, January 30th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Gouin, that the Bill S-27, intituled: "An Act respecting The Quebec Savings Bank", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Gouin, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29696—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, February 5th, 1969.
(17)

At 11.20 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed to consider Bill S-27, "An Act respecting The Quebec Savings Bank".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Haig, Hollett, Inman, Kinley, Leonard, Macnaughton, Molson and Thorvaldson—(19).

Present but not of the Committee: The Honourable Senators Bourget, Grosart, Phillips (*Rigaud*)—(3).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

DEPARTMENT OF FINANCE:
W. E. Scott, Inspector General of Banks.

THE QUEBEC SAVINGS BANK:
Jacques de Billy, Counsel.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 11.40 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, February 5th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-27, intituled: "An Act respecting The Quebec Savings Bank", has in obedience to the order of reference of January 30th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 5, 1969

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-27, respecting The Quebec Savings Bank, met this day at 11.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we are dealing with Bill S-27. May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: To deal with this bill in the first instance and to give us his comments, we have Mr. W. E. Scott, Inspector General of Banks for the Department of Finance. Mr. Scott is here to tell us his views in relation to this bill.

Mr. W. E. Scott, Inspector General of Banks, Department of Finance: Mr. Chairman, perhaps I might confine the opening remarks to a rather short list of matters that would appear to be of some importance. If there are other matters that anyone would wish to pass on, I will be available following this.

The move of the Quebec Savings Bank from the present Quebec Savings Bank Act to the Bank Act would obviously increase the scope of its possible operations under the new legislation. It is presently confined to the district of Quebec. It would be able to operate in the whole of Canada, or outside Canada, if it wished. Its scope for business lending and for personal loans would be considerably increased.

In respect of only one kind of lending, I think, it would be restricted as compared to its present position, and that is on conventional residential mortgages, where section 75(4) of the Bank Act would confine it to relatively modest increases in outstanding mortgages during the duration of the present Bank Act.

On the other hand, the liquidity requirements of the Bank Act might be somewhat more expensive for this bank than its present arrangement. Under the Quebec Savings Bank Act it must keep a cash reserve of 5 per cent of its total Canadian deposit. Under the Bank Act it would keep 4 per cent of time and 12 per cent of demand deposits.

Initially, with the present distribution of the Quebec Savings Bank deposit, its weighted average ratio would not be higher than five. It might be between four and five, but the present deviation of cash permits it to keep funds on deposit with other banks as part of its reserve. Frequently, these banks bear interest and, therefore, the cost of maintaining the reserve is not as high as it would be under the Bank Act, where the cash must be kept in the form of Bank of Canada notes and deposited with the Bank of Canada, and the Bank of Canada discounts the interest so that...

So, to offset the loss of earnings there would have to be some advantage taken of the larger scope of operation. In other words, the bank would need to grow to end up in as good a financial position as it is today.

The third and final respect in which there might be a change does not relate to the financial aspect, but to the position of shareholders. The returns made to the minister under section 97 of The Quebec Savings Bank Act, and which are tabled in Parliament, indicate that there is one shareholding considerably in excess of ten per cent, the limit which was put into the Bank Act in 1967. This holding predated 1967, and has carried on as is permitted under the act, but there is

no provision in this bill to permit that situation to continue, nor is there any provision in the Bank Act under which it could continue. So, if and when this bill comes into effect that holding will have to be reduced to not more than ten per cent, or the holder will lose his voting rights.

Senator Connolly (Ottawa West): All of his voting rights?

Mr. Scott: Yes, they would be suspended, in other words, until the holding is reduced. I think those are the only three aspects on which I would want to comment.

The Chairman: At this stage is there anything that you wish to add on the negative side?

Mr. Scott: No. I think, as I mentioned, Mr. Chairman, it will be the success of the bank in expanding its operation that will govern how it will work out. If it is no larger some years in the future than it is now then it will not have gained.

The Chairman: If it is no larger a few years from now that it is now...

Mr. Scott: ...then the increased liquidity requirements might have operated to leave it less favourably placed financially.

Senator Molson: Will it have any problem in getting up to the liquidity requirements?

Mr. Scott: No, I would not think so. It would simply reduce the balances kept at chartered banks and on deposit with the Bank of Canada.

The Chairman: Are there any other questions of Mr. Scott? Mr. de Billy, you are here on behalf of The Quebec Savings Bank?

Mr. Jacques de Billy, Counsel, The Quebec Savings Bank: Yes, Mr. Chairman.

The Chairman: Is there anything that you or Mr. Foucault, the General Manager, would like to add?

Mr. de Billy: No, Mr. Chairman.

Senator Gelinas: May I ask a question, Mr. Chairman. Why is the name in French to be "La Banque Populaire", and in English "The People's Bank"? The one is not a translation of the other.

Mr. de Billy: Of course, senator, the bank will be operating in a French speaking district, and the name "La Banque Populaire" is a name that the bank wished to have. If you translate it as "The Popular Bank" it would not have the same meaning. After consultation it was decided that "The People's Bank" would be the best translation under the circumstances of "La Banque Populaire".

Senator Gelinas: Do you not think "La Banque du Peuple" would be just as good?

Mr. de Billy: Yes, but what's in a name? Maybe "La Banque du Peuple" would be just as good, but the directors of the bank prefer "La Banque Populaire".

The Chairman: By putting in the word "Popular" does not necessarily make it popular.

Mr. de Billy: No, unfortunately.

Senator Connolly (Ottawa West): I should like to ask Mr. de Billy a question on that point. The caisses populaires are very widespread institutions in the Province of Quebec. You now have a banque populaire. Is there going to be confusion in the minds of the public?

Mr. de Billy: Well, there are many institutions that have names that are similar. There are, for instance, the Royal Trust and the Royal Bank; the Bank of Montreal and the Montreal Trust. In the insurance field you have the Prudential of America and the Prudential of England, and so on. This is a bank, and the caisses are quite different institutions. The important word is the word "bank" or "banque". A caisse populaire does not stand by itself; its name would be the Caisse Populaire du St. Michel or the Caisse Populaire du St. Pierre.

The Chairman: Senator Connolly, in any event, we have received no letter from any source objecting to the name.

Are you ready for the question?

Senator Molson: I should like to ask one question. Has there been any precedent on this matter of English and French names not being translations of each other? I do not remember any bills coming to us that have ever varied from what one would describe as the closest translation. There is some question here as to whether this is a translation of the French into English, or the English into French.

The Chairman: I do not know of any law that provides that one has to be a translation

of the other. The point is just what the organization is to be called in English and in French.

Mr. de Billy: If I might mention it, I remember one instance a few years ago of a company that was incorporated under the French name of L'Assurance-Vie Desjardins in French, and under the name of Desjardins Mutual Life Insurance Company in English.

Senator Molson: But the word "Desjardins" was in both names.

Mr. de Billy: Yes, but the word "mutual" was not in the name in French. Parliament gave it the name of Desjardins Mutual Life Insurance Company. In the English name it added the word "Mutual" which does not exist in the French name.

The Chairman: Are you ready for the question?

Senator Macnaughton: Mr. Chairman, in any event, it is the decision of the board of directors to use these names.

The Chairman: That is right, and there is no law that says they must be a translation of each other.

Senator Macnaughton: That is right.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 17

WEDNESDAY, FEBRUARY 5th, 1969

First Proceedings on Bill S-30,

intituled:

"An Act to prohibit the advertising, sale and importation of hazardous products".

WITNESSES:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

R. W. James, Director, Consumer Research Branch.

THE QUEEN'S PRINTER
OTTAWA, 1969

75598—1

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 17

WEDNESDAY, FEBRUARY 5th, 1969

First Proceedings on Bill S-26,

intituled:

"An Act to prohibit the advertising, sale and importation of hazardous products".

WITNESSES:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

R. W. James, Director, Consumer Research Branch.

THE QUEEN'S PRINTER
OTTAWA, 1969

29698—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis–(30)

Ex officio members: Flynn and Martin

(*Quorum* 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, February 4th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products".

After debate, and–
The question being put on the motion, it was–
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was–
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29698–1½

MINUTES OF PROCEEDINGS

Wednesday, February 5th, 1969.
(18)

Pursuant to adjournment and notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Haig, Hollett, Inman, Kinley, Leonard, Macnaughton, Molson and Thorvaldson. (19)

Present but not of the Committee: The Honourable Senators Bourget, Grosart, Phillips (*Rigaud*). (3)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and
R.J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

Upon motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

Bill S-26, Hazardous Products Act, was read and considered.

The following witnesses were heard:

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS:

The Honourable Ronald Basford, Minister.
R.W. James, Director, Consumer Research Branch.

At 11.15 a.m. the Committee adjourned consideration of the said Bill to the call of the Chairman and proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 5, 1969

The standing Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, I call the meeting to order. We have two bills before us this morning, plus the one on which we commenced our consideration last week. It is proposed, subject to the wishes of the committee, to proceed to consider Bill S-26, which concerns hazardous products. May I have the usual motion for the printing of the proceedings?

The committee agreed that a verbatim report be made of its proceedings on the bill.

It will be recalled that a bill similar to this one was before us last year. We heard a good deal of discussion on it, and changes were made. Then, of course, there was a realignment of the bill's provisions, as was explained by Senator Carter when he moved the second reading of Bill S-26 in the Senate. We have received no requests to be heard from the public this time, so I see no reason why we should not proceed this morning to consider this bill.

The minister is with us, and he will make a statement in connection with the purposes of the bill, after which the meeting will be open to questions.

Have you anything to add, senator, before we commence?

Senator Carter: No, Mr. Chairman, I have nothing to say in addition to what I have said already.

The Chairman: Mr. Minister?

Hon. S. Ronald Basford, M.P., Minister of Consumer and Corporate Affairs: Mr. Chairman and honourable senators, I should like first to express my thanks to Senator Carter for his speech when he introduced this bill in the Senate, and to thank those honourable senators who made a contribution to the debate, all of which I have read except the conclusion last night. Some of the questions asked in the debate have been answered by Senator Carter in the Senate, and others that arose in the debate can be answered this morning. I have a short statement that I should like to make—I hope it can be regarded as short—with respect to the bill after which, as the chairman has said, we can deal with specific questions.

As Senator Carter pointed out in his speech when he introduced the bill, we have had a very long tradition in this country of protecting the purity and safety of the foods and drugs that are offered for sale. I think honourable senators are familiar with the work of the Food and Drug Directorate, and of the Health of Animals Branch, and other branches of the Department of Agriculture, all of which are designed to give us a very high degree of assurance that we, as consumers or customers, are not going to be poisoned or sickened by the food we eat. There is, however, a lack of balance—and this is really the purpose of this bill—in the protective machinery because the Canadian public is exposed to significant risks from products which are neither foods nor drugs, which are not covered by our existing legislation. We have had a number of instances in recent years of toxic or contaminated products which could be dealt with only with considerable difficulty, if at all.

It may surprise honourable senators to hear me say that Canada is really several years behind countries such as the United States and Britain in passing legislation, along the lines we are dealing with this morning, to protect the consumer. "The right to safety—to be protected against the marketing of goods which are hazardous to health or life," headed the list of President John F. Kennedy's famous list of Consumer Rights.

As early as 1953 the Flammable Fabrics Act was made law by the United States Congress to protect the consumer from clothing containing dangerously flammable fabrics. In 1967 this act was amended to provide for more stringent flammability tests and to

encourage research and investigation into the whole problem of fabric flammability. In 1960 the Hazardous Substances Labelling Act was passed in the United States. This act was amended in 1966 by the Child Protection Act. As it now stands, the United States Hazardous Substances Act requires the mandatory labelling of all hazardous substances such as cleansers, polishes, bleaches, drain cleaners and toxic solvents such as glues containing toluene, which are sold in interstate commerce. It also bans household substances or toys containing substances deemed so hazardous labelling would not provide sufficient protection. It also established–and I think some of my officials will have something to say about this later–a council to deal with protection and safety.

Britain – and I would like, if I may, Mr. Chairman, just to mention that briefly – has also had a law protecting the consumer from hazardous products for several years. The Consumer Protection Act was passed in 1961. The act empowers the Home Secretary to make regulations for any prescribed class of goods regarding the composition or contents, design, construction, finish or packaging, in order to prevent or reduce the risk of death or personal injury. Regulations have been passed under that act dealing with fireguards, portable oil heaters, children's carry-cot stands, mandatory flame-resistant materials for children's nightdresses or night clothes and the safety of toys.

I have all that legislation here, if honourable senators wish to take a look at it.

The British and American laws provide for thorough inspection procedures to ensure compliance with the regulations of each respective act. Stiff fines are also imposed for contravention of the acts, especially for second offences.

The Hazardous Products Act, which is now before this committee, is designed to provide Canadian consumers with the same basic protection which exists in both Britain and the United States.

The fact that the vast majority of children survive the hazards of infancy is sometimes a cause for wonder by parents and other observers. The fondness of children for chewing on their cribs, rattles and toys creates a serious danger if they swallow an appreciable amount of poison in the process. The use of lead-based paints on objects which children come in contact with is obviously undesirable. This is why the Hazardous Products Act, in the Schedule, makes provision for the effective elimination of lead in any paints which children may eat.

Paints and related products also present other hazards. Many paints, thinners and similar products give off volatile fumes which may be inadvertently ignited. Sometimes, these products have such a low flash point that they are not safe for household use. When such products can be classed as extremely dangerous they clearly should not be permitted for household use.

There is, however, a wide range of other household products which are hazardous but cannot reasonably be banned. It is true, for example, that gasoline is a dangerous product because of its high flammability but it would be absurd to want to ban its sale. For such classes of essential but potentially hazardous items we must devise other expedients and, with regard to gasoline, many of our provinces and municipalities are devising these expedients.

I would like now, Mr. Chairman, to mention a few problems of accidental poisonings. We do not know with any degree of precision the total number of accidental poisonings in Canada each year. We can, however, establish minimum levels based on the reports of the poison control centres across Canada. I am referring here exclusively to poisonings that do not involve drugs and medicines. In the 1966 statistics on the poisoning of children less than five years old, we find the following causes and figures: cleaning and polishing agents, including bleaches, 3,852; cosmetics, 1,627; substances eaten as food, including inedible plants, 880; painting and building products, including turpentine and solvents, 1,240; pesticides, 994; fuels and lubricants, 886.

It is abundantly clear from this that immediate attention should be devoted to the category of cleaning and polishing agents and bleaches. This explains, for example, why the first three items of Part II of the Schedule cover bleaches, sanitizers, cleaners and polishes and other cleaning agents.

Within the past several years, solvent sniffing by youngsters has become widespread and this has created both a social problem and a health hazard in Canada. Provision is made under the authority of this act to control the sale of the type of glues favoured by the sniffers. We recognize that this is a social and psychological problem and that all the regulations in the world are not going to solve the problem, but we do feel that some regulation can be helpful and can reduce the amount of glue sniffing. We have not yet worked out–because the legislation is not passed–a complete control program, but we have been considering a number of steps. Honourable senators may wish to ask about these. We are looking at such things as mandatory cautionary warnings on all tubes of glue; the removal of glue from open display counters, etc. Honourable senators will understand that this is a complicated problem and that there is no simple answer, but at least we are being given, or are asking for, the machinery by which we can start to find the answers and try to solve the problem.

We have had some preliminary discussions with some of the producers, and it would also be my intention to continue these discussions, with a view to obtaining aid in solving the problem.

I have also been asked about protection in regard to burns. Burns occurring in the household constitute a significant public health hazard. It is estimated that 176,000 burns occurred in Canada in 1966 and that approximately 75 per cent of those occurred in and around the home. Many serious burns are associated with clothing which catches fire. Many types of ordinary clothing will burn readily when ignited, and it hardly needs emphasizing that clothing burns often involve large areas of the body. The results are a shocking loss of life, human suffering, emotional shock and very high costs for medical care. We know that certain types of fabrics ignite very readily and burn vigorously. It is my firm belief that fabrics which can reasonably be classed as dangerously flammable should be classed as hazardous products and should not be used for apparel or household furnishings. The determination of flammability standards is a technically complex problem. I am glad to be able to say that we have been able to enlist the support of the Canadian Government Specifications Board, the National Research Council, the Ontario Research Foundation, the Department of Public Works and the Department of National Defence in a research and testing program. This program is under way now and it is hoped that some preliminary results will be available soon. We will have to allow some time for consultation with the textile industry on the implications of banning dangerously flammable textiles from the market.

Many accidents are caused in part by human carelessness or foolishness, but this does not mean that we can adopt a fatalistic attitude and shrug off the problem with the remark that "accidents will happen." It is an observable fact that many types of household appliances do present an undue hazard and that even a prudent householder is exposed to unnecessary risk. The Consumers' Union in the United States has had extensive experience in testing household products. They have reported that, in the 10-year period 1956-1966, they found nearly 400 products to be unacceptable because they were dangerous. Out of the total, 150 electronic products, toys, appliances and tools had electrical hazards; over 100 had mechanical hazards; and the others had sharp edges, were poisonous, presented fire hazards or had some other dangerous quality.

Nothing I say should be taken to suggest that consumers are devoid of all protection in the household appliances and items they now use. There is, in fact, a large volume of engineering and product standards developed by such bodies as the Canadian Standards Association and the Canadian Gas Association, among others, which afford a real measure of consumer protection.

However, many of the standards which now exist are related to performance or composition or a manufacturing process and may or may not emphasize consumer safety. Apart from this, many standards are voluntary. We must, in my opinion, make sure that proper attention is paid to the factor of consumer safety by all standards-setting agencies. Once a satisfactory standard exists from the point of view of consumer safety, the next logical step would be to prohibit the sale of sub-standard products. A case in point is life saving equipment. Standards of safety have been developed for this equipment and it is my contention that life saving equipment which does not meet these standards should not be sold in Canada. I fully expect that the successful operation of the Hazardous Products Act will depend heavily on the intimate co-operation of the Canadian Standards Association, the proposed Standards Council of Canada and the various trade and industry associations which are concerned with consumer goods.

Some preliminary conversations have already been held with organizations such as the Canadian Manufacturers of Chemical Specialties on methods of consultation. You had them before you when you were considering Bill S-22 in the last Parliament. It is my intention to establish formal and informal contacts with industry so that my department can benefit from their knowledge of the practical problems of introducing labelling or control programs. There is already a clear understanding with the Department of National Health and Welfare that their medical and toxicological experts will advise and assist us in dealing with the problems of safety levels and other technical matters. The wide experience of the Food and Drug Directorate in the administration of the Food and Drugs Act will undoubtedly be of great assistance in the extension of safety controls to other products.

For many potentially dangerous household products such as caustic or toxic or flammable liquids, the principal kind of regulatory action under the act will be to require more specific and complete cautionary labels. Sometimes people do not realize the extreme toxicity of some ordinary household products, particularly if they are swallowed by small children. There should obviously be a clear and explicit cautionary statement on the label and a warning that the products should be kept out of the hands of small children. An excellent labelling code has already been developed by the Canadian Manufacturers of Chemical Specialties and is used widely by their members, and again I compliment them for drawing up this code. It is, however, a voluntary code and it is clearly desirable to have the existing code or some modification of it used throughout the industry.

Another possible alternative would be to develop childproof closures for household chemicals, similar to the closures which are now being developed for drugs. If modern technology can send men into orbit around the moon, it should be able to defeat the considerable ingenuity of little children. It may be that we can develop meaningful and arresting cautionary symbols.

Some people are reluctant to read labels and some other visual appeal may be more effective.

In conclusion, Mr. Chairman, there is one important aspect of the Hazardous Products Act that I want to stress. We cannot possibly know at this time all the hazardous products that are on the Canadian market or that will appear on the market in the future. A restrictive or limited interpretation of the coverage of the act might have the most serious consequences in the future and might mean that the government would lack the power to act in an emergency situation. It is for this reason that the act is framed to provide quite general coverage of the kinds of things that might be determined to be dangerous or hazardous. I would hope that this will not lead anyone to believe that we propose to declare hammers a hazardous product because people hit their thumbs with them. On the other hand, the act does recognize the desirability of providing for a review process, which is to be carried out by the hazardous products board of review. Such a board will be constituted if a manufacturer, wholesaler or distributor feels that the action taken under the act is mistaken and misguided. The board will be empowered to obtain all the relevant evidence concerning the hazards attributed to the product and to report to the minister. The act makes provision for publicizing the results of such inquiries. It is anticipated that this system will prevent any hasty or ill-advised additions to either the banned or controlled products, which may be included in the Schedule.

That is my overly long introductory statement, Mr. Chairman. I am now open for any questions that honourable senators may have.

Senator Croll: After that short statement may I just put this to you. You started out by saying you were two years behind the times in this sort of legislation. Can we assume that you will not likely make that statement when you appear again in connection with a similar undertaking, so that next time you will be perhaps two years ahead of, say, Britain and the United States in respect of these matters?

Hon. Mr. Basford: I hope that in some respects Canada could lead the world.

Senator Croll: You have a department now to deal with this matter. What I really wanted to ask was this. You spoke about protecting little children. What about protecting someone who is a little older than little children, a fellow like myself, against health and safety hazards? What about substandard tires that are sold? What can you do, or what do you do, about substandard corrosive cars?

Hon. Mr. Basford: The specifications board has prepared and published a specification for tires which my information indicates most of the provinces have accepted, and require the use of it within their provinces, so at the moment I would think that situation is covered. Dr. James might want to add to what I have said, but at the moment we have protection at the national level of a national standard through the specifications board, and the provinces have required the use of this standard.

Senator Croll: What brings this to my mind is the fact that, in the United States, national tire associations of renown have recently been brought before the appropriate board in the United States on charges that they were guilty of passing out substandard tires. Have we made any investigation in this country of tires manufactured by the same people?

Hon. Mr. Basford: We have not, I am not sure whether the Department of Transport, which is the department responsible for car and tire safety, has done so. I would like Dr. James to supplement this. I know there have been several meetings and conferences with the provinces to persuade them to accept, as they are accepting, the standards specified for tires by the specifications board. I do not have a copy of it here, but it is a standard which specifies certain minimum requirements for tires, and it is designed to give minimum safe standards to tires.

The Chairman: Is the administration of that in your department?

Hon. Mr. Basford: No.

Senator Croll: So that belongs to the Department of Transport?

Hon. Mr. Basford: Yes.

Senator Croll: It is in no way connected with your department at all?

Hon. Mr. Basford: No.

The Chairman: Why should not standards be assembled in one place?

Hon. Mr. Basford: I appreciate your support of my department, Mr. Chairman. Last July the standards branch of the Department of Trade and Commerce was transferred to my department. We will also be represented on the proposed standards council that will be formed.

Senator Macnaughton: Mr. Chairman, Mr. Minister, you invited us to ask the following question so I will ask it: What steps does your department have in mind taking now?

Hon. Mr. Basford: Well, the act has the Schedule which you have in front of you. On Royal Assent of

the act, the first three items in Part I will become illegal immediately. Part II is declared or becomes effective only on proclamation. That is, section 16 declares that Part II will become effective on proclamation.

It will be some time after royal assent before we will be prepared or able to declare or proclaim Part II.

We have within the department drawn up very rough draft regulations to cover most of the things listed in Part II. We will, however, and we have not in any way concluded this or really even started it, want to consult in terms of those regulations with the industries affected in the items in Part II before we proclaim them. Therefore, it will be some time before Part II applies.

But we have, as I mentioned in my statement, the labelling code of the Canadian Association of Chemical Speciality Manufacturers. We will want to discuss much further that code and our draft regulations covering, for example, bleaches, cleaners and sanitizers with the manufacturers, at which point they will then agree on the regulations which will have to be passed by Governor in Council and proclaimed.

Senator Kinley: There are a lot of inventories all over the country. The merchants in Canada have a great deal of merchandise on their hands. What are you going to do with the inventories that they have? Are they going to have to destroy their stock?

Hon. Mr. Basford: No. Let me draw an example of something that is going on right now with respect to a totally different product not related to hazardous products at all. Some senators may be familiar with the sale of Greenland halibut by the Newfoundland fishermen to the Canadian and American markets. The American authorities recently, last year, declared that they regarded this as a deceptive title or name for this product. The American food and drug authorities said that it could not be labelled Greenland halibut, but would have to be labelled Greenland turbot. Our own fisheries department recently passed a similar regulation, which does not come into effect until some time in April. This delay is designed solely to let the fishermen get their inventories off the market.

Admittedly, that is dealing with a product that is not hazardous, but I do want to point out, senator, that with regard to Part I items, things that are dangerous and poisonous and extremely hazardous which may come on to the market will be added to Part I immediately, and any inventory can be seized. I draw the example which has been mentioned again and again, and was mentioned in the debate in the Senate – the jequirity bean case, where it was found that there were necklaces and broaches made of certain West Indian beans that are extremely poisonous and hazardous. Our food and drug administration had to go to a great deal of difficulty to get those products off the market. This legislation now gives us the legislative authority to deal properly with that situation. If jequirity beans are in Part I, then anyone who has jequirity beans in stock will have in stock an illegal substance which is subject to seizure.

The reason for this is that, in that aspect of it, this is a measure to protect the health and safety of the public.

Senator Kinley: Will this bill come in right away?

Hon. Mr. Basford: It comes into effect and is law on Royal Assent, but, if you will look at the act you have in front of you, you will see that with respect to the items listed in Part II the law will not affect them until proclamation.

Senator Kinley: Will there be a hiatus between the passing of this act and its coming into effect so that the merchants will have time to get clear of stock that is mentioned in the schedule?

Hon. Mr. Basford: With respect to Part II items, yes. The purpose of the proclamation is so that we can sit down with the industry and work out the problems of labelling requirements, precautionary aspects, and so on.

Senator Kinley: What is the penalty of Part II? Is it the same penalty under each part? I notice it is $1,000 presently.

The Chairman: Everything is relative, senator.

Senator Kinley: Is a magistrate allowed discretion?

Hon. Mr. Basford: Yes.

Senator Carter: Mr. Minister, what will be the disposition of substances that are hazardous for a particular use, but are not hazardous for other uses? For example, flammable textiles might be hazardous for apparel for every day wear in the kitchen, but might be useful for some other purpose. How do you propose to handle that situation? It would not seem fair for a merchant who has $1,000 worth of a product on his shelves to face a total loss upon seizure, if the product could be sold under some regulation which would ensure that its use was not hazardous. After all, sometimes hazards arise out of the use to which a product is put as much as from the nature of the product itself.

Hon. Mr. Basford: Exactly, senator. This is why we would proceed as the British have proceeded: Not outlawing a certain textile or a certain fabric, but outlawing its use for certain apparel. As I mentioned, under the British act they have dealt with and regulated the use of certain materials for children's

night clothes, but that does not prevent the manufacturer of that textile from making men's shirts out of it.

Senator Carter: That would be taken care of under section 7, by the regulations?

Hon. Mr. Basford: Yes.

The Chairman: Well, it would really come under section 3.

Hon. Mr. Basford: The regulation governing the textile would come under section 3, yes.

Senator Carter: Yes, but I was thinking of the disposal of it. The regulations under section 3 would refer to its sale, advertisement, or importation, but disposal is a separate thing. Would that be included under section 3, or would it be necessary to have a separate regulation under section 7?

Hon. Mr. Basford: It would be under regulations made governing the items in Part II of the Schedule which would be made pursuant to section 7.

The Chairman: But also covering Part I, because you may have to go in and seize prohibited hazardous products, and then there is a provision in the bill for their disposal?

Hon. Mr. Basford: I think the senator was referring to certain fabrics that will not be used for certain garments.

Senator Leonard: Mr. Chairman, my recollection is that when we considered a similar bill respecting hazardous substances last year, representatives of the chemical industry appeared before us and took exception to the definition of "flash point" that then existed. I think the matter was left that there would be some discussions between the trade association and the departmental officials. My question is: Is the definition of "flash point" that appears in this bill the same as that in the bill we considered at the last session, or did a discussion of this take place?

Hon. Mr. Basford: No, this is the same "flash point", as it was amended by the Senate last session. The discussions referred to took place in this committee, and the amendment was made in committee.

Senator Leonard: You have refreshed my memory.

Hon. Mr. Basford: It was, I think, 40 degrees, was it not?

Senator Leonard: Yes, that is right.

Hon. Mr. Basford: Yes, and the committee reduced it to zero.

Senator Molson: Mr. Chairman, last night we heard a number of comments about the Canadian Government Specifications Board. I wonder if we could, for the record, have a description of this Canadian Government Specifications Board which is mentioned in paragraph 3 of Part I of the Schedule.

Hon. Mr. Basford: May I ask Dr. James to deal *in extenso* with the Canadian Government Specifications Board?

Dr. R. W. James, Director, Consumer Research Branch, Department of Consumer and Corporate Affairs: Mr. Chairman, the Canadian Government Specifications Board is now an agency of the Department of Defence Production. Its primary purpose is to establish specifications for items being procured by Government departments, primarily the Department of Defence Production, which is the major procurement agency. It is the most knowledgeable Government agency on standards and specifications in so far as consumer needs are concerned.

The federal Government, as will be recognized, is a major purchaser of consumer goods and, therefore, a great many specifications have been drawn up for procurement purposes. Many of these specifications can, of course, be adapted for the purposes of the Hazardous Products Act in the sense that the specifications will embody certain safety features.

I might mention as an example that the Canadian Government Specifications Board drew up the present specifications for life jackets. They have also undertaken on our behalf to draw up a specification and standard for matches. Personally, I believe that they can have a significant influence on the machinery which can be used to implement the intent of this legislation.

Senator Connolly (Ottawa West): Do they work with the industry affected in each case, or do they work on their own.

Dr. James: The characteristic pattern used by the Canadian Government Specifications Board is to establish a committee which consists of representatives of the Government departments interested and, normally, retailers and the industry. There is a broad spectrum of representation of all interested parties on the C.G.S.B. committees. They do not, in fact, vote in these committees; rather, the committees operate by consensus.

Senator Connolly (Ottawa West): They are in touch with the industries affected, and they know what is possible and what is impossible, and they try to reach a maximum level of safety?

Dr. James: They are very closely in touch with the industry on all of these matters, senator.

Senator Flynn: Mr. Minister, may I say that in my mind Part I and Part II of the Schedule are merely indicative at this time of the outlook of your department and, in fact, this bill is seeking for the Governor in Council the authority to decide what is a hazardous product at any time without any control by Parliament. Possibly you would say there is no other way of dealing with this problem. I think we are all in agreement with the objectives of the bill, but would you say there is no other way of dealing with this than to give this very wide authority to the Governor in Council?

Hon. Mr. Basford: Yes, I would say that.

Senator Flynn: You would?

Hon. Mr. Basford: Experience really makes this necessary. This is why, in my opening statement, I mentioned the British and American experience. In the United States they started off with a very minimal act concerning the labelling of flammable products, and over a short period of time–some six years–they have run the whole gamut of legislative action, and have now ended up with a very comprehensive hazardous substances act. We, starting late, are able to gain from the American experience, and we are starting, we think, with a comprehensive act.

The British jumped right in, if I may put it in that way–perhaps I might read from their Consumer Protection Act. It says:

> The Secretary of State may by regulations impose as respects any prescribed class of goods–

And then it sets out the labelling, and so on.

Senator Flynn: It is practically the same language as here.

Hon. Mr. Basford: Yes. We have in section 8 limitations which are not in the British Act at all. The substance has to be poisonous, toxic, flammable, et cetera, and it has to be for household, garden, or personal use.

Senator Flynn: My main question is in connection with section 9–the Board of Review. You say that where a product or substance is added to Part I or Part II, any manufacturer or distributor of that product, or any person having it in his possession for sale, may make a request for a reference to a Hazardous Products Board of Review, and subsection (2) says:

> Upon receipt of a request described in subsection (1), the Governor in Council, on the recommendation of the Minister, may establish a Hazardous Products Board of Review–

It seems to me that this right of appeal is in the discretion of the minister. I would feel happier if it was compulsory for the minister to set up this board of review whenever a manufacturer is hit by an order in council. You may say: "Oh, well, this is not a serious complaint", and it seems to me that under the section as it is drafted you may refuse the establishment of a board of review. You may be badly counselled by your officials. I am sure that they are all very highly qualified, but that could happen accidently.

Hon. Mr. Basford: The purpose of the "may" is to avoid duplication. If a product is dealt with under either Part I, of Part II of the Schedule, it may affect the ten manufacturers of the product. If it is a "shall", we would have to have ten inquiries.

Senator Flynn: Would you set up a board for each case?

Hon. Mr. Basford: If it is a "shall" I would have to. The use of "may" allows me to hold one inquiry on that product.

I do not entirely accept the premise that what we as ministers do is not open to review. We have a question period in the House of Commons and we have a very alive and alert opposition. Anyone who feels aggrieved by the action of any minister has, in our system, his remedies. If I or my departmental officials acted in any arbitrary or reckless way, I think that the political processes of the country provide a remedy.

Senator Flynn: It is not sufficient.

Hon. Mr. Basford: The reason for the "may" is simply to avoid the necessity of having ten inquiries dealing with the same end product. It would allow me to set up a board of review to deal with, say, life jackets, which has been mentioned as an example.

Senator Macnaughton: You may refuse, though.

The Chairman: It seems to me, if I may interject, Mr. Minister, that this reason for using "may" instead of "shall" should be that the moment you classify something in Part I instead of Part II of the Schedule, the public are getting full protection of this act–so by the procedures you then have, the public are not being exposed to any risk. On the point that you make, it seems to me, that that can be covered by inserting the "shall" but saying that he shall do this except in any case where a decision of the hazardous products board of review has been made in relation to this particular product.

Senator Flynn: It seems to me that it is because public opinion must be informed sufficiently to protect the real interest of a manufacturer, it is not because you can put a question in the house. Public

opinion may always be against the manufacturer, and he cannot find redress, even by having a question put to you in the house. He may not be able to get a redress through the board of review.

Senator Connolly (Ottawa West): Without contradicting Senator Flynn's point, because I think this is valid, it seems to me that the position on safeguards that the Minister referred to will also have the safeguards on the other side, on the lower level, arising out of the committee which Dr. James just mentioned. We ought to know Dr. James here, because he did a great job of work for us on a number of our inquiries.

If that particular committee has on it representatives of industry, and if there has been some consultation and advice, then I think that is an additional safeguard. What I was going to ask, to buttress further perhaps the point that Senator Flynn is making, is this: In the event of your setting up a board of review–which is an appeal from a decision that might–might, by the industrialist concerned–be conceived to be an arbitrary decision, would that be a departmental board, or would you set up the kind of board that would be knowledgeable in that particular instance?

Hon. Mr. Basford: This is one of the reasons why there is a board constituted for each case.

Senator Connolly (Ottawa West): Perhaps that answers the question. I think it answers my question.

Hon. Mr. Basford: My initial inclination would be to use the Restrictive Trade Practices Commission, but it may be that I could not use that commission. A lot would depend on the nature of the appeal requested, the nature of the product concerned. The act allows us to establish a board to hear that specific case.

Senator Connolly (Ottawa West): In other words, you are saying, Mr. Minister, that if you have to deal with matches then you might have to have a certain amount of know-how on that board. But if you are going to deal with life jackets, then you have a different kind of problem, and perhaps you require different kinds of people, so you have different kinds of boards.

Hon. Mr. Basford: Precisely, and this is why there is not a permanent board established under this act. It is established on an *ad hoc* basis, if I might say so, for each product. It is also for reasons that, as you will notice, honourable senators, the Minister of National Health and Welfare also has access to the Schedule, because he has certain concerns with health products. And he may add products. Some of those would require completely different boards than the sort of thing that the Department of Consumer Affairs is concerned with. If you were hearing evidence on the jequirity bean, for example, you would have quite a different board than the one dealing with glues.

Senator Connolly (Ottawa West): I assume you keep close to the Minister of National Health and Welfare because a lot of the plans have arisen out of the use of hazardous products which have been imported on toys and other articles–the coloured ice balls for drinks–for example, that came from Hong Kong. How much help do you get from the Customs Department? Do you expect to get it from the Customs Department to stop these products coming in at the border?

Hon. Mr. Basford: Once something is listed in the Schedule, the customs points would be alerted to this.

Senator Connolly (Ottawa West): This is one of the functions that you would envisage?

Hon. Mr. Basford: I am told by the Health and Welfare officials that this now works, that they have good relationship in this regard, with products under the Food and Drugs Act.

Senator Connolly (Ottawa West): Do you need any help from them, from the Department of National Health and Welfare?

Hon. Mr. Basford: If something were added to the Schedule, I expect we would. I would anticipate that we would have the same relationship with revenue and with the customs officials as the Department of National Health and Welfare has.

The Chairman: I assume, Mr. Minister, that, as Senator Connolly says, you would appoint a knowledgeable board. That goes without saying.

Hon. Mr. Basford: Yes.

The Chairman: I therefore would feel that in the case of the person who feels he has been hurt, and who feels he should have a right to have his case discussed, that we should first make all those assumptions, that the board will be a proper board. I would expect that the Minister would do that. I think it is his duty to do that.

Hon. Mr. Basford: Senator Connolly was rightly raising the question that the board will be set up for each case, and that on the board there would be people who would be knowledgeable on that particular industry or for that particular product.

The Chairman: But it does not go to the question of whether I have a right of appeal or whether I am dependent on your discretion–and when I say "you", I mean the Minister and not you personally.

Senator Connolly (Ottawa West): For the record, perhaps I should ask one more question, without prolonging the discussion. In the Minister's view, even though the word "may" is used here, do I understand that the right of appeal is there and is absolute and is *de facto*. There would be an appeal only because in your opinion a board is necessary in a given case.

The Chairman: Having a board is no reason for having to write out a notice of appeal. Under the bill the minister may request.

Senator Flynn: Would the decision be final? There is no recourse to the Exchequer Court? A decision of the board of review would be final, would it?

Hon. Mr. Basford: The board of review makes a report which may or may not be published, as determined by the board. If the board of review says the product is not hazardous, or these regulations are inappropriate, silly, or conversely that the regulations do not go far enough, the minister then ignores the report at his peril, it seems to me.

Senator Flynn: I understand that. I am speaking from the strictly legal point of view. We may not always have as good a minister as we have now.

Hon. Mr. Basford: Whether or not you have a good minister, he will be subject to the penalties of not listening to the board.

Senator Flynn: These are relative considerations.

Senator Connolly (Ottawa West): Should we not go back to the Chairman's point. Suppose you have a man who has a grievance and there is no board of review in existence. What is the machinery whereby he launches his appeal to a board of review which has not been set up? Does he request that a board be set up?

Hon. Mr. Basford: Yes.

Senator Connolly (Ottawa West): Then is it completely discretionary for the minister in the department to say whether the board will be set up?

Hon. Mr. Basford: Yes. The purpose of this is to avoid the necessity of having a whole series of hearings with regard to one product. If it were mandatory, each person who complained could file a request and launch an appeal. The right is given to any manufacturer or distributor. If we deal with a product, there can be ten manufacturers and 500 distributors. My purpose would be to have one appeal, one board of review sitting on that product and judging that product, whether in the opinion of the board it is hazardous or not and whether the regulations to deal with it are too stringent or not stringent enough, rather than having 510 appeals in that case.

Senator Connolly (Ottawa West): Certainly that is completely sensible.

The Chairman: That is why I suggested the exception. It occurs to me that there is nobody here from the Department of Justice, but as I understand it, in legislation referring to the Governor in Council, usually the practice is to say "may" instead of "shall". Very often in those circumstances "may" is given the interpretation of "shall". I would say from the way in which you have developed this, Mr. Minister, you would apply the discretion to do or not to do rather than interpreting "may" as "shall" where a person asks that you set up a board for consideration.

Hon. Mr. Basford: Yes, because I think it would be very undesirable to place upon me or on the Governor in Council the obligation to have 510 proceedings.

The Chairman: If there were 510 different proceedings, whether it is a burden or anything else, there should be provision there, and if it involves the same point I would suggest the simple way is to have one hearing which applies to all those cases.

Hon. Mr. Basford: That is right. This is what I can now do.

The Chairman: The point is that it is your discretion whether the order is referred to a hazardous products board of review or not; it is your interpretation of subsection (2) of section 9.

Hon. Mr. Basford: Yes.

Senator Macnaughton: I understand that all the members of the board of review are appointed by the minister.

Hon. Mr. Basford: Yes.

Senator Flynn: You mean the same people who have decided already? I do not see how you get a review.

Senator Connolly (Ottawa West): That is unlikely is it not?

The Chairman: Frankly, I would not look at it from that point of view. The minister would be impartial.

Senator Leonard: We are dealing here with subordinate legislation. Section 8 subsection (1), gives power by order to amend Part I or Part II, and section 8 subsection (2), simultaneously gives power to amend on the recommendation of the minister. We go through all the necessary procedures to determine that certain articles are dangerous or hazardous substances, and then we give somebody else power to determine that some other substance is of the same character.

This brings up the whole question of subordinate legislation. If it is so important to deal with this as an act of Parliament, then it seems to me we should deal with any other dangerous substance. If the Governor in Council may have to make a quick decision and add an article to the list, that should come back to Parliament, in my view, and should not have effect until such time as it is ratified by Parliament. That would be the real board of review.

Hon. Mr. Basford: I cannot agree, with all due respect. This is not a new approach, either with regard to hazardous products or with regard to other legislation. For example, the Food and Drug Act allows the Governor in Council to add certain drugs, to change the drugs from one schedule to another. The Agricultural Products Standards Act allows the Governor in Council to add foods to the act, processes to the act, packaging and labelling to the act. There is wide discretion to add or subtract materials covered by those two acts. Again I draw on foreign experience. In Britain the Home Secretary is allowed to deal with any products that may require labelling, packaging or construction features, and that power is far wider than this bill.

The Chairman: I did not understand the honourable senator to be objecting to the Governor in Council having powers.

Senator Leonard: The initial power. I agree with that. It is a question of whether subordinate legislation should come back and be ratified by Parliament. In this case, which is quite exceptional, these are the kinds of amendments to an act that ought to come back to Parliament in due course. There are some things that are purely regulatory. You are yourself setting up a committee, or providing by your rules for the review of all subordinate legislation. Consequently this will probably come before whatever you do set up. When you consider it worthwhile to set up even a board of review, it seems to me all the more important that you should consider whether or not this is the kind of thing that ought to be reviewed by Parliament.

Hon. Mr. Basford: The actions of the board?

Senator Leonard: No, no, the actions of the Governor in Council.

Hon. Mr. Basford: In what way? By tabling the Orders in Council?

Senator Leonard: By ratifying whatever the decision is by a subsequent bill.

Hon. Mr. Basford: I am not sure that the Parliamentary process is quite up to that, because, for example, under the Food and Drugs Act, if Parliament had to deal with all the Orders in Council made under the Food and Drugs Act, it would take a great deal of the time of Parliament. If they had to deal with the regulations made under this act, if the regulations had to be confirmed by Parliament, it would be a very burdensome task, I think, for Parliament.

Senator Leonard: There are differences so far as legislation is concerned, but it strikes me in this particular case—where we have had a considerable amount of discussion as to just what are hazardous substances, as to what should be done about glue, and as to the question of giving a broad power to add to those—it certainly strikes me that it would be better that that be reviewed by Parliament for the future.

The Chairman: Parliament is making the first list.

Senator Leonard: That is right.

The Chairman: Therefore, the authority to add to it would be in the interest of the public. I fully support that. The question is whether it should be ratified.

Senator Connolly (Ottawa West): From a practical point of view, is the Minister in this difficult position that, suddenly, hazardous substances appear on the market and, in the interest of the public, he has to deal with them expeditiously? It seems to me that the Minister would have to have discretion to go ahead and put that on to the schedule.

The Chairman: We are agreeing to that, senator. Senator Leonard says yes to the initial authority to add this. We agree that this should exist, but we say at some stage that the exercise of that authority, and that classification should be reviewed by Parliament.

Senator Connolly (Ottawa West): In what way? By reviewing the regulation that was made? The Order in Council?

Senator Leonard: The regulation would have effect until confirmed by Parliament.

Senator Connolly (Ottawa West): Yes, ratification. That would not be burdensome. It might be time-consuming to Parliament.

The Chairman: There are more considerations than just the consumption of time, senator.

Senator Grosart: Mr. Chairman, I spoke on this bill in the Senate last night. I went a little farther than Senator Leonard has gone. I pointed out that clause 8 gives the Minister the power to repeal the act. I do not know whether any other act goes that far, but I think it is quite clear that this act does. He may delete all the items in Part I and Part II of the schedule which would mean the act is repealed. I suggest this is going

farther than any act that I have studied recently. I do not know whether the Food and Drugs Act goes that far. If it does, I would suggest that it would be merely another objection to this act that it is following that precedent. Parents sometimes tell their children not to follow bad examples. I do not think there is any justification whatsoever if this is objectionable, to say that this sort of thing is done in some other act—whether it is or not.

The Chairman: Do you agree that what is provided in section 8 is in your view properly there, and that there should be that authority?

Senator Grosart: No, I do not agree.

The Chairman: Then you disagree with Senator Leonard's point of view?

Senator Grosart: I, at the moment, will not judge whether I am agreeing or disagreeing with him. I am merely saying that, in making this statement, I am going farther than he went. I do not know whether he would agree with me or not. That is not for me to judge at the moment, Mr. Chairman.

However, I would point out that the Minister seemed to give the impression that the listings, say, in Part II, bleaches and so on, were a limitation on the power of the Minister. I suggest that there is no limitation whatsoever on his power, because under the act the hazardous product is anything that the Minister, at his discretion, puts into Part I or Part II of the schedule. There is no limitation whatsoever, therefore. A hazardous product is described as anything that is put into the schedule, Part I or Part II, and the Minister can put anything in that he wants, and he can take anything out that he likes.

The Chairman: The Governor in Council can do so on his recommendations.

Senator Grosart: All right, say the Governor in Council, although there is a reference here to Ministers, and I think we are all aware that the normal process is that the Minister uses the Governor in Council as the *modus operandi.* However, I am prepared to say the Governor in Council.

The Chairman: You might run into debate on that, if you say that the Minister uses the Governor in Council. It may be the other way round. That is, that you cannot have an Order in Council without the recommendation of the Minister.

Senator Grosart: I am not arguing that particular point. What is more important to me is the power that is given, whether it be to the Minister or to the Governor in Council, and, as Senator Leonard pointed out, we have the will of Parliament clearly expressed at the moment in the schedule, Part I. Parliament says that these are the hazardous products. These are the things we say are hazardous products. The Minister can say that he does not care what the will of Parliament is, or was, on the day that this act was passed, and he can say that Parliament was wrong. He can say, "I am changing this. I am taking one out."

Now, that is the essence of my objection to the act as it stands. I am fully aware of the problem of acting swiftly, and I have great sympathy with those who are faced with it. Obviously, the department in certain cases must act swiftly. The Minister was asked if there was some other way. He thought not. That is an answer that never satisfies me. We hear today the common phrase, "There is no way." There is a much better axiom: "Where there is a will, there is a way." I suggest that there is a way here, if there is a will.

My suggestion is to adopt a certain formula, and if you will allow me to give it a name, I will call it the "Hayden Formula". It is a formula that I have seen you, Mr. Chairman, develop from time to time, and sometimes quite effectively, and I am thinking now of the deposit insurance bills.

I think it falls into the suggestion made by Senator Leonard that the Minister should be required to come back to Parliament in due course, and the Hayden Formula, as I understand it, would be that we should put a time limit on the effectiveness of the regulatory action, and I am quite sure that this would obviate the general feeling of public servants and Ministers about the slowness and cumbersomeness of the Parliamentary system. If the Minister or Governor in Council or Governemnt, whatever way you like to take it, knew that what was done by regulation was going to lapse in time, the Minister would see that the amendment was brought before Parliament.

Here we are giving the Government a real incentive to come back to Parliament and to at least ameliorate the effect of this, which is a clear delegation of legislative power.

The Chairman: You are really agreeing, in effect, that section 8 is properly in the bill and that the Governor in Council must have that initial authority to do these things in the public interest. What you are saying is that some time thereafter Parliament should either ratify or amend or approve what has been done.

Senator Grosart: Or extend it.

The Chairman: Because this is what Parliament is doing now. It is approving the initial list.

Senator Grosart: In general, yes, Mr. Chariman, although I would have some reservations about giving the Governor in Council the power to repeal anything in Part I of the schedule.

The Chairman: I do not see any difference between repealing and adding.

Senator Grosart: I think there is a difference, with respect, Mr. Chairman. The difference is that here Parliament has specifically looked over the whole field of now known hazardous products and has said that these groups are hazardous. I think that should stay. That is the will of Parliament. Nobody is going to be hurt if there is some delay in bringing in one of those out from under Part I of the Schedule. Therefore, I say I agree with your interpretation of my remarks generally, except that I would make the additional reservation that the Governor in Council should not be allowed to repeal, in effect, a clear expression in statutory form of the will of Parliament at a given time.

Hon. Mr. Basford: Mr. Chairman, I am in a state of some confusion. During the last Parliament the Senate passed Bill S-22, after hearings in this committee. That bill did not get dealt with by the House of Commons, and it died when Parliament was dissolved. The Government had to decide whether to proceed with this measure, and it did so decide, and the matter was transferred from the Department of National Health and Welfare to the Department of Consumer and Corporate Affairs, and I revised the act and re-introduced it.

The revisions that have been made to the act are the addition of subparagraph (b) to section 8(1) which includes household, garden, and personal products, and the setting up a board of review. Those provisions were not in the former bill S-22. Apart from that, the scheme of this bill is exactly the same as that of the bill passed by the Senate during the last Parliament. So, I am now in some confusion.

The Senate approved the whole scheme of the act, and of the addition of things to the schedule, and their deletion. In fact, in the committee there was a great deal of discussion as to whether things could be moved from one part of the Schedule to the other. The whole scheme of the act was approved by the Senate, yet I have this morning got into trouble because of the board of review which I thought was a desirable addition to the act. I am, in a way, sorry that I did not leave out the board of review, and leave the matter as it was in the old Bill S-22.

It seems to me that this act is a great improvement, and is one that provides more protection to the public and to the industry than did the old bill S-22 which, as I say, was approved by the Senate after hearing in this committee representations by the Canadian Manufacturers of Chemical Specialties Association and the Canadian Paint Manufacturers Association. These organizations recognized the need for regulation, but they wanted to be consulted—and they will be consulted. They did not raise the point that they wanted a board of review in the hearings in this committee, but I felt it desirable that there should be a procedure by which people could go before some board and have a fair hearing, or a judicial hearing, on regulations governing their products.

This is the kind of scheme envisaged and outlined when the former Bill S-22 was before this committee. It was outlined by the Director-General of the Food and Drug Directorate, who was then carrying the legislation, and was approved by the Dominion Council of Health as a very necessary measure that should be proceeded with expeditiously. It was said that this was the only proper way of dealing with a host of products that are on the market, or that may come on the market.

If we are not going to have this scheme of legislation then it will become necessary, as the need arises, to introduce a jequirity bean act, and then a children's nightdress act, and then a household fluids act, and so on. This is the experience of the United States. They started with a minimum piece of legislation, and then got to where we are now by having a general piece of legislation.

The Chairman: But, Mr. Minister, this is not the objection, as I see it. The objection is that every power you are asking for in the bill initially, or that you want to add or take away, you can obtain by means of an order in council. All that is being said is that thereafter at some stage Parliament should have the opportunity of saying whether it approves of that, or whether there should be any change. It does not interfere at all with the administration. It does not interfere at all with the public interest. The public interest is protected in the meantime. It does not disturb the scheme of the act.

Senator Leonard: There are things here that were not in the previous bill. Is that not so?

Hon. Mr. Basford: Paragraph (b) of section 8(1).

Senator Leonard: The glue, for example.

Senator Grosart: May I just comment on the minister's remarks?

The Chairman: I think the minister wants to say something in answer to Senator Leonard.

Hon. Mr. Basford: I just want to say that the real addition is paragraph (b) or section 8(1). I think the glue was in the old Bill S-22.

Senator Leonard: I accept that.

Hon. Mr. Basford: The schedule has not been changed.

Senator Grosart: I was going to say that the minister appeared to be answering my objection, but I

would make a further comment. I agree with him that this is a better bill than the one that was before the Senate during the last Parliament. I can understand it when the minister says he is confused–perhaps "frustrated" would be a better word–in that, certain principles having apparently been approved, he now comes back before the Senate committee and discovers that somebody wants to re-open the whole matter. I do not think we have to apologize for that. Our whole system of legislation is based on the fact that we stage the various processes, and one of the reasons for that is to give people like myself, who need more time than others to find out what may be objectionable in an act, an opportunity to say something. I do not think I have to apologize for the fact that it took me a long time to find out that there is something objectionable here. I am not a lawyer, and I did not take the time to read all the acts.

Incidentally, I am not a member of this committee, I am sorry to say. I am speaking as a senator, and not as a member of the committee. I am not quarrelling about the Board of Review. All I am saying is that there should be–I am in agreement with Senator Leonard here, and, perhaps, the chairman–some control on the complete, and now uncontrolled, legislative power that is given to the Governor in Council under this act. I said last night, Mr. Minister–and you may read it in *Hansard*–that I was not concerned about the administration of this act under the present minister.

Senator Kinley: Mr. Chairman, I think this bill is a technical one. It needs technical knowledge. If the minister makes a decision, or even if the Governor in Council makes a decision, then that decision must be made on the advice of advisers who have knowledge of the situation, and who are the people who will decide. If the minister is going to delete or add something to the schedule then, no doubt, there will be public interest in that, and it will be done on the advice of his advisers. Now, if he is going to have a board of review, and he appoints the same technical advisers to the board of review, then what chance have we got? We have no chance at all.

I have been following this thing. I have been in the drug business for 30 years, although I am not in it now. I do have some knowledge and experience of the drug business. I remember that in the Exchequer Court, there were lawsuits that cost many thousands of dollars proving that Coca-Cola and Pepsi-Cola were not the same thing. There are many industries in this country that need these things for certain purposes. Now, is there any exception for a purpose that it would be needed, and that it could not be given to the general public?

I heard mention the other day, Mr. Chairman, of free wheeling, and I might say that there is a lot of free wheeling in this bill. Since I came to Parliament 30 years ago I have been listening to debates on legislation. We have made laws, and then when we got down to the point of having people interpret them we have found there is an order in council that emasculates the law. I think that we would want an independent body to decide on a review.

Senator Carter: Mr. Chairman–

The Chairman: May I add just one thing, Senator Carter. The minister was commenting on the fact that we did not raise the question of some check on this arbitrary power last year. Well, the minister knows very well that we did discuss it, and decided to let it go. That is not unusual. I do not have to name the things that have happened, but I am sure the minister will recall, and the senators will recall, what I am referring to. I have often seen–and in the not too distant past–bills introduced in one house of Parliament being substantially amended or proposed to be amended by the very people who sponsored the original bill. So we have at least that much power. I do not think we misled the minister.

Hon. Mr. Basford: That is why, Mr. Chairman, I started the bill in the Senate, knowing that it would get careful consideration.

Senator Molson: We are not always consistent, because when we had the Department of National Health and Welfare hearing here, we were unable to find any definition for promotion or advertising in Bill S-21; but in Bill S-22 it came out here without any difficulty whatsoever.

The Chairman: That is why we move around.

Senator Flynn: We are trying to improve all the time.

The Chairman: And ourselves, too.

Senator Flynn: That is what I mean.

Senator Carter: Mr. Chairman, I have been trying to think out the application of the principle enunciated by Senator Leonard and Senator Grosart. The principle is that Parliament is supreme; and it is my understanding of it that any law made by Parliament could be changed only by Parliament, that that is the supremacy of Parliament.

This bill that we have now already has classifications of substances which Parliament has approved. Consequently, any subsequent changes in the Schedule, anything added or deleted, should also go before Parliament in time for approval. But if we start now to apply that principle, then we have to put in this bill somewhere a time limit on the decision of the minister, or a time limit in which the bill, with the

changes in it, would go back to Parliament for approval.

Once you start putting a time limit in the bill, then what does the minister do? He must apparently bring this bill to Parliament long before the date of expiry in the bill–in case by chance there should be a dissolution or a summer recess or something like that when this date falls due.

The Chairman: That is readily taken care of. We have existing legislation in which you have this provision many times, about having to bring something back to Parliament. There must be a report, the orders in council must be tabled, you have all sorts of other things. The language is usually the same–that is, if the Parliament is in session, within sixty days, or 120 days, from the opening of Parliament; or, if it is not in session, then it is when Parliament resumes.

Senator Carter: Would you make provision for the minister to exercise his powers–

The Chairman: Right away.

Senator Carter: All the time. There would be no disruption of the minister's power at any time?

Senator Leonard: I think it would be better to order it in the bill itself.

The Chairman: I think so, too.

Senator Burchill: May I ask a question?

The Chairman: Certainly.

Senator Burchill: Is the minister obliged to accept the recommendations of the board of review?

The Chairman: No.

Hon. Mr. Basford: The reason for that is principally a health reason. It is more the considerations that would apply to the Department of Health and Welfare than to the products I am concerned with, in that the Minister of National Health and Welfare has a statutory obligation to be concerned with the health of the public. He will be exercising his influence on this bill and adding things to the Schedule. In fulfilling his obligation to the health of the public, he cannot be bound, I think. Now, if he has acted in an arbitrary way or in an unnecessary way, the board of review will point that out–to the minister's penalty, I suspect. But I do not think that you can bind the Minister of Health to be bound by the recommendations of the board.

With regard to the matter which has engaged us here, about regulations, I could not here and now, at this point, consent to an arrangement by which any orders passed under the act would have to be confirmed by Parliament. This is a new procedure, I think, to me.

Senator Leonard: To put it the other way–a certain length of time?

Hon. Mr. Basford: I could not consent to that, without discussion with the Department of Justice, because of problems there could be if they had to be confirmed. This has very far reaching implications, and Parliament could well spend a great deal of its time confirming regulations. I would like to suggest, senator, that the House of Commons has a committee established to consider these very issues.

Senator Leonard: Obviously, the addition or deletion of a substance as being hazardous or non-hazardous is an important thing, and any amendment to that effect, it seems to me, ought to have effect for a limited period of time, so that Parliament could review it.

Senator Flynn: May I suggest that we could adjourn the consideration of this bill to give the minister time to consult on these two points that I have raised. There is the question of referring to Parliament any additional deletion to the Schedule. There is the second point, the problem of the board of review. I think anyone should be entitled to have his request referred to the board of review, if the point has not already been decided or if a board has not already considered the point. If it is already considering the point, it would be only a matter of referring the request to a board already in existence.

The Chairman: These are two points where we are asking the minister to consider. There is one other thing I would like to ask the minister. Do you feel, or do your departmental officers feel, that the authority you have taken in relation to inspectors and in relation to the analyst will enable you to move quickly enough, in certain circumstances?

Hon. Mr. Basford: I was intending to make a slight amendment with regard to the definition of analyst.

The Chairman: Do you think that in relation to the inspector you have it broadly enough now, that if you need an inspector so quickly, that you have to take some person in a local area, that you can do what is required to make the inspection?

Hon. Mr. Basford: Yes, the Department of Justice advises me on that, too.

The Chairman: Well, I am putting the question to you.

Hon. Mr. Basford: Yes.

The Chairman: While the minister will give consideration to these two points, are there any other points that you would like to ask him now?

Hon. Mr. Basford: I am not quite sure that I said that. I certainly said I could not consent to it, without advice from the Department of Justice.

The Chairman: I was not asking you to consent: I was asking you, do you want any time to consider it?

Hon. Mr. Basford: My own view was that I do not think it would be necessary. I certainly could never recommend, and would not recommend, that the orders be only made for a little while or for a period of time and then had to be confirmed by Parliament or they expired. I think that creates tremendous difficulties. It is conceivable that something could be added that was hazardous, dangerous or poisonous, and for some reason Parliament could not get around to dealing with it, and then it would be legal to sell that.

The Chairman: That of course is not what we are asking.

Senator Leonard: Up until this bill is passed, that is the situation we have had in the past.

Senator Flynn: If Parliament has to deal with that, it would be certain that it would deal with it as it does in other cases. I do not think the minister needs to be afraid of that situation.

Hon. Mr. Basford: But in what other cases does Parliament confirm regulations?

Senator Flynn: It is in many other acts that we have. When we know that we have to deal with a given matter before a certain date we do it. This is not the first time. I know it is not the same thing, but we dealt with the Customs Tariff because it had to come into force on January 1, 1969; we dealt with the legislation required because of this delay within the period provided.

The Chairman: In what we are suggesting we are not limiting the power of the minister in any way to get action immediately by order in council, for the Governor in Council to put another substance in Part I or Part II or to take one out. All we are suggesting is that at the next sitting of Parliament what was done under the order in council should be submitted to Parliament. That is all we are asking. If Parliament does not think it is important enough to deal with, that is another question.

Senator Connolly (Ottawa West): If the deletion or addition had to be approved ultimately by Parliament, as I understand the discussion here the deletion or addition would remain in effect until Parliament had dealt with it.

The Chairman: Yes.

Senator Connolly (Ottawa West): From a practical parliamentary point of view, what would be required would be an amendment to the act by way of changing the schedule.

The Chairman: That is right.

Senator Connolly (Ottawa West): I take it that this would be a bill that would have to pass both houses. I suppose when Senator Leonard talks about the substitution of Parliament for the board of review, he would say that if there is an aggrieved person in Canada affected by this regulation that aggrieved person can come before one of the parliamentary committees–certainly it could come before his committee–and make his case. In saying that, I do not think what we are doing is attempting to protect the people by putting a mark on hazardous substances that are dangerous to the public, but there may be a legitimate grievance, for example, in the case of someone making life-jackets where certain standards are a little too high. Perhaps this is a bad example.

It is the kind of thing where there could conceivably be an area of disagreement and a place of grievance. I cannot make up my mind whether this is the right way or whether the board of review is the appropriate way, but I do think it is worthy of consideration by the Department of Justice.

The Chairman: The board of review provisions do not deal with the question Senator Leonard raised, which is the question whether if this bill is passed by Parliament . . .

Senator Connolly (Ottawa West): Accepted in a practical way. Probably if the board of review decided in a certain area the power would still remain with the Governor in Council to amend the act.

Senator Phillips (Rigaud): Could we consider the suggestion that deletions or additions shall remain in force for a period not to exceed two years, so there would at least be a time within which deletions or additions would remain effective and provide a time at the end of which it would require parliamentary sanction?

Senator Connolly (Ottawa West): With all respect to Senator Phillips, I do not think it is an arbitrary time limit to suit a case like this where you are dealing with matters that might affect the health or welfare of the public if it is a hazardous substance.

The Chairman: The order is in force the minute it is made.

Senator Connolly (Ottawa West): That is right.

The Chairman: So the public is being protected.

Senator Connolly (Ottawa West): If there is a time limit of one, two or three years, as the minister pointed out . . .

The Chairman: I would prefer to say the next sitting of Parliament if Parliament is not in session.

Senator Connolly (Ottawa West): Suppose you have an election within two years.

The Chairman: Then the order goes on.

Senator Connolly (Ottawa West): Under Senator Phillips' suggestion.

The Chairman: No, under what we have been suggesting.

Senator Connolly (Ottawa West): That is what I say. I go with the minister, that the addition or deletion from the schedule should remain until there is parliamentary action regardless of how long it might take.

Senator Flynn: Oh no.

The Chairman: No, it has to be the next session of Parliament.

Senator Phillips (Rigaud): It has to be dealt with by Parliament; it has to be put before Parliament, and Parliament should deal with it at that session or in the next session.

The Chairman: If Parliament does not deal with it then the order has gone.

Senator Phillips (Rigaud): Obviously the deletion or addition in respect of the schedule in question should be submitted to Parliament for ratification within a period not later than a certain date.

Senator Connolly (Ottawa West): Oh yes.

Senator Leonard: I think Senator Phillips' suggestion is the way to deal with it. A minister could bring it along inside three months if he wanted to. In the meantime, two years would give ample opportunity to be satisfied that the action had been right or that it should be changed.

Senator Connolly (Ottawa West): That was my objection.

Hon. Mr. Basford: I am not sure precisely what the committee means by "submit to Parliament". If it means simply laying the order in council on the table, that is one thing. If it means debate by Parliament, then it means a great many other things.

The Chairman: It means amendment to the legislation.

Hon. Mr. Basford: I know you want to amend the act to provide that the orders made changing the schedule be submitted to Parliament. What I would like to know is what you mean by "submit to Parliament". Is it laying on the table or debating it?

Senator Leonard: I mean a bill amending the act, changing the act to conform with an amendment made by the Governor in Council.

Hon. Mr. Basford: We are dealing here with a great many technical matters. Senator Connolly rhetorically raised the question of where people would get the better hearing. I would point out that item 3 of Part I of the Schedule refers to:

> Liquid coating materials and paint and varnish removers for household use having a flashpoint of less than 0°F as determined by method 3.1 of Specification 1-GP-71 of the Canadian Government Specifications Board.

The flashpoint of paint is an extremely technical question. There are all sorts of different methods of determining flashpoint; there are all sorts of different specifications. I cannot speak for the Canadian Paint Association, but if there were to be a change in that specification I would, with all due respect and deference, suggest that they would get a better hearing in front of a specialist board of chemists, engineers and laboratory people who knew about the specifications of paint, and about flashpoint, than they would from a parliamentary committee. I do not think Parliament is designed to deal with method 3.1 of Specification 1-GP-71.

Senator Leonard: Parliament did that.

The Chairman: Parliament enacted it.

Hon. Mr. Basford: You may make some change in the flashpoint. We are going to deal with the flammability of textiles. There are eight different methods of determing flammability being considered by the Canadian Standards Council or by the standards people. I have been in Parliament for five years and I have never sat on a committee that would be able properly to consider whether to use one method of determining flammability rather than another method. This is surely an area in which the scientists are involved, not the politicians. These are the kinds of regulation that we shall have to be passing under Part I, whether to amend the standard, whether to change the flashpoint, whether the lead content

should be .5 or .7. Is Parliament to debate each of these changes?

The Chairman: I do not want to get into an argument, but I want to state what our position is. If the Minister, on the recommendation of his advisers, decides that item 3 in Part I should be broken into smaller parts, or the standard should be changed, then the authority we agree would be in the act that the Governor in Council, by Order in Council, would delete or amend so as to reflect that. Now, the Minister does that on the advice of his responsible officers and members of the public who are experienced in this business.

The same people are available to Parliament and the Committees of Parliament and are used there all the time. We used them here the last time we considered this bill. It is not a question of whether Parliament is better able or the Minister is better able, but it is a case of the Minister having the best advice possible and then disclosing that advice to Parliament. If there is any more advice, Parliament will get it. These are the legislative processes, and I do not see that we should interfere with them at all.

Senator Macnaughton: We are all very sympathetic with the Minister and want to help him get through his bill, which is very much needed. But there are two points we have raised this morning which need further consideration. Is there a possibility of a short adjournment so that further consideration can be given to these points? I understand the Minister's position, but there is such a thing as our duty to Parliament as we see it. If we do not agree with the Minister, that is just too bad, but we have our duty first.

The Chairman: We can adjourn until two o'clock, or 2.15, or we can adjourn until the Senate rises later today. If you want action, we will give it to you.

Hon. Mr. Basford: Fine. I would like to consult, but, first, I would like to know precisely what the suggested amendment is.

The Chairman: There has not been a motion yet. Senator Phillips (Rigaud) made certain suggestions and then revised them. We are still in that flexible stage of discussion and we invite you to join in. Shall we adjourn discussion of this bill until later today?

Senator Connolly (Ottawa West): Perhaps that is too fast for the Minister, Mr. Chairman. He has to consult with the Department of Justice and with his own officials. He may want to look at this record. Although he has heard it, he may still want to show it to people who are concerned.

The Chairman: Well, we will be sitting again. We will be sitting later today. We could sit some time tomorrow. We can sit next Wednesday. We will be here next Wednesday, in any event. You may take your choice of the times. Suppose we adjourn the consideration of this bill until the call of the Chair. The moment the Minister indicates that he is ready, then we can meet.

Hon. Mr. Basford: That is fine.

The Chairman: Then consideration of this Bill S-26 is adjourned to the call of the Chair. Is it agreed?

Hon. Senators: Agreed.

Whereupon the committee proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 18

WEDNESDAY, FEBRUARY 12th, 1969

Third Proceedings on Bill S-17,
intituled:
"An Act respecting Investment Companies".

WITNESS:

Department of Insurance: R. Humphrys, Superintendent.

THE QUEEN'S PRINTER, OTTAWA, 1969

29700—1

THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29700—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, February 12th, 1969.
(19)

At 11.35 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

At 12.05 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 26th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Now we come to Bill S-17. Perhaps we are not ready this morning to proceed further with consideration of this bill at the moment. I had hoped that we would have submissions from people who wished to appear. We have had some submissions but a number of them have gone firm for the 26th February and afterwards. One reason for our hesitation in choosing an earlier date is the question of whether or not the Senate will be sitting next week. That apparently has not been determined as yet.

When we go through the bill clause by clause, which will be the next step, I would personally prefer to do it with Mr. Humphrys and representatives here so that we could correlate the objections and the submissions. If we were to start the clause by clause consideration today it would mean that we would be repeating it to a great extent at a later date. However, if that would embarrass any person here today and who wishes to make a presentation that I am not aware of, we will certainly hear him.

Senator Connolly (Ottawa West): Mr. Chairman, I wonder whether the committee would allow me the time to ask a few questions of a general character with respect particularly to acceptance companies which I dealt with in the speech I made on the bill. This is not clause by clause consideration really and it would not take me very long to do it while Mr. Humphrys is here. As a matter of fact I have told him in a general way the kind of questions I wanted to ask. Would it be agreeable to the members of the committee if I did that now rather than going into it at a very crowded meeting the next time? It will take about three minutes to ask the questions.

The Chairman: Let us say 10 minutes. Is the committee agreeable? We will be going over the points you raise again, but I am in the hands of the committee. It is up to them to decide whether or not they want to do this this morning. Usually when a senator wants to ask some questions we say "Yes, go ahead."

Senator Beaubien: I agree with Senator Connolly, and I think he should go ahead.

Senator Connolly (Ottawa West): Mr. Humphrys, you remember the speech I made in the Senate when I talked about companies gnerally known as acceptance companies and the Porter Commission relating them to real banks. I called them merchant banks, but I realize that they do not qualify for that term under the definition of merchant banks as that term is understood in European practice. They are perhaps industrial banking companies.

I also suggested that first of all in a general way it might be appropriate to deal with this type of institution in a separate section of the bill, and I would like to get your views on that point. I am not going to reread the definition of the company because it is defined in general in the Ontario Securities Commission definition—101—67—acceptance companies. Simply to save time, I will not read that, but I know very well that Mr. Humphrys knows what that definition spells out and what in fact these companies do. What I proposed was that these companies might be dealt with in a separate section of the act, but they might be made subject to the appropriate sections of the Bank Act. I list for the sake of the record section 29 dealing with "Non-current loans", section 62 and section 63, annual statements; sections 64 to 68 dealing with powers of Inspector General; sections 103 to 107, and 152 and 153 dealing with returns, and sections 139 and 140 dealing with inspection.

I suggested certain requirements, because, as I understand this industry, they do not

want to avoid any of the inspection requirements provided for banks—they feel there is better confidence established if, in the mind of the investing public, the restrictive provisions of the Bank Act should apply to them. Therefore the requirements on capital investments should be the same as are required of the chartered banks; that is, that they report forthwith, as the chartered banks are required to do, all loans and investments in excess of 5 per cent of the capital and reserves to the Inspector General of Banks; that they maintain reserves of, say, 12½ per cent of their short-term liabilities, which I understand is acceptable within the industry, and that the credit of last resort should be provided either by the Bank of Canada or by some other appropriate Government agency.

I also added that provincially incorporated acceptance companies which comply with these requirements should be entitled to register federally. We used this device in the Deposit Insurance Act, if you will recall. We provided there, in section 16, a formula whereby a provincial body could join the federal club, and by section 25, a formula whereby they could be excluded from the federal club.

Now, I realize that if these proposals are acceptable that you, the Superintendent of Insurance, would not have the supervision and control of these organizations. They would in effect become "near banks" and be subject to the proposals made for them in the report of the Porter Commission.

I should mention here that most of these companies, because of the amendments made to the Bank Act at the last revision, are competitors of the chartered banks, but they have to have their reserves pretty well wholly in the hands of the chartered banks. Thus they are dependent to a large extent for their credit resources on their competitors.

That is the general character of the proposal that I made. I wonder if at this time you could comment upon it.

The Chairman: Are you proposing for consideration a separate part in this bill or a separate act?

Senator Connolly (Ottawa West): Well, I am really indifferent about that. I think the industry would want a separate part rather than a separate act, because a separate act would take too much time to pass. If it were to speed up the legislative process to accomplish this purpose, I would say, do it by a separate section and do the legislating in respect of the appropriate sections of the Bank Act by reference to the Bank Act rather than by spelling them out.

The Chairman: Mr. Humphrys, do you want to take time to consider this, or are you ready to give your views now?

Senator Connolly (Ottawa West): I did mention this to Mr. Humphrys about a week ago.

Mr. Humphrys: I will attempt some comment, Mr. Chairman, honourable senators. The breadth of the question and suggestion is such that it involves policy matters that are very substantially beyond those that are dealt with in the present bill. Therefore, I feel a little hesitant about commenting on it. I think I would have to say that I am giving my own personal reaction.

Senator Connolly (Ottawa West): I appreciate that. I would not want to embarrass you by asking you to comment on policy, which I would expect the Minister to do.

Mr. Humphrys: Yes, senator. I think that the ideas that Senator Connolly put forth in his speech before the Senate and which he has outlined this morning are very interesting. They might well provide a kind of structure that is suitable for organizations in this type of banking business. It is an aspect of banking that has not been specifically defined or distinguished in Canadian law or financial institutions. But we have seen it grow up in the development of the financial community, particularly in the post-war years.

In commenting specifically on the proposals, we face again the problem that has been referred to in earlier hearings on this bill: that we simply have not as much knowledge and information as we need concerning companies that are in the financial-intermediary business in one aspect or another. This has hampered us in attempting to arrive at specific definitions of the kind of companies that should be brought under this piece of regulatory legislation; it has hampered us in proposing specific rules or regulations or guidelines that might be appropriate for various types of companies; it has hampered us in making recommendations to the Government as to more specific legislative enactments that would apply to certain classes of companies. Part of the rationale of this bill—perhaps the principal rationale at this stage—was to establish a flow of information and a focus whereby the companies concerned could have their voices heard in the

Government organization and where the Government could turn for up-to-date and reliable information on the various types of companies that would be concerned.

In the absence of that, it is very difficult to propose legislation of the precision that you have outlined for certain types of companies.

Just to take one illustration, the question of the emergency liquidity facilities, or as it is commonly called "the lender of last resort". Companies that we commonly think of as finance or acceptance companies have raised this question from time to time. It was referred to also in the Porter Report.

There are, however, a number of other companies in the financial intermediary field which also would very much like to have better facilities than now exist for "lender of last resort".

I think the adoption of the Deposit Insurance Act created a vehicle that could be used in extreme emergency as respects companies subject to it, but it was not intended or designed to fill the place of a more or less normal lender-of-last-resort facility.

Also I would like to comment that to some extent Government policy was determined on the recommendations of the Porter Commission in this regard, when the Bank Act was amended two years ago. Evidently, it was thought that these particular recommendations should not be picked up at that time. I do not know and I would not presume to say whether it was a firm negative decision or one based on a time factor rather than anything else.

Senator Connolly (Ottawa West): They may have had enough to do dealing with the chartered banks.

Mr. Humphrys: In proposing this piece of legislation the idea was to start this flow of information. It was put with the Department of Insurance because the responsibilities of that department are in the field of supervising financial institutions of a wide variety. We already supervise mortgage loan companies, which are a kind of broad investment-type company principally oriented towards mortgages. We have a staff of inspectors and administrative machinery that make it possible to graft the administration of an act such as this on to our department.

The Inspector General of Banks operates with very limited staff, and there is no field staff for this at the present time, so it would be rather difficult to put this kind of responsibility on him in any sudden way.

Senator Connolly (Ottawa West): And perhaps duplicate staff.

Mr. Humphrys: Yes. I do not think one should assume from the pattern of this legislation that it necessarily fixes indefinitely the supervisory or legislative pattern for the companies that may become subject to it.

One of the things we wanted to do was to be in a position to give better advice to the Government as to appropriate legislative structure and supervision for different types of companies, and it may well be that we need some expansion and modification of the concept of our banking legislation to fill the position you have described that might be appropriate for a type of industrial bank or merchant bank.

It might also be we need some modification of our banking legislation to cover a savings and loan type of organization, where the organizations are more admittedly in the savings bank business and more directly oriented towards mortgage lending.

We see the Quebec Savings Bank Act is now an act of general application, and if the bill to amend the charter of the Quebec Savings Bank passes through Parliament, the Quebec Savings Bank Act will remain being applicable to one institution only.

We have the Loan Companies Act which goes part way in the same field. Some accept deposits, provide checking facilities, make mortgage loans, and offer other facilities. They are not all that different from a savings bank.

Another stage is the stage you have described, where you get to an organization that is not taking deposits but is raising money by short-term paper, and is not making personal loans but industrial loans and equipment financing, more of the type of a merchant bank. So, there are various stages of organizations which will probably have to be sorted out or should be as we develop our legislation.

Senator Connolly (Ottawa West): The comment I would like to make on that is this. As you say, this industry, which does the acceptance company work, is expanding constantly and becoming a very large part of the financial organization within the private sector, and it seems to be a very special category. We have had before us briefs dealing with industrial holding companies like

Massey-Ferguson. We have had briefs from Dominion Textile, and so on—sometimes not briefs, but letters. They have certain problems, but here you have a clear-cut industry, that is well defined and understood, that would like to see this kind of legislation, with certain modifications perhaps, applicable in it, particularly in a separate section. Is it not better to have it in legislative form rather than in regulatory form, so that from the point of view of the investing public they know exactly where these companies fit?

Mr. Humphrys: I would agree with you in principle, Senator Connolly. I do not feel myself at this stage that I could properly make recommendations to the Government with precision on the matters you outline in your comments. We have in this legislation refrained from any specific recommendations on the grounds that we must know more before we can really recommend what rules would be appropriate, either in the form of regulations or legislation, for companies in the acceptance field or any other fields. We would like to be in a position, if we go ahead with that procedure at some time, to know what companies are in the field, what variety exists within the class of companies generally called finance or acceptance companies, and what rules would be appropriate. I could not recommend now whether, say, 12 per cent as a liquid reserve would be good or not.

Senator Connolly (Ottawa West): No, and I could not either. I used that figure because it seems to be reasonable.

Mr. Humphrys: Even in the Ontario act, where they define a finance company, it ends up with, "and a company designated by the Director as a finance company". They have certain descriptions, and then there is that general provision. I do not know whether that is a satisfactory answer.

Senator Connolly (Ottawa West): It helps a good deal, because there will be representations from some of the companies in this sector of the industry, and perhaps after hearing them and the representations that they make about the peculiar problems, this committee might make the recommendation that they should perhaps be dealt with in a separate part of the act. I do not think I need stress that point further. I thought the committee would consider this bill much earlier this morning, and it is now getting rather late. I also wanted to talk a little about representations we have had from some of these holding companies like Massey-Ferguson and a few others.

The Chairman: All I want to add before we adjourn is that we have had communications from about 21 different organizations and individuals. We have had quite a number of submissions. We have had positive statements from about 8 or 10 that they will appear. We have maybe a couple of fence-sitters who apparently have not made up their minds which side of the fence they want to fall on.

Senator Connolly (Ottawa West): Or whether they want to come.

The Chairman: Yes. Now, we are sending to each one of those persons a copy of the proceedings of this committee. Before I close the meeting today I want to make the statement that on February 26, when we will sit again in connection with this bill, all those who wish to make representations should make up their minds, and be prepared to attend that meeting. If they attend then we will sit in the morning, in the afternoon when the Senate rises, and again in the evening, if necessary, in an endeavour to enable them to complete their submissions that day. If that is not possible then the committee will meet again the next morning.

I cannot say now what time will be available after that, because we may want to go into our own conferences and consultations in the event that we think, as may appear now from some of the things that have been said, that there should be changes made in the form and substance of the bill as against what we have here.

I am making that statement now so that all those who have submissions to make will know that the deliberations of this committee are not like Tennyson's brook.

Senator Connolly (Ottawa West): No. I think that is right. I do not know whether I am right or wrong, but I have heard that this bill is something of a trial run at this type of legislation, and whether it finally gets passed by Parliament at this session is somewhat problematical.

The Chairman: I think it should be crystallized in some form that we consider acceptable, because that will be of great use in a subsequent session.

Senator Beaubien: Mr. Chairman, did you say we shall meet at 9.30 on the morning of February 26?

The Chairman: Yes, 9.30 on February 26. I should tell you that it is quite likely that we may sit again tomorrow morning in order to deal with a bill that may be referred to us this afternoon.

Senator Beaubien: But we will deal with Bill S-17 at 9.30 a.m. on February 26?

The Chairman: That is right.

The committee adjourned.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 19

WEDNESDAY, FEBRUARY 12th, 1969

Second and Final Proceedings on Bill S-26,

intituled:

"An Act to prohibit the advertising, sale and importation of hazardous products"

WITNESSES:

Department of Consumer and Corporate Affairs:
The Honourable Ronald Basford, *Minister.*
Department of Justice: D. S. Thorson, *Assistant Deputy Minister.*

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 19

WEDNESDAY, FEBRUARY 12th, 1969

Second and Final Proceedings on Bill S-26,

intituled:

"An Act to prohibit the advertising, sale and importation of hazardous products".

WITNESSES:

Department of Consumer and Corporate Affairs:
The Honourable Ronald Basford, Minister.
Department of Justice: D. S. Thorson, Associate Deputy Minister.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

29702—1

THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (Ottawa West)	Isnor	White
Cook	Kinley	Willis–(30)

Ex officio members: Flynn and Martin

(*Quorum* 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, February 4th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products".

After debate, and–

The question being put on the motion, it was–

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was–

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29702–1½

MINUTES OF PROCEEDINGS

Wednesday, February 12th, 1969.
(20)

Pursuant to adjournment and notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *resume* consideration of Bill S-26, "An Act to prohibit the advertising, sale and importation of hazardous products".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis.–(17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

The following witnesses were heard:

Department of Consumer and Corporate Affairs:
The Honourable Ronald Basford, Minister.

Department of Justice:
D. S. Thorson, Associate Deputy Minister.

AMENDMENTS:

The Honourable Senator Carter moved that subclause (b) of clause 2 be deleted and a new subclause substituted therefor. The question being put, the motion was declared *carried.*

The Honourable Senator Carter moved that the heading immediately preceding clause 4 be amended.
The question being put, the motion was declared *carried.*

The Honourable Senator Carter moved that a subclause (3) be added to clause 4. The question being put, the motion was declared *carried.*

The Honourable Senator Leonard moved that a subclause (3) be added to clause 8. The question being put, the Committee divided as follows:

YEAS–9 NAYS–3

The motion *carried.*

The Honourable Senator Carter moved that subclauses (1), (2) and (3) of clause 9 be deleted and new subclauses substituted therefor. The question being put, the motion was declared *carried.*

Note: The full text of the above amendments can be found by reference to the Report of the Committee immediately following these Minutes.

Upon Motion, it was *Resolved* to report the said Bill as amended.

At 11.05 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, February 12th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products", has in obedience to the order of reference of February 4th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, lines 12, 13 and 14:* Delete subclause (b) of clause 2 and substitute therefor the following:

   "(b) 'analyst' means a person designated as an analyst under the *Food and Drugs Act* or by the Minister pursuant to section 4;".

2. *Page 2, next following line 20:* Strike out the work "Inspectors" immediately preceding clause 4 and substitute therefor the words "Inspectors and Analysts".

3. *Page 2, next following line 30:* Add the following subclause to clause 4:

   "(3) The Minister may designate as an analyst for the purposes of this Act any person employed in the public service of Canada who, in his opinion, is qualified to be so designated."

4. *Page 7, next following line 5:* Add the following subclause to clause 8:

   "(3) Any order made under subsection (1) or (2) adding to Part I or Part II of the Schedule any product or substance not contained in either Part on the coming into force of this Act, unless within a period of two years from the day on which such order was made this Act has been amended by Parliament so as to incorporate the provisions of such order therein, shall, on the expiration of such period, be deemed to have been repealed and shall cease to have any force or effect; and the power of the Governor in Council to make an order similar in substance to any order so repealed shall also terminate on the expiration of such period.".

5. *Page 7, lines 6 to 31 inclusive:* Delete subclauses (1), (2) and (3) of clause 9 and substitute therefor the following:

   "(1) Where a product or substance is added to Part I or Part II of the Schedule by order of the Governor in Council, any manufacturer or distributor

of that product or substance or any person having that product or substance in his possession for sale may, within sixty days from the date of the making of the order, request the Minister that the order be referred to a Hazardous Products Board of Review.

(2) Upon receipt of a request described in subsection (1), the Minister shall establish a Hazardous Products Board of Review (hereinafter referred to as the "Board"), consisting of not more than three persons and shall refer the order in respect of which the request was made to the Board.

(3) The Board shall inquire into the nature and characteristics of any product or substance to which an order referred to it under subsection (2) applies and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing before the Board, presenting evidence and making representations to it.".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products, met this day at 9.30 a. m. to give further consideration to the bill.

Senator Salter A. Hayden *(Chairman)* in the Chair.

The Chairman: Honourable senators, we have several items before us this morning and the first is to resume consideration of Bill S-26. As you will recall, last day we had a considerable amount of discussion on this bill. The two items that took most of the time in discussion were clauses 8 and 9 of the bill. Clause 8 gave authority to the Governor in Council by order to add to the prohibited list in Part I of the schedule and also to add to Part II which is a list of hazardous substances which can only be dealt with by and under regulation, and also gave him the power to delete from that list any items.

Then clause 9 was the clause which has to do with a Hazardous Products Board of Review. There was considerable discussion because the language was "may"—in other words there was a discretion somewhere as to whether when a manufacturer, for instance, of a product which was declared to be hazardous wanted to raise the issue, it appeared in clause 9 as presently drawn that there was a discretion as to whether he could get that Board of Review, and there was also a discretion given to the minister afterwards, even if the Board of Review found in favour of the particular manufacturer, as to whether that decision would be accepted.

Now we stood further consideration of the bill so that the minister might consider these points which were raised and now we are back here this morning.

I think our main attention should be directed to these two clauses, but that does not prevent any senator from raising any other clauses of the bill for discussion.

Mr. Minister, do you want to start off in relation to clauses 8 and 9 of the bill?

Senator Connolly (Ottawa West): Excuse me, Mr. Chairman, before we start do we need another motion to print?

The Chairman: No, the previous one just carries through.

Hon. S. Ronald Basford, Minister of Consumer and Corporate Affairs: Mr. Chairman and honourable senators, when I left the committee last week I said I would consult with the law officers of the Crown and with my officials, which I have done, and I would like to speak briefly to clause 9 which deals with the Board of Review of hazardous products. Several senators raised questions concerning this, and I have asked the sponsor of the bill, Senator Carter, to make some amendments at the appropriate time, or rather to propose some amendments to clause 9 which I might just outline to the committee.

Subclause (1) would be changed only to the extent that the 30 days in there would become 60 days. The purpose of that is that under the Regulations Act, regulations are published in the *Canada Gazette* and placed before Parliament within 60 days, and so we thought we should put 60 days in there.

Subclause (2) would read "Upon receipt of a request described in subsection (1)"—that is a request from a manufacturer or distributor. . . . "—the minister shall establish a hazardous Products Board of Review hereinafter referred to as the "Board" consisting of not more than three persons and shall refer the order in respect of which the request was made to the Board". That is to say if someone feels he is adversely affected by the order that the Governor in Council makes, he would file with me a request for a board and I would have to set a board up and the complaining party would have an automatic right to a Board of Review.

Subclause (3) would read "The Board shall inquire into the nature and characteristics of any product or substance to which the order referred to it under subsection (2) applies, and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing

before the board, presenting evidence and making representations to it." The balance of the clause would remain the same.

As I have made clear, the purpose of the amendments is to provide to any person feeling aggrieved by any order, an automatic right to a review of that order by that Board of Review. I, myself, raised the problem of duplication—that we could have ten or 20 or 50 requests. What I refer to the board is the order that I make, or the Governor in Council makes, so that if there were a number of distributors who felt affected, the order affecting them would be the same order and that order would go to the Board, and all 50 distributors would have a right to appear and make representation to the Board.

The Chairman: Mr. Minister, I am a little concerned here with clause 9. What happens, and where is there provision as to what happens, when the board has made its decision and reported back to you?

Hon. Mr. Basford: I think subclause (5) of clause 9 takes care of that:

> (5) The Board, as soon as possible after the conclusion of its inquiry, shall submit a report with its recommendations to the Minister, together with all evidence and other material that was before the Board.

Subclause (6) reads as follows:

> (6) Any report of the Board shall, within thirty days after its receipt by the Minister, be made public by him, unless the Board states in writing to the Minister that it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

Subclause (6) is really drawn from a technique used under the Combines Investigation Act relative to the Restrictive Trade Practices Commission which may make the same kind of recommendation to the Minister, namely, that the report be not made public. It is in here at the request of the Department of Health and Welfare, who have functions and responsibilities under this act and who feel that in certain matters of health products it may well be advisable that the report of the Board and the evidence be not made public. But that would be a decision for the Board. It is not the Minister's decision; the Board has to make the recommendation.

The Chairman: I was thinking of the angle that the Board makes recommendations which in effect recommend supporting the position of the producer or manufacturer who has appeared and appealed to the Board. Then the Board's decision is communicated to you by way of the report with those recommendations. Now, where in the act does it say what happens to the report and the recommendations?

Hon. Mr. Basford: Well, the report is made public.

The Chairman: I mean as to recognition of the report, if it is favourable to the manufacturer.

Hon. Mr. Basford: I explained last week, Senator, I think, particularly in reference to the responsibilities of the Department of Health and Welfare, that the final authority had to rest with the Minister of Health and Welfare who is responsible for the safety and health of the public, and that his responsibility could not be overridden by the Board of Review. But I suggest that the purpose of the protection here is that, if the Minister has acted arbitrarily or unwisely or has been advised unwisely, then the Board would point that out to him. I think the Minister, at his peril, would not review the report of the Board and change the orders.

The Chairman: I see that "Minister" in clause 9 is the Minister of National Health and Welfare.

Hon. Mr. Basford: It is either Minister.

The Chairman: I was looking at the definition, and I see that you are correct. Either one has jurisdiction over clause 9. This Board is to be an internal board appointed from within the department?

Hon. Mr. Basford: No. I explained last week that, certainly, our present intention was to use the Restrictive Trade Practices Commission as a Board of Review. However, the subject was raised by some of the senators that, if, for example, you got into certain medical products of some sort, you would want a different kind of Board with different expertise on the part of the Board members. You would want some doctors or chemists or people of that sort. It is not the intention or purpose of the Board to be independent, which the Restrictive Trade Practices Commission is under the act. The Board is appointed pursuant to and has all the powers under the Inquiries Act and would act as such.

Senator Connolly (Ottawa West): The Minister has very far-ranging discretion. He may appoint experts as he sees fit. There is no question about that.

The Chairman: That is right. Are there any questions or is there any amendment being proposed to clause 9?

Senator Molson: Mr. Chairman, I am not clear why the Minister says the Restrictive Trade Practices Board would be the one used for this purpose. I do not see any connection between the two. In fact, I am not sure that I do not see some dissimilarity.

Hon. Mr. Basford: Let me say that we did not see the need for setting up permanent machinery or establishing a permanent board to be called the "Hazardous Products Review Board". We do not expect that many applications under this review section. So we thought, as I described last week, that we would have an *ad hoc* approach to this. When someone requested a Board, we would establish a Board for him. Generally, my own thinking is that a suitable agency for this would be the Restrictive Trade Practices Commission on most consumer products that may be covered under this act. They are competent people. They know how to act as a commission in a quasi-judicial capacity. This has been their experience and their practice.

Of course, under this act they are entitled to call before them whatever expert witnesses they want or feel the need of under the Inquiries Act. I concede, however, as I say, with certain health and welfare matters, that the Restrictive Trade Practices Commission may not have the expertise on the commission that we think would be desirable or that the Minister of National Health and Welfare would think desirable, in which case we would appoint a Board with different personnel.

Senator Carter: Mr. Chairman, I would like to move that subclause (1) of clause 9 be deleted and the following be substituted therefor: "Where a product or a substance is added to Part I or Part II of the schedule by order of the Governor in Council, any manufacturer or distributor of that product or substance or any person having the product or substance in his possession for sale may, within 60 days of the date of the making of the order, request of the Minister that the order be referred to a Hazardous Products Board of Review".

The Chairman: Is this motion in relation to the new subsection (1) approved? Carried.

Senator Carter: I would move, seconded by Senator Croll, that subclause (2) of clause 9 be deleted and the following be substituted therefor: "Upon receipt of a request described in subclause (1), the Minister shall establish a Hazardous Products Board of Review, hereinafter referred to as the Board, consisting of not more than three persons, and shall refer to the Board the order in respect of which the request was made.

The Chairman: Does this amendment carry?

Some hon. Senators: Carried.

Senator Carter: I move, seconded by Senator Croll, Mr. Chairman, that subclause (3) of clause 9 be deleted and the following be substituted therefor: "The Board shall inquire into the nature and characteristics of any product or substance to which an order referred to it under subclause (2) applies, and shall give the person making the request, and any other person affected by the order, a reasonable opportunity of appearing before the Board, presenting evidence and making recommendations to it".

The Chairman: Now, you have heard this proposed amendment. Is it carried?

Some hon. Senators: Carried.

Senator Flynn: Now, it all depends on whether you put the question on clause 9 as a whole.

The Chairman: Yes.

Senator Flynn: If there are no further amendments, what I would like to point out is that this problem of what the Minister may do with the report is tied to the other objection raised, especially by Senator Leonard, as to the ratification by Parliament of any addition to Part I or Part II, because my point is that if the Minister has full discretion he may disregard a report of the Board of Review and does not have to report to Parliament. Then I think this discretion is going too far. There is no redress. I do not find any redress before the court from a refusal of the Minister to yield to the recommendation made by the Board of Review. At least, if the order goes back to Parliament, if it has to be ratified by Parliament, we have that guarantee that someone will look into it. That is why I say this section as it stands, if there is no amendment later on, would not carry in the way that I think it should.

The Chairman: Well, Senator, the effect of clause 9, if it is accepted with these amendments, is that you get to the point that you have stated, where the Minister will have a report and recommendations from the Board. Now, it is his discretion whether he accepts that and acts on it. Let us assume that the report and recommendations are against the enforcement of such an order and he refuses to accept that. The effect of that is that the order remains under the authority of clause 8.

Senator Flynn: That is right.

The Chairman: And, therefore, if you think there is anything that should be done to correct that situation, then the place is in clause 8 and not in clause 9.

Senator Flynn: It may be that, if there is something done to clause 8, we do not have to do anything to clause 9. However, if nothing is done to clause 8, we might try to add something to clause 9. I do not want to close the debate on clause 9 before we deal with clause 8. That is the only point I make now.

The Chairman: Three amendments have been proposed and approved. What I propose to do now is

to stand clause 9 with these amendments until we deal with clause 8.

Senator Leonard: Mr. Chairman, I would like to follow Senator Flynn's remarks, and I have an amendment here to suggest.

The Chairman: To which clause?

Senator Leonard: To clause 8. I have supported the amendments which have been made to clause 9 because they are good and desirable and improve the clause. The minister has pointed out that they still leave the ultimate responsibility for what is, in effect, an amendment to the act in the hands of the minister, as he does not need to accept the decision of the Board of Review. The chances are that in most cases he probably would, but he still feels he should have that ultimate responsibility.

That brings us back, then, to the question of the responsibility of the minister and of the Cabinet to Parliament, and here we are into this whole realm of subordinate legislation which is the concern of all countries, including Canada, as to when legislation should be properly done by regulation because it is pertinent and necessary to carry out the legislation, and when it should be stopped from being, in point of fact, actual legislation.

I doubt whether, in my experience, I have ever seen anything quite so baldly put as section 8(2), reading:

> An order amending Part I of the Schedule

– and that is part of the act, of the statute –

> may be made by the Governor in Council on the recommendation of the Minister or the Minister of National Health and Welfare.

I think this kind of legislation should be subject to ultimate review by Parliament – that is the principle I think most people subscribe to – until we come down to some particular example where it may be that the proponents of this who feel the executive are the ones who should decide these things, leave legislation in this form.

Good and all as a Board of Review is, as part of this legislation, still they have not the ultimate power to make the decision pro or con the inclusion of a hazardous substance. This is a matter of real substance. After all, we have gone through all these years without any legislation saying what these hazardous substances are. They are matters of life and death; they are extremely important parts of our life today; and we do want to be sure that all the proper safeguards are placed that should be placed to ensure that the public interest is being well looked after.

In other legislation we have from time to time set time limits on the exercise of discretionary powers by the Governor in Council and ministers, and it seems to me this is another of those cases where we might very properly, without in any way tying the hands of the minister or the cabinet, call for a review of the decision by Parliament.

So, the amendment I am about to suggest would be to the following effect, to add to section 8, which is the section, under both subsections 1 and 2, giving the power by Order in Council to amend the act – to add this subsection 3:

> Clause 8 is amended by adding thereto subsection 3 as follows:
>
> (a) Any order made under subsection (1) or (2), unless within a period of two years from the day on which such order was made this act has been amended by Parliament so as to incorporate the provisions of such order therein, shall, on the expiration of such period, be deemed to have been repealed and shall cease to have any force or effect; and the power of the Governor in Council to make an order similar in substance to any order so repealed shall also terminate on the expiration of such period.

Take, for example, any new hazardous substance the minister and his department, through the Governor in Council, think should be included under Part I or Part II. That can be done just as quickly as it could under the bill as it now stands. The only thing is that, even after hearing the Board of Review, the decision should be brought back to Parliament within two years for confirmation or otherwise.

If I have a seconder, I will move that motion.

Senator Connolly (Ottawa West): You do not need one.

The Chairman: You do not need a seconder.

Senator Connolly (Ottawa West): I rather hesitate to intervene in a situation where two such eminent counsel as the Leader of the Opposition and Senator Leonard have expressed themselves so forcefully.

The Chairman: Do not be bashful, senator!

Senator Connolly (Ottawa West): I will not be bashful, but they deserve a plug–not that they need it!

I think one of the things we should remind ourselves of is this, that under other legislation Orders in Council made like this do, first of all, come before Parliament and are required to come before Parliament. And if they do come before Parliament it is open to members of Parliament to question them, and it is open to them also either to ask for the Government to amend the act or to bring in a bill to

do that, which would be a private member's public bill, if you will, but it is still an avenue.

More important than that, I think we should remind ourselves particularly that what we are dealing with here are substances which are noxious or dangerous. I think we want to do all we can to make sure that these noxious or dangerous substances are kept out of commerce and are not available to the public. The departmental officers finding these things will make a recommendation, upon which the minister can act as he sees fit; but if these people persist in putting before the public things that are troublesome, then what we would complain about very strongly is that no action was taken. They are the offenders . . .

The Chairman: What do you mean by that, "that no action was taken"? Do you mean the Governor in Council did not add such an item to the list? –because he can do that at any instant.

Senator Connolly (Ottawa West): But I say that we would be pressing on the Government to be alert about, pressing upon both ministers to be alert about, is to watch for the introduction into the market of products of this character.

Now, if they are dangerous, if they are noxious, then the Order in Council puts them on the list and takes them off the market. If there is any question about it, the Board of Review makes a finding to the contrary. Surely, there is a pressure there upon the minister then to revoke the order, and it can be debated in Parliament because the order in council is laid before Parliament. What I am concerned about–and this struck me at the last meeting–is that if the getting of these substances off the market beyond the period of two years, as Senator Leonard's amendment suggests, requires a further act of Parliament, then I would point out that we all know what happens to some bills. In the Senate we have had experience of bills coming before us two and three times before they are finally passed, because of adjournments, elections, and all that sort of thing. It does seem that the amendment that has already been moved, plus this other provision which requires the order in council to be tabled–at which time it becomes parliamentary property–is the kind of protection that the public wants.

I think that by these amendments we will have given the people the protection they need in respect of noxious substances, which might possibly cause harm, coming on to the market. The mandatory requirement for a Board of Review would provide . . .

The Chairman: I think Senator Leonard's amendment was really directed to the protection of Parliament–Parliament's right to review legislation which it has passed and which is being amended by order in council.

Senator Croll: Surely, we are not protecting Parliament against itself. Parliament can look after itself.

The Chairman: I am using "Parliament" in the broad sense. I am sure you understand that. I am referring to Parliament representing the people. If Parliament enacts legislation, than that legislation should not be trifled with.

Senator Croll: It is not, usually.

The Chairman: I know it is not, usually.

Hon. Mr. Basford: When I left I said that I would consult with the Department of Justice. I have with me this morning Mr. Thorson, and I would think it would help if Mr. Thorson could comment on this question.

Mr. D. S. Thorson, Associate Deputy Minister of Justice: Mr. Chairman, as I understand Senator Leonard's proposal, it is in essence that there be a time limit on any order; that any order would lapse unless confirmed by Parliament within a period of two years. This technique of review is very similar, I think, to the technique that was employed in the Surcharge on Imports Order Act of 1963 which imposed, as I remember, a time limit of six months on any order made under section 4 of the Customs Tariff withdrawing the benefit of certain preferential rates of duty. It will be recalled by honourable senators that the use of this power in combination with the use of section 22 of the Financial Administration Act–that is, the remission power–had been criticized as effecting a fundamental alteration in the tax law without reference to Parliament.

I would have thought pretty clearly this is not the case here. Here the authority being sought by Bill S-26 is an authority which would be conferred by Parliament itself directly, and in express terms. I think it is fair to ask: Would it be appropriate to apply the same kind of technique under a regulatory act, such as Bill S-26? In my opinion, at any rate, there would be difficulties.

The most obvious comment that could be made about the proposal–and I think this was alluded to by Senator Connolly a minute ago, and this is a point that I think would occur to almost anyone–is that it would be difficult, awkward, and potentially time-consuming to have to bring forward one or even more bills before Parliament each year, or at the most each two years, in order to confirm the doing of what Parliament had already authorized to be done by executive action. It is reasonable to ask, I think, apart altogether from the element of obvious inconvenience: What is wrong with doing just that? I think there are a number of things that might be considered.

First of all, I would submit that there is a potential in the proposal for a built-in rigidity of an unfortunate

nature. For example, could the department deal with desirable changes from the prohibited class, which is the first part of this schedule, to the regulated class, which is the second part of the schedule? If this kind of change would require parliamentary approval then I would think it might very seriously impede the effective administration of the law.

The Chairman: Right on that point, Mr. Thorson, if it were something that was going to be deleted, and if an amending bill were not presented to Parliament, it would be deleted automatically within the two years.

Mr. Thorson: May I come to that, sir?

Senator Flynn: Are you suggesting the movement of a substance from Part I to Part II, or from Part II to Part I?

Mr. Thorson: From Part I to Part II.

Senator Flynn: This is an improvement in–

Senator Connolly (Ottawa West): . . . the status.

Senator Flynn: I do not think it is suggested that a deletion–

Mr. Thorson: May I deal with that point for a moment, because I think it is relevant.

Senator Flynn: I just want to understand where you are going.

Mr. Thorson: What if next year, or the year after–after Parliament had enacted this hazardous products act–Parliament were to amend the act in order to continue in effect the regulation of some particular product or substance, only to find that, say, six months later it was necessary either for Parliament or for the Governor in Council, depending upon how the confirmation rule were framed, to have to delete it from the Schedule? I do not think you would want to bar that possibility. I think that would be a rigidity that would have to be considered.

To return to your point, Senator Flynn, I take it that the power to remove items from the Schedule cannot really be made subject to parliamentary approval. If it were subject to parliamentary approval it seems to me that products that had been de-listed by executive action might then again appear back on the prohibited list or regulated list as a result of Parliament's failure to confirm the delisting order, or to do so in time. This, I submit, would result in a certain amount of chaos. I think there would be very great uncertainty if this were a possibility. I submit there is a potential for real hardship if that were to happen.

The Chairman: How could that happen, Mr. Thorson? The minister is not going to run out of the ability to cause orders in council to be passed. Do you concede that as a possibility?

Mr. Thorson: No, sir, but if actions taken by way of deletion from the Schedule similarly required parliamentary approval in due course, then a de-listed–

The Chairman: But it would be effective right away.

Mr. Thorson: Yes, but if Parliament failed to confirm the de-listing, what would be the legal result? You might find the item appearing back on the list of prohibited or regulated items.

Senator Flynn: But if we were to ask for ratification only of orders adding to Part I or Part II, and not orders deleting articles or transferring them from Part I to Part II, would that meet your objection?

Mr. Thorson: I think so. I think there is a real problem in terms of parliamentary approval of actions by way of deletion from the Schedule, even if the law were so framed as to require direct deletion only by Parliament, I think. Again you might very well have injustices resulting from a delay in the taking of quite desirable action.

Senator Flynn: Well, I think it is quite a serious question.

Mr. Thorson: I agree, but I was merely commenting that the rule would not extend to deletions. Thirdly, the proposal as I understand it, and as it would apply to this particular bill, would not be very easy to write into the law and, once it is in the law, to police. Would Parliament, for example, have to protect against the possibility of an order lapsing only to be renewed by the further order the following day if it has lapsed?

The Chairman: The amendment proposed takes care of that in that it says the Governor in Council.

Mr. Thorson: Then there is a further point. Would we have for example again to protect or would we have to forbid transfers by executive action back and forth from the prohibited class to the regulated class and from the regulated class to the prohibited class for the mere purpose of ensuring that time would start running again? As I understand it the order would run for two years. Would the rule be aimed at administrative malfeasance or bad faith? These are problems that have to be taken into consideration. Again, and this is a different point, I think it would be fair to consider the implications of the proposal in terms of other acts where the same kind of power to add or subtract items from a schedule of the act is confirmed by Parliament. I have in mind in particular the Food and Drugs Act where there is very definitely a power to add by executive action to the schedule to the statute. In other words the statute can be amended by order of the Governor in Council directly. Really I

think the rationale that is advanced for the proposal would have equal application to a statute of this nature, but I would have thought that as a practical matter such a rule applied to a statute such as the Food and Drugs Act would be almost certainly unworkable having regard to the volume and frequency of the changes in the schedules to that act.

Now if the same principle were extended to a variety of other acts, I think you would get. . .

Senator Flynn: It is not a principle. You are suggesting that the legislation concerning food and drugs is concerned with a number of items. It is not a principle; it is a practical situation you are dealing with. But now you are referring to questions of principle.

Mr. Thorson: I am trying to say here that the adoption of a principle such as this—that the principle could be adopted because I think the rationale is the same in terms of an act such as the Food and Drugs Act where there is power to amend by executive action the terms of an act of Parliament.

Senator Flynn: The reasons would not be the same. The reasons for the Food and Drugs Act would not be the same as here. The number of items, I agree, but you don't have the same number of items under this legislation.

Mr. Thorson: I agree, but the principle would be the same and in terms of certain parts of the Food and Drugs Act the amendments are not frequent.

The Chairman: Do I understand the principle you are talking about? Is that the principle that legislation should not be amended by order in council but by Parliament?

Mr. Thorson: To the extent that the proposal is directed to providing a new mechanism and a law which provides for executive amendment of an act of Parliament, then my answer would be yes, sir.

The Chairman: The general principle, when you use that word to start off with, is that if Parliament enacts legislation, then Parliament is the body that should repeal or amend that legislation. That is the general principle. Then it gets down to a question of fact as to whether in the case of this particular bill, giving the executive power to amend is necessary in the circumstances and in the public interest.

Mr. Thorson: That is correct.

The Chairman: Then it becomes a question of fact.

Mr. Thorson: It is a value judgment that has to be made.

The only further point on this is the principle extended to other acts beyond the ones I have mentioned, and I think one could make a case for doing so in certain instances, then I submit the line between executive responsibility on the one hand and legislative responsibility on the other hand would be in danger of being blurred to the detriment of the discharge of both responsibilities.

Mr. Chairman, if I might become a little bit philosophical for the moment on the question of subordinate legislation, I am tempted to add a personal expression of view; under our system of government the legislature has every right to be vigilant about the terms on which it confers powers on the executive to make subordinate legislation. The legislature surely is entitled to define exactly what kind of power is to be granted and the circumstances that must exist as a condition of its exercise. Similarly if a power that has been granted by the legislature is being found to be abused, then the legislature has a clear right, and I would submit even a duty, to revoke the power, but I personally do not think the answer is to so hedge the use of the continuing validity of the power so as to risk making it inadequate for the task that Parliament has instructed the executive to deal with.

Senator Flynn: If I may interrupt here; you say the legislature has the power to revoke and intervene. But you know that in this case it would take a private bill and the initiative of a member of Parliament. You suggest it should come from Parliament and not from the Government. Do you think it is feasible under the rules now prevailing in the other place that this should happen?

Senator Connolly (Ottawa West): There is nothing to prevent it.

Senator Flynn: There is nothing to prevent the introduction of a bill, but passage of a private bill is another matter and is absolutely impossible if the Government decides it shall not pass because no time will be allocated. Nobody can succeed in having a private bill passed unless the Government agrees that it shall pass. So private legislation is not the remedy in the present case.

Mr. Thorson: I agree about the difficulties as a practical matter. But I think it is nonetheless true that virtually in every session bills are brought forward by the Government itself modifying the powers that have been delegated to the executive branch.

Senator Flynn: It is suggested that even if the Government knew that the legislature could or would, nevertheless I say in practice this is not true.

Mr. Thorson: If I conveyed that impression, may I correct it? If the power is abused there is a clear duty to come forward and modify that power.

Senator Flynn: But it is an imposibility to do it.

Mr. Thorson: Just to finish off the point I was developing, we do not feel the answer is to hedge the power in the manner suggested, and it seems to me that hedging the power in this fashion would result in finding that you have merely succeeded in transferring to the legislature the burden of exercising the power conferred on the executive. Applied to Bill S-26 itself, for example, the legislature might be in the position of having to function as a hazardous products board of review itself to decide between the conflicting claims and evidence of expert chemists or physicists or what have you.

Where the issue is the health or safety of the public as in this bill, this might be a very difficult function for Parliament to discharge.

The Chairman: Does that not happen all the time in connection with various types of legislation like taxation and other bills?

Mr. Thorson: Sir, I think that Parliament is singularly, in fact, obviously, the most appropriate forum in the country to deal with issues such as taxation. The question is, is Parliament the appropriate forum, and indeed, would Parliament judge itself to be a competent forum for the discharge of this kind of function which might very well involve having to assess conflicting technical evidence and to make adjudication between conflicting technical evidence for the purpose of arriving at some sort of decision as to whether to continue or discontinue to enforce the action taken by the executive.

Senator Macnaughton: I do not see any difficulty at all. What is wrong with Parliament setting up a subcommittee and calling experts, as we do in our science policy? To say that Parliament has not the mental capacity to decide these matters of scientific data is absurd.

Mr. Thorson: I am not suggesting, sir, that it cannot be done. I am suggesting that Parliament, in order to function, would have to rely on the very kind of expertise that the Government itself has to rely on.

Senator Macnaughton: What is wrong with having parliamentarians judge that? If the Minister can judge it, parliamentarians can.

Senator Connolly (Ottawa West): The answer to Senator Macnaughton's question, which is a valid question, is that the time factor creates the problem. The time factor for getting the bill through Parliament, that is.

The Chairman: Having two years to do it?

Senator Connolly (Ottawa West): Even having two years to do it, yes.

Senator Croll: Mr. Thorson, if at the end of the two-year period, or say the day after the two-year period has expired, the Minister issues a similar order to that which would have lapsed or died, the effect would be that that is an order that is in effect?

The Chairman: No. Under the amendment, he has not got that power.

Mr. Thorson: As I understood Senator Leonard's proposal, that would be barred.

Senator Leonard: That is right.

Mr. Thorson: If an order did lapse, the Governor in Council could never thereafter take action.

Senator Leonard: That is right.

Senator Flynn: He could take action by introducing a bill in Parliament.

Mr. Thorson: That is right. It would take parliamentary action to reinstate the order.

Senator Croll: He would be going much too far if he then put it back into Parliament.

Hon. Mr. Basford: I think there is some confusion possibly as to the kind of orders that will be passed under the sections, and I would like, with your permission, Mr. Chairman, to have a member of my staff distribute to senators copies of the regulations that have been passed under the counterpart legislation in the United States. I would like the senators to see the regulations under the Federal Hazardous Substances Labelling Act of the United States simply that they might see the extreme technicality of those regulations. I would like to just refer to part of those regulations. It is part of the regulation that states that products containing 5 per cent or more of petroleum distillates shall bear special labels with the word "danger" on them.

The Chairman: Is this subject generically on the prohibited list? Is this an amplification of what is to be included in that list? Our bill only deals with the additions of new substances.

Hon. Mr. Basford: The point I want to make is that any amendment of the regulations is going to add some product to the list.

The Chairman: No.

Hon. Mr. Basford: Yes, it is.

The Chairman: It may enlarge the scope.

Hon. Mr. Basford: That is right. It is going to cover new products that were not considered hazardous before.

With regard to these products containing petroleum distillates, there are a number of exemptions. For example, the following exemption is provided for:

> Section (32) Hollow plastic toys containing mineral oil are exempt from the labeling specified in subsection 191.7(b) (3)(ii), under the following conditions:
>
> (i) The article contains no other ingredient that would cause it to possess the aspiration hazard specified in subsection 191.7(b) (3)(ii).
>
> (ii) The article contains not more that 6 fluid ounces of mineral oil.
>
> (iii) The mineral oil has a viscosity of at least 70 S.U.S. at 100°F.
>
> (iv) The mineral oil meets the specifications in the N.F. for light liquid petrolatum.

Here is another example:

> (8) Containers of paste shoe waxes, paste auto waxes, and paste furniture and floor waxes containing toluene (also known as toluol), xylene (also known as xylol), petroleum distillates and/or turpentine in the concentrations described in subsection 191.7(a)(4) and (6) are exempt from the labeling requirements of subsection 191.7(b)(3)(ii) and (5) if the viscosity of such products is sufficiently high that they will not flow from their opened containers when inverted for 5 minutes at a temperature of 80°F., and are exempt from bearing a flammability warning statement if the flammability of such waxes is due solely to the presence of solvents which have flashpoints above 80°F. when tested by the method described in subsection 191.13.

Those are the kinds of regulations that will be passed under this act, and any amendment of those regulations is going to bring in some new products. I think that was the point Mr. Thorson made, that Parliament really is not designed to discuss whether the temperature affecting the viscosity of inverted containers should be 80 degrees Fahrenheit or 90 degrees Fahrenheit. Surely this is a subject of tremendous technicality. If anyone feels prejudiced by having the regulation changed so that it goes from 80 degrees Fahrenheit to 90 degrees Fahrenheit, that person has a right to have a Board of Review look at that question—a Board of Review of experts capable of calling upon experts. That is where that sort of issue should be debated. To say that it should be debated in the Board of Review is surely no discredit to Parliament. Parliament is dealing with the setting up machinery to deal with such problems. The principle is to deal with hazardous, poisonous, toxic products on the market. That is what Parliament is being asked to do. I do not think Parliament should be asked, with all due respect, to decide whether it should be 70 degrees Fahrenheit or 80 degrees Fahrenheit.

Senator Flynn: You are asking us to do it now.

Hon. Mr. Basford: This is the kind of regulation that will be passed. Any amendment of it will, under this amendment that Senator Leonard has proposed, have to come to Parliament. And this has, I suggest, another reaction or another effect. We will be passing regulations, senator, or proposing to pass regulations and, as I have made clear, we will consult with industry on these regulations. So we have a certain regulation in the books, and a certain part of industry feels that it is adversely affected by that regulation. Representatives come to me and say that that is a silly regulation and need not be so stringent. They may say, "These are the products you are concerned with. You should amend the regulation to exclude certain other products and just leave in these products that you are concerned with."

I do not want to say to them, or be forced into saying to them, that I accept their argument and that it is a good argument, but that I do not have enough time or that Parliament is too busy to amend the act. I am sure, sir, that you have made the observation that people in industry constantly get this reaction from Government. They go to Government to make representations and the minister says, "Well, I think you have a good point, but we have no time to amend the act. We have no time in Parliament to deal with your point. It is a good point, but I am sorry, we have to leave the law until it is revised."

I get representations every day in my office to amend the Copyright Act, or the Bankruptcy Act, or the Patent Act, or the Combines Act. But we are not doing it because we are waiting for a review. I do not want to say to industry, "I just do not want to go back to Parliament with an act to accept this regulation to exclude or add some of your products." With the greatest respect—and I appreciate your concern—this is what you are asking to be done in this act with your amendment.

Senator Croll: Mr. Chairman, I recall very vividly having before us some members who came here, a couple of Deputies who came with bills, and the question I asked was, "It is so obvious you should have done something about this some years ago. Why did you not? " And the poor frustrated civil servant not only shrugged his shoulders but said. "I have been trying to get this before my minister and Parliament for two or three years in order to get it done, and I had to come here to do it, but it should have been done before." That is exactly the point the minister is making, and when my friend Senator Macnaughton speaks about Parliament breaking itself up into subcommittees for the purpose of doing this and that, obviously he has been away from the House of Commons too long to realize that they are very busy over there, particularly in the committee stages. Even with their utmost efforts it is hard, if not impossible, for

them to continually get quorums and do the work available to them. The result is this will not be done and the purpose of the act will be frustrated for some time.

We are now starting out on something new, something we have not done before, something that is long overdue. Surely, we can leave the matter to the minister until such time as we see some abuses occurring, and then, at that time, he will hear about it and we will know about it, and the thing can be corrected. But now we have a Review Board that will sit, and I think of the Restrictive Trade Practices Act where from time to time Parliament is presented with an act. I have often looked at them, and then the next think I have heard is that Parliament, the minister, has decided not to take action on the recommendation, or to take action on it, which is the normal practice, and I have never heard too many complaints about that sort of matter, despite the fact that in some instances we might not agree. I think the department should be given an opportunity to test this, to see what it is doing. It is groping, it is attempting to reach out for something that is not only desirable. Mr. Chairman, time and again I have picked up the morning paper and read about a house burning down, seven children dying, the father or mother getting away, or the whole family being killed; about some hazardous substance being left in the house which cought fire, and away it went. The substance was being sold legitimately. As a matter of fact there was a hazardous substance the other day–

Senator Flynn: This is not relevant at all.

Senator Croll: It is the purpose of the act.

Senator Flynn: It is the purpose of the act, but not of the amendment.

Senator Croll: The amendment, to some extent, will handicap the minister, which is not what I think we ought to do at this particular time.

The Chairman: There will still be fires and people burned to death.

Senator Croll: Of course there will be, but at least we can do something to prevent it.

Senator Flynn: That is what we are doing.

Senator Croll: We are not doing it if we tie the minister up to the point where he has to go to Parliament to declare that this or that is a hazardous substance.

The Chairman: If he has two years within which to go to Parliament, that is not giving him enough time?

Senator Croll: Not at all.

Senator Flynn: It is only a matter of time.

Senator Croll: It is not a matter of time. At this time the minister is entitled to have a go at it in order to prove whether he can handle the situation or not. I feel confident that he can, but we are entering into a new field, and we ought to offer him a certain amount of discretion.

Senator Macnaughton: My learned friend's remarks are very seductive, but I was not referring to the minister at all, but to the statement made by our legal counsel. Learned as he is, it is possible to disagree with his interpretation, and I do, when he says that Parliament has not the ultimate capacity, if the minister has the ultimate capacity. Is there not someone left in the House of Commons and Senate who might have a similar quality of brain power to reach a similar decision?

The Chairman: That must be recognized, because we are asked to pass the bill in the first place.

Senator Flynn: Otherwise we should not pass the schedule, because there is a reference there as complicated as that just mentioned. I take it, if the minister is correct, that we should not pass on the schedule because we do not understand a word that is in there.

Hon. Mr. Basford: Senator, I hope you are being facetious.

Senator Flynn: To some extent I am.

Hon. Mr. Basford: I would like to make the point clear that the schedule, and Parts I and II, and the items described there are really there as examples, to illustrate the kind of products that will be dealt with under this act. They were included for the information of Parliament, to show that under this act we are concerned with household bleaches, cleansers and sanitizers, and we are concerned with household cleansers containing sodium hydroxide, potassium hydroxide, sodium bisulfate, hydrochloric acid or phosphoric acid. We are concerned with household polishes and glues, and so on. However, we are going to have to pass, under that schedule, regulations far more precise than those items that are enumerated. For example,– and I am now giving an off-the-cuff view here–I think there is no danger to a cleanser that contains one-one-hundreth per cent of hydrochloric acid, and our regulations will have to include those that have 5 per cent, or 10 per cent, or 15 per cent.

Senator Flynn: You are not dealing with the regulations that the Governor in Council is empowered to make under section 7. We are dealing only with section 8.

The Chairman: That is right.

Senator Flynn: There is a difference there. We do not want to intervene in the making of regulations indicated under section 7. We are dealing only with section 8, where you could add to the list something new; that is all. As far as the other regulations are concerned, we understand that they have to be made by the Governor in Council, and they do not need to be ratified by Parliament because they are administrative, in essence.

Hon. Mr. Basford: With all due respect, I do not entirely go along with you, senator, because as we develop more refinement in this case we are going to be adding and deleting.

Senator Flynn: Yes.

Hon. Mr. Basford: And I think the concern of the Senate is the addition of new products.

Senator Flynn: To Parts I and II.

Hon. Mr. Basford: Particular products being included within the ambit of the act.

Senator Flynn: Parts I and II.

Hon. Mr. Basford: The point I was making was that amendments to the regulations will be including more products, otherwise we would not be making the amendments. If those amendments have to come before Parliament, we will have built into this whole machinery an extremely undesirable inflexibility.

The Chairman: Mr. Minister, if I may say so, there is complete confusion between regulation and an order adding new products to the list. Take your own example, under Part II, item 2, cleansers. If the cleansers for household use contain certain materials that are mentioned here, no matter what the percentage may be, they are on a list of products that can be marketed et cetera only by regulation. If you say: "Well, it is true this cleanser contains two per cent", the answer will be: "That is right. That is the regulation." That is not creating a new product. A new product is something entirely different. We are becoming confused between this type of thing and a regulation adding a new product.

Senator Flynn: That is the only point we are trying to make. I suggest, Mr. Chairman, that the only argument against the principle of the amendment moved by Senator Leonard is that it is not possible for Parliament within two years to ratify the order in council or the amendment. I suggest that it is possible. We have seen some acts amended every year. It has always been possible to do it. When you have two years in which to do it then I do not see how you would not succeed in bringing such a matter before Parliament. There would be a technical problem for Parliament only in the case of a conflict between a manufacturer and the minister; otherwise there would be no problem at all.

I submit that in practice there would be no problem at all. If there is a conflict between the minister or the Board of Review and the manufacturer it would then be time for Parliament to look into the matter and seek the advice of experts. I suggest that Parliament in those circumstances would be able to judge just as well as the Governor in Council or the minister, because they would be acting on the advice of experts, as they are doing every day when they pass regulations adding or subtracting from the list.

Therefore, I do not think a point has been really made against the amendment moved by Senator Leonard. It may be that it can be amended to cover the point of where we only add to Part I or to Part II. I would even accept the case of where a product or substance is transferred from Part I to Part II. I do not mind that because that would be a deletion from Part I and adding to the other class.

The Chairman: Are you suggesting an amendment?

Senator Flynn: I was trying to seek the consent or agreement of the minister to an amendment along the lines of the suggestion of Senator Leonard but modified in order to take out of it that which might be cumbersome, and one that will achieve all that we are trying to achieve in respect to protecting the right of an individual where there is a conflict between the minister or the Board of Review or other experts and the individual.

Senator Connolly (Ottawa West): Do you not accept the idea that in this case, when you are trying to protect the view of an individual who might very well be putting a substance on the market that is very dangerous for the public, he has a right of appeal?

Senator Flynn: No, no.

The Chairman: The order is the first event, senator. That takes it off the market, or makes it subject to regulation.

Senator Connolly (Ottawa West): Yes, and then he goes to the Board of Review, and is not satisfied.

The Chairman: The order is still in force, and for two years it is in force.

Senator Connolly (Ottawa West): All right, for two years it is in force, and then it goes out the window.

The Chairman: If Parliament does not deal with it.

Senator Connolly (Ottawa West): I do not see why you have to bring it back to Parliament.

Senator Leonard: It could be brought before Parliament in six months, if that is necessary.

Senator Connolly (Ottawa West): Perhaps we might ask the minister whether he expects very many products to be dealt with.

The Chairman: The minister answered that earlier by saying that in the first instance he was contemplating using the Restrictive Trade Practices Commission because he did not think there would be many occasions on which this procedure would be invoked.

Senator Connolly (Ottawa West): The appeal procedure?

The Chairman: Yes.

Senator Carter: I should like to get one of Senator Flynn's points clarified. I gather what he objects to is the minister having the power to amend the act for an indefinite period.

Senator Flynn: Yes.

Senator Carter: Your real objection is to his amending it?

Senator Flynn: I am objecting to the adding to the list, in Part I or Part II, indefinitely.

Senator Carter: But you have no objection to the minister's deleting from the list?

Senator Flynn: No, because there is a presumption that if the minister deletes from the list he has taken all necessary precautions, and there is no danger.

Senator Carter: But he is amending the act if he deletes just as much as he is if he adds. Is not that correct?

Senator Flynn: I do not mind sticking to the general principle embodied in the motion of Senator Leonard. I was yielding to the argument of Mr. Thorson which was to the effect that it would be cumbersome in that we would have to ask Parliament to ratify deletions, and if the department failed to obtain that ratification the product or substance would then be added back to Part I or Part II. That is the point that was made. All I was yielding to was the argument that that would be a cumbersome procedure.

Senator Carter: I cannot see any . . .

Senator Flynn: If you want me to be very rigid then I will follow you.

Senator Croll: If you are yielding to that argument then what stops you from yielding to the other argument?

Senator Flynn: Because it is not valid. I yield to an argument when it is valid, but I do not yield to an argument that is not valid.

The Chairman: Senator Croll is insisting at the moment that we be very logical.

Senator Flynn: Senator Carter insists on that.

Hon. Mr. Basford: Senator Flynn asked what products we think we would be dealing with. This is rather difficult to answer. We have in the Schedules items that are there purely as illustrations so that Parliament will be aware of the sort of things we are thinking about. I have said publicly, and I think I said in my opening statement, that one of the things we contemplate dealing with rather quickly is life preservers. They are not in the Schedule at the present time. They are presently covered by regulations of the Department of Transport, but those regulations provide only that there will be a certain number of life preservers in motor boats licensed by the Department of Transport. That was that department's sole authority, as I recall the matter, for those regulations. A person may still go into a department store, as my wife and I did last summer prior to going on a fishing trip, and be presented with six different kinds of life preservers, some of which meet the Department of Transport regulations, some of which meet the Workmen's Compensation regulations in the particular province, and some of which meet no regulations at all and which, in fact, serve no life saving purpose.

I think it will be easy, having regard to the fact that the Department of Transport has tested life preservers, and has a program applicable to their boats, to include within this act life preservers that do not measure up to those standards, so that unsuspecting people are not going into a department store and buying life preservers which are discovered to be, when a boat capsizes, not life preservers at all. That is one item that I think we can deal with fairly quickly.

Flammable children's clothing is another item that I have said publicly we can deal with as soon as we get some proper tests of flammability from the National Research Council. This, as I mentioned in my opening statement, is a very technical matter. There are some 28 different tests for flammability, but it is my hope that we can deal fairly soon with flammable children's clothing, because there have been a great many accidents resulting from it.

I mentioned in my opening statement that under the British Consumer Protection Act children's clothing is dealt with. To further my point I should like to mention those regulations.

Regulation 1 says, "A child's nightdress shall comply with the requirements specified in the Schedule to these Regulations."

A child's nightdress is defined as a nightdress which. . .

(a) Has a finished garment chest measurement not exceeding 38 inches;

(b) is of a length which, measured from the highest point of the shoulder to the bottom of the garment, does not exceed 46 inches;

(c) is not so made or designed as to be unsuitable to be worn by a person under the age of 13 years; and

(d) is not an infant's gown;

And I can go on, if honourable senators would like, as to what an old man's gown consists of and what an infant's gown consists of. Now, if I want to deal with children's clothing, which I think as soon as we have a test of flammability we will be doing, then I have to come to Parliament and put it in the schedule within two years. I suggest this is the point Mr. Thorson was trying to make, and that is not what Parliament is set up to deal with. Do we want to have a debate in Parliament as to whether a gown should be 13 inches long or 16 inches long? That is the kind of debate we would be getting into in Parliament.

The Chairman: Are you suggesting that there has not been that kind of debate in Parliament before?

Senator Croll: I regard myself as being a normal member of Parliament and able to hold my own there and here. I do not understand many of these items that are being included, and so I admit I must rely upon the department and upon the experts to tell me what is involved. I rely upon the fact that they have made extensive studies on these things. But if I find that there is something wrong, as I am bound to do in due course, then that is another matter. But in the initial stages I have to rely upon them because they are the experts, and other members of Parliament and members of the Senate are no more experts than I am on this. Consequently we have to leave it to the department.

The Chairman: Honourable senators, we have had a very general and detailed discussion and we have had the benefit of Mr. Thorson's view and the view of the minister. Do you think it is about time that we examined the amendment to determine whether it is in the form that is agreeable? Senator Leonard, are you yielding to Senator Flynn on the suggested restriction?

Senator Leonard: On the powers of deletion only.

The Chairman: Only the power of addition?

Senator Flynn: I was trying to meet the objection of Mr. Thorson. What I am asking for is protection for the manufacturer. I am sure the public will be protected.

The Chairman: How do you suggest the amendment should read?

Senator Flynn: It would be exactly the wording suggested by Senator Leonard except that after the words "any order made under subsection (1) or (2)" we would add the words "adding to Part I or Part II of the Schedule, any product or substance not contained in either Part on the coming into force of this Act," and then go on with "unless within a period of two years from the day" et cetera.

Senator Croll: Since I am totally confused I will vote against it.

The Chairman: Are you ready for the question?

Senator Flynn: That is too easy an approach.

Senator Croll: It is not easy.

Senator Flynn: If I were to yield to the minister I would not vote on the bill.

Senator Leonard: I will accept that amendment if we start on the basis that there is now no legislation covering a great many products and we are taking effective action in bringing in certain products. We see those before us now. If we are satisfied that any of these could be put back in the open market, then we can vote for the change that is suggested by Senator Flynn, and I think that change would be all right.

The Chairman: You will move the amendment, Senator Flynn?

Senator Flynn: I would say the amendment should be moved by Senator Leonard.

The Chairman: Those in favour of the amendment please raise their hands.

Senator Kinley: What is the amendment?

Senator Flynn: To obtain ratification by Parliament within two years when they add to the list.

The Chairman: Will those in favour of the amendment raise their hands so that we can count?

Now will those against the amendment raise their hands?

The amendment carries.

Senator Carter: There are a couple of other amendments.

The Chairman: There was one question that I was wondering if the minister would clarify for us. I dont understand it, but that in itself is not too difficult to understand. Under subclause (2) of clause 8, I was wondering why it specified that an order amending Part I may be made by the Governor in Council on the recommendation of the minister or the Minister of National Health and Welfare. Is there some significance to be attached to that? This is dealing with hazardous products that are being prohibited from being imported or sold, and in those cases the Minister of National Health or yourself may make the recommendation. Do I take it that in all other cases in the list in Part II you as the Minister of Consumer and Corporate Affairs make the recommendation?

Hon. Mr. Basford: Yes. We got back to Bill S-22 which was put forward by the Department of Health and Welfare. Part of the products here fall within the ambit of the Department of National Health and Welfare and the purpose is to show that they have immediate access to the act and to the schedule.

The Chairman: Senator Carter, you said there were some further amendments.

Senator Carter: Referring to subclause (2) of clause 4, the first amendment has to do with the definition of "analyst" to be found in clause 2, paragraph (b). I move that paragraph (b) of clause 2 defining "analyst" be deleted and the following substituted therefor: "Analyst" means a person designated as an analyst under the Food and Drugs Act or by the minister pursuant to section 4;"

The Chairman: The only addition is "or by the minister pursuant to section 4". This is to provide for greater flexibility in dealing with this question? Is the amendment accepted?

Hon. Senators: Agreed.

Senator Carter: The other amendment has to do with clause 4 and the first deals with the heading of this clause. The present heading is "Inspectors" and I move that the words "and Analysts" be added so that the heading will be "Inspectors and Analysts".

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: And your next amendment?

Senator Carter: The other is an amendment to clause 4 by adding a third subclause. I move that subclause (3) be added to clause (4) to amend clause 4 by adding thereto the following subclause (3) 'The Minister may designate as an analyst for the purpose of this act any person employed in the public service of Canada who in his opinion is qualified to be so designated."

The Chairman: Mr. Minister, I think I asked you when I looked at this first whether this is broad enough for your purposes.

Hon. Mr. Basford: It is, and the purpose of the amendment was that any person who was an analyst in the public service could act as an analyst for the purpose of this legislation.

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: Do you wish to go through the bill section by section, or do you wish to pass the bill as amended?

Hon. Senators: Pass the bill.

The Chairman: Agreed?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): I just want to clarify something in my own mind by asking Mr. Thorson this question: The amendment which was carried requires additions to the schedules to be confirmed by Parliament within two years. There are other acts which provide that where changes are desired, upon the appropriate minister laying Orders in Council which bring the change before Parliament, if within a certain period of time, say, 60 days, a resolution is passed requesting legislation, then in that case the normal processes of Parliament are invoked and a bill is introduced and debated. Would that have been an appropriate way to proceed in a bill of this kind? I realize the question is purely theoretical.

The Chairman: We have got beyond that stage.

Senator Connolly (Ottawa West): I know we have, but we do not have Mr. Thorson here very often and, having had the experience of having him advise the legislative committee of the cabinet when I was chairman, I think it is a useful kind of question to have him answer.

Mr. Thorson: As I understand your question, Senator Connolly, what you are proposing is really the negative of the proposal that was advanced this morning, namely, that an order would go before Parliament and then would be subject to being upset on the carriage of the motion of either house or both houses.

Senator Connolly (Ottawa West): Yes.

Mr. Thorson: In other words, it would take an affirmative act of either house or both houses to upset the validity of what had been done.

Senator Connolly (Ottawa West): I would say to bring on legislation to correct, if you will. I do not care, really, what the language is.

Mr. Thorson: I assume, though, that the essence of the proposal is that the order continues in force but subject to a mechanism to enable a review on the carriage of the motion by either house upsetting the order.

Senator Connolly (Ottawa West): That is right.

Mr. Thorson: This is rather similar to what we, for example, had in the Maritime Transportation Unions Trustees Act several years ago. I believe it was 1965.

Senator Connolly (Ottawa West): It seems to me that there was something like that in the redistribution.

Mr. Thorson: The essence of that proposal was that the order continues valid subject to being upset. The question is, what are the parliamentary mechanisms that are effective to effect such an upset? If, for example, again by extending the argument, what would be the situation if you have a block of orders, motions coming from here and there, to the effect that the order be unrevoked?

Senator Connolly (Ottawa West): That is right.

Mr. Thorson: How does this work into the programming of house time, Senate house time and so on?

Senator Connolly (Ottawa West): I would assume that in a case like this it would be no more difficult than is required under the present amendment. It might be less difficult, because in this case everyone has to get parliamentary sanction within two years, and under the procedure that I am discussing only the ones that are objectionable would have to get parliamentary consideration.

Mr. Thorson: I appreciate the significance of that.

Senator Flynn: How would you proceed with your objection?

Senator Connolly (Ottawa West): There is no problem. We have a couple of precedents.

Senator Flynn: Not in practice in Parliament. I think you have it on the statutes.

Mr. Thorson: There are examples in the statute books. The Electoral Boundaries Readjustment Act is one that involves an upset mechanism of a similar nature. The real problem here is the effectiveness of the mechanism as a parliamentary review procedure.

The Chairman: Gentlemen, we have disposed of the bill. How long are we going to talk about it.

Senator Carter: With respect to clause 4, I would just like to ask a question of the Minister or one of his officials. Is it assumed that an analyst designated under clause 3 will be certificated, or are you going to make provision for such certification as you have done for inspectors in clause 2? It says here that he is qualified. You interpret that as being certificated?

Hon. Mr. Basford: Yes.

Senator Carter: There is no need to provide for certification as you have done for inspectors, then?

Hon. Mr. Basford: No.

Senator Carter: There is no need to add inspector or analyst.

Hon. Mr. Basford: No.

The Chairman: All right. Thank you, Mr. Minister.

Senator MacNaughton: Have we passed the bill?

The Chairman: Yes. I asked if the bill as amended passed, and the committee agreed. I did not recognize the individual voices, but there were no negatives.

Hon. Mr. Basford: It is passed.

The Chairman: Yes.

The Committee then proceeded to the next order of business.

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 20

WEDNESDAY, FEBRUARY 12th, 1969

Complete Proceedings on Bill S-28,

intituled:

"An Act to amend the Co-operative Credit Associations Act".

WITNESS:

Department of Insurance: R. Humphrys, Superintendent.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

29704—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 6th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Sparrow, seconded by the Honourable Senator Everett, for the second reading of the Bill S-28, intituled: "An Act to amend the Co-operative Credit Associations Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, February 12th, 1969.
(21)

At 11.05 a.m. the Senate Committee on Banking, Trade and Commerce proceeded to the consideration of Bill S-28, "An Act to amend the Co-operative Credit Associations Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis. (17)

In attendance: E. Russel Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-28.

The following witness was heard:

Department of Insurance:

R. Humphrys, Superintendent.

Upon motion, it was *Resolved* to report the said Bill without amendment.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, February 12th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-28, intituled: "An Act to amend the Co-operative Credit Associations Act", has in obedience to the order of reference of February 6th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,

Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-28, to amend the Co-operative Credit Associations Act, met this day at 11.05 a.m. to give consideration to the bill.

Senator Salter A. Hayden *(Chairman)* in the Chair.

The Chairman: Honourable senators, we are dealing with Bill S-28. May we have the usual motion to print?

> Upon motion, it was *resolved* that a verbatim report be made of the proceedings on the said Bill and that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, we have Mr. Humphrys here this morning in connection with Bill S-28, an act to amend the Co-operative Credit Associations Act. We had a good explanation of this bill in the Senate. Perhaps it would be in order to have a statement from Mr. Humphrys as to the purposes of the bill.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to effect certain amendments in the Co-operative Credit Associations Act. These amendments have the effect of relaxing some of the restrictions in the act that are applicable to organizations subject to it and to grant some modest additional powers.

The Co-operative Credit Associations Act is intended to establish a system of supervision and inspection applicable to certain central credit societies. It applies to any credit society incorporated by Parliament and also to those provincial central credit societies that voluntarily make themselves subject to the act by becoming members of the federal society.

At the present time there is only one federally incorporated society and four provincial centrals that are members of it. Thus, the act applies only to these five organizations. The federal society is the Canadian Co-operative Credit Society. The provincial centrals that are members are the provincial centrals for the provinces of British Columbia, Saskatchewan, Manitoba and Ontario.

So far as a federally incorporated society is concerned, the act contains all the usual corporate clauses dealing with the internal government of the society, and it contains certain restrictions on investments and loans designed to achieve and maintain a strong and solvent position.

With respect to provincial societies that become subject to the act, they are then deemed to be federally incorporated and are endowed with certain corporate powers in the deposit-taking and lending fields. They are also subject to certain limitations on investments and loans.

The act was passed in 1953, principally at the request of the co-operative movement. They desired a national central society which would provide a vehicle for exchanging funds in the co-operative movement from one part of Canada to another, and also some doubt was being expressed concerning the constitutional validity of incorporation of some of the provincial centrals.

This act provided means whereby they could be endowed with federal status and granted corporate powers that some thought lay within the banking field. For some years the co-operative movement has been requesting some relaxation of the provisions of this act in order to enable them to continue sound development. It has been thought these changes can now be granted since the organizations concerned have grown in financial strength and in management skill over the 16 or so years since the act was in force.

I think, Mr. Chairman, that is all that would be useful by way of a general statement. I would suggest that perhaps the best course from here on is to look at the individual clauses, and I can explain the purpose as we come to them.

The Chairman: Are there any particular questions at this stage? The bill seems pretty straightforward, Mr. Humphrys, and you made some reservation of explanation of the purposes as and when we come to them. It may well be, in the circumstances of this bill, that we will not do a section by section study, so that my injunction to you would be: Speak now or forever hold your peace!

Mr. Humphrys: In that event, I will touch on two or three of the main points.

Senator Connolly (Ottawa West): The general effect seems to be that even though an act has been passed by Parliament incorporating all these associations, amendments to the charter may be sought by way of application for supplementary Letters Patent. In other words, you will not require these people to come back to Parliament to get their charter amended.

Mr. Humphrys: Yes.

The Chairman: That is a very commendable provision, I would say.

Senator Connolly (Ottawa West): Highly.

The Chairman: And not too soon.

Senator Connolly (Ottawa West): That is right.

Mr. Humphrys: I would like to touch perhaps on three points.

One rather special feature of this Act is when a provincial central—that is, an organization incorporated by a province—becomes subject to this act by becoming a member of the federal society, it is thereupon deemed to be federally incorporated and is granted certain powers. Legislation now provides that such a provincial central must come to Parliament and be declared eligible by Parliament. This proposes to leave it to the Governor in Council to declare eligibility.

The Chairman: On that point, the provincial central which may become a member of the federal and the declaration that it is to be deemed thereafter to be a federal company, I take it at the present moment that, as it exists, it is not a provincial company but a non-incorporated body, is that right?

Mr. Humphrys: I do not think this has been thoroughly resolved. I would think it is an incorporated body. There may be some doubt about certain of its powers, if they were judged to lie within the banking field.

What this act has done is to consider it to be a credit society incorporated by Parliament, and to endow it with certain powers; but we have been proceeding on the assumption that such an organization has a sort of dual personality: it has the powers granted to it pursuant to its provincial incorporation, in so far as they are within provincial jurisdiction; and it has also the powers granted to it under this act.

The Chairman: Right there, if you would stop for a moment, the thing that bothers me is, in effect, are we declaring that a provincially incorporated company, as and from a certain date, is to be deemed to be or regarded to be a federal company?

Mr. Humphrys: This is what we have done, senator, when the act was passed in 1953.

Senator Connolly (Ottawa West): But subject to the restrictions of the federal act?

Mr. Humphrys: Yes, it was considered to continue to have the powers granted to it pursuant to its provincial incorporation, except as those were specifically modified by this legislation.

The Chairman: You mean it has a dual personality?

Mr. Humphrys: Yes.

The Chairman: I can understand that, but the next stage, to say some of the powers it has heretofore had in its provincial charter are no longer powers which it may exercise, are you going that far?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Federally or just provincially?

Mr. Humphrys: We are restricting all of its powers—that is, where there is a restriction in this act which is interpreted to be a restriction of the powers of that organization.

Senator Connolly (Ottawa West): And the constitutional authority is the power to legislate in respect of banking?

Mr. Humphrys: That is the basis of it, senator, yes, and the restrictions that are imposed by this act on the provincial centrals deal only with the aspects of its investments and loans.

The Chairman: Is there a legal opinion that exists in support of the constitutionality of what is proposed in this bill?

Mr. Humphrys: The constitutional point was deal with at the time the act was adopted in 1953. This bill does not propose any change in that basic structure, except it does have a clause that specifically states that these provincial centrals continue to have the powers granted to them pursuant to their provincial incorporation, except as specifically limited.

Senator Connolly (Ottawa West): Can they exercise them within the province in which they were incorporated?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): All the powers which the province gave them, they can exercise within that province?

Mr. Humphrys: Yes, except as specifically restricted by this act.

Senator Connolly (Ottawa West): So, in fact, you cut them off?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Then these provincial organizations need not subject themselves to this act?

Mr. Humphrys: No.

Senator Connolly (Ottawa West): So it is purely voluntary on their part?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): And if they do, they are limited in every aspect of their application by whatever the restrictive provisions are in this act?

Mr. Humphrys: Yes.

The Chairman: You mean it is a matter of agreement, the same as the form you might sign when you become a member of a club?

Mr. Humphrys: Yes, in a sense. There is no compulsion on provincial centrals to bring themselves under this act and, in fact, some of the provincial centrals have not done so.

The Chairman: All the statute says to a provincially incorporated company is, "If you have the idea you want to join this rather exclusive federal club, then you must agree not to exercise certain powers which you possess provincially"?

Mr. Humphrys: Yes. Also, on the other side, they are granted by Parliament the power to accept deposits and make loans.

Senator Connolly (Ottawa West): They do it with their eyes open. There is that about it.

The Chairman: Yes.

Senator Connolly (Ottawa West): Have we had any representations from the organizations, Mr. Chairman?

Mr. Humphrys: These provisions have been requested by the co-operative movement, and discussions have taken place over some time between the department and the organizations concerned.

Senator Desruisseaux: Mr. Humphrys, will this enable these clubs to deal more easily interprovincially?

Mr. Humphrys: It was the original intention to use the federally incorporated society as a vehicle through which the co-operative movement could exchange funds from one province to another. As a matter of fact, it has not worked well that way because the co-operative credit movement in each province has needed all of its funds within its own province and there has not been enough left over to move to the federal society and thus pass to another region. The society has put forward the view that the restrictions imposed on a federal society under this act are so tight as to hamper its development. Nevertheless, it was thought wise to proceed in that way in the early 1950s because the organization was a new idea, and the provincial centrals at that time were not all that well established or strong. They have grown in strength since that time, and that justifies the relaxation of some of the restrictions.

I cannot say whether or not this will really result in any great development of the federal society. It might. On the other hand, it is quite possible that at some point the co-operative movement might think its best interests lie in seeking the incorporation of a bank to serve the movement.

Senator Connolly (Ottawa West): I suppose, apart from the extra powers that are given to these provincial bodies, even though they have to surrender certain powers given to them by the provincial authority...

The Chairman: I think the right language is that they would agree to forego the exercise of certain provincial powers.

Senator Connolly (Ottawa West): All right, but they have also the advantage, I suppose, of supervision. At least, so far as the public is concerned, they are known to be supervised by the federal authority, and therefore their status is raised in the eyes of the investing public which might be dealing with them.

Mr. Humphrys: These organizations have a quite limited contact with the investing public in general. They operate within the co-operative movement, and do not usually go outside the movement for funds, although they do to some extent.

Senator Connolly (Ottawa West): But, in any event, the fact that they are known to be subject to the federal act improves their status a good deal, does it not?

Mr. Humphrys: I believe so, senator, yes.

Senator Carter: Might I ask, Mr. Chairman, if these co-operatives or credit associations will become subject to the provisions of Bill S-17, the investment companies bill, when that becomes law?

Mr. Humphrys: I do not think it was so intended. I will turn to the other act. I think there is a specific exemption in it.

The Chairman: If so, the next question is: Why?

Mr. Humphrys: No, there is a specific exemption. That bill exempts organizations subject to the Co-operative Credit Associations Act.

The Chairman: Then the question arises: Why that exemption?

Mr. Humphrys: Because they are supervised under this act.

Senator Carter: And this act gives the same protection to the public as Bill S-17 is supposed to give?

Mr. Humphrys: I would think more so, senator.

Senator Connolly (Ottawa West): Let us say it is better to have a special controlling act than a general controlling act.

The Chairman: Yes. Are there any other points in the bill that you wish to refer to, Mr. Humphrys?

Mr. Humphrys: There are two other points. One is that at present organizations are restricted in the volume of money they can accept by way of deposit, or by way of borrowed funds, to ten times their capital, surplus and reserves. This bill will raise that limit to twenty times, subject to approval by the minister on the recommendation of the Superintendent.

Senator Connolly (Ottawa West): What section is that?

Senator Desruisseaux: That would be section 47.

Mr. Humphrys: Yes. It is clause 8 on page 5 of the bill, which amends section 47 of the act.

Senator Connolly (Ottawa West): Yes.

The Chairman: It says it shall not exceed ten times the aggregate of its paid-up capital, the amount of its guarantee fund, and the amount of its surplus.

Mr. Humphrys: Yes, except as authorized by subsection (2). The new material is subsection (2) which is marked by a side line, and which provides that if the association adopts a by-law, approved as indicated there, it can go up to twenty times subject to approval by the minister.

The Chairman: With the approval of the minister on your recommendation?

Mr. Humphrys: Yes.

The Chairman: Are there any other points?

Senator Connolly (Ottawa West): Do you use the words "twenty times" in that subsection?

The Chairman: Yes, it is in subclause (b) on page 6.

Senator Connolly (Ottawa West): I see it now.

Mr. Humphrys: The other point concerns the question of the liquidity reserves. At present organizations subject to this act are required to keep at least 20 per cent of their deposits in the form of federal Government securities, provincial Government securities, municipal securities, school securities, or cash. The rules say that five per cent of the deposits must be in cash, and at least 15 per cent in securities of the type I have described or cash.

Senator Connolly (Ottawa West): What section is that?

Mr. Humphrys: That is clause 6 on page 3.

Senator Beaubien: Mr. Humphrys, does it stipulate the length of the maturity of the securities?

Mr. Humphrys: No. These organizations do not issue long-term obligations. They are mostly in the deposit business, so their liabilities are demand or short-term deposits.

Senator Desruisseaux: What about mortgages?

Mr. Humphrys: They are not in the mortgage business. So, this will lump together all their deposits and require them to keep a liquidity reserve of 20 per cent. That is the present rule. This change will do two things. It deletes municipal and school securities from those that are eligible as part of the liquidity reserve, and it permits a provincial central to count as part of this its reserve, deposits with the federal society. This is parallel to the situation that now exists so far as the local credit unions are concerned. They may count as part of their liquidity reserves deposits in the provincial central under the provincial law. Heretofore provincial centrals subject to this act have been required to keep their cash reserves either in cash on hand or deposits in a chartered bank. This will require them to keep at least five per cent of their deposits still in that form, but as respects the total of 15 per cent of the deposits constituting the balance of the liquidity reserve, they would be able to count deposits with the federal society as part of the liquidity reserve up to 5 per cent of the deposits. The reason for deletion of the municipal and school securities was that it was thought that while they are usually of good quality they are not usually of sufficient liquidity to rely on them as a source of ready cash to meet deposit withdrawals.

The Chairman: Any other sections?

Mr. Humphrys: The federal society may not now lend more than 10 per cent of its capital and deposits to any one member. Provincial societies are permitted to exceed that subject to approval by two-thirds of the directors and quarterly reporting to the superintendent and all members. This amendment will extend the same power to the federal society.

The Chairman: When they report that, have you a power of veto?

Mr. Humphrys: No.

Senator Connolly (Ottawa West): Well, then, what happens?

Mr. Humphrys: The point is that if they make a loan of more than 10 per cent of their capital and deposits to any one member, firstly it must be approved by two-thirds of the directors, secondly it must be for not more than one year, and thirdly it must be adequately

secured and they must send quarterly reports to all members setting forth these large loans. A copy of that comes to the superintendent.

Senator Connolly (Ottawa West): Who supervises as to the adequacy of the security?

Mr. Humphrys: Nobody has any specific authority on that. We would look at it and form an opinion as to whether in our view it was adequate or not. If there was a difference of view between ourselves and the society we would not have the power to rule alone. If we change the statement and rule the loan out on the grounds we thought it was not adequately secured the organization would have an appeal against our ruling. Generally the principle involved is to let the members know what is being done and to keep us informed and so provide an opportunity for rectifying a practice if it appears to be becoming dangerous.

The Chairman: You would have the power to determine whether the excess in this loan over what is provided in the statute puts the company in a position where there is peril or risk?

Mr. Humphrys: Yes, we have that over-riding power.

The Chairman: And you could exercise those over-riding powers. What would be the effect on the company in those circumstances? Would they have to stop doing business?

Mr. Humphrys: They would have to stop doing business.

This provision has been in the provincial act since it was passed in 1953 and it has been satisfactory. The proposal is now to extend it to the federal society.

The Chairman: Honourable senators, we could go through the bill clause by clause, but we had a good explanation in the Senate and Mr. Humphrys has hit all the high points in the bill. Are you prepared to authorize reporting of the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee proceeded to the next order of business.

First Session—Twenty-seventh Parliament
1969

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, Chairman

No. 3

WEDNESDAY, FEBRUARY 26th, 1969

Fourth Proceedings on Bill A-10,

"An Act respecting Trust and Loan Companies".

ORGANIZATIONS REPRESENTED:

Industrial Acceptance Corporation Limited, The Canadian Manufacturers' Association, The Association of Canadian Investment Companies, Canadian Pacific Investments Limited & Canadian Pacific Investments Ltd., Massey-Ferguson Limited, Canadian Chamber of Commerce.

APPENDICES:

"A"—Brief submitted by Industrial Acceptance Corporation Limited.
"B"—Brief submitted by The Canadian Manufacturers' Association.
"C"—Brief submitted by The Association of Canadian Investment Companies.
"D"—Brief submitted by Massey-Ferguson Limited.
"E"—Brief submitted by Canadian Chamber of Commerce.

THE QUEEN'S PRINTER, OTTAWA, 1969

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 21

WEDNESDAY, FEBRUARY 26th, 1969

Fourth Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

ORGANIZATIONS REPRESENTED:

Industrial Acceptance Corporation Limited; The Canadian Manufacturers' Association; The Association of Canadian Investment Companies; Canadian Pacific Investments Ltd. & Canadian Pacific Securities Ltd.; Massey-Ferguson Limited.

APPENDICES:

"A"—Brief submitted by Industrial Acceptance Corporation Limited.
"B"—Brief submitted by The Canadian Manufacturers' Association.
"C"—Brief submitted by The Association of Canadian Investment Companies.
"D"—Brief submitted by Massey-Ferguson Limited.
"E"—Brief submitted by Canadian Chamber of Commerce.

THE QUEEN'S PRINTER, OTTAWA, 1969

THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis–(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intitulated: "An Act respecting Investment Companies".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29706—1½

MINUTES OF PROCEEDINGS

Wednesday, February 26th, 1969.
(22)

At 9.30 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies."

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Inman, Isnor, Kinley, Leonard, Thorvaldson, Walker and Willis.–(20)

Present but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

INDUSTRIAL ACCEPTANCE CORPORATION LIMITED:

L.E. Nichol, President;
J.S. Land, Executive Vice-President, Finance.

THE CANADIAN MANUFACTURERS' ASSOCIATION:

H.J. Hemens, Q.C., Chairman, Committee on Corporation Law (Secretary and General Counsel, Du Pont of Canada Limited).

THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES:

J.V. Emory, Vice-President (President, United Corporations Limited);
W.I.M. Turner, President, Power Corporation of Canada Limited;
R. de Wolfe MacKay, Legal Counsel (Counsel, Power Corporation of Canada Limited).

CANADIAN PACIFIC INVESTMENTS LTD. & CANADIAN PACIFIC SECURITIES LTD.:

Donat J. Levesque, Assistant General Solicitor;
G.J. van den Berg, President, Canadian Pacific Securities Ltd.; and Vice-President, Investments, Canadian Pacific Investments Ltd.

MASSEY-FERGUSON LIMITED:

John G. Staiger, General Vice-President, Corporate Administration.

It was agreed that the briefs submitted by the above organizations be printed as Appendices "A" to "D", inclusive, to the proceedings of this day. It was further agreed

that the brief submitted by the Canadian Chamber of Commerce be printed as Appendix "E".

At 12.35 p.m. the Committee adjourned consideration of the said Bill until Wednesday, March 5th, 1969.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, February 26, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are going to resume our consideration of Bill S-17 this morning. This is the day we start hearing representations from organizations that are concerned, interested, or both, in connection with this bill. We have five different organizations. The order, subject to change, would be, I suggest, to hear first the Industrial Acceptance Corporation Limited. They have filed a brief. Mr. L. E. Nichol, the President of that corporation, is here together with Mr. J. S. Land, the Executive Vice President.

Possibly, the way to deal with this is to have Mr. Nichol present his brief, after which he will be open to any questioning that the committee wants to indulge in. Is that satisfactory?

Hon. Senators: Agreed.

Mr. L. E. Nichol, President, Industrial Acceptance Corporation Limited: Mr. Chairman and honourable senators, I wish first to express my deep appreciation and that of my associate, Mr. Land, the Executive Vice President of Industrial Acceptance Corporation, for the opportunity you have give to us to present the brief prepared on behalf of our company.

I wish immediately to impart to you the good news that I have no intention of reading the brief to you today; however, I feel that I can be of some assistance by bringing to your attention certain of the highlights in the brief, and perhaps certain facts which may be of interest to you and which may not be fully expressed in the brief.

Industrial Acceptance falls within the class of what was called "near banks" by the Porter Royal Commission. We carry on most aspects of banking with the principal exceptions of the acceptance of deposits and the provision of chequing services. In many areas we are in direct competition with the chartered banks, and, ordinarily, there is no banking requirement too large or too small to permit of it being dealt with by one of our companies.

Our consolidated assets are well over a billion dollars, and, as examples of the kinds of banking business in which we are engaged, I might say that in the past few years we have financed the construction of grain elevators, costing in excess of $16 million; maximum size lakers, which transport grain from the Lakehead to these elevators at the mouth of the St. Lawrence and iron ore on return to Great Lakes ports; tankers operating in the St. Lawrence River, Seaway and Great Lakes; and tugs, barges and fishing vessels operating in coastal waters.

We have provided the financing for the purchase of commercial jet aircraft. We have supplied the financing required for the construction of schools, nursing homes and a hospital. We have provided the necessary financing in multi-million dollar amounts for the supply of manufacturing and industrial equipment to some of Canada's largest industries. At the same time, we have continued to provide purchase credit and consumer loan services each year for more than 500,000 Canadians from coast to coast.

The financing of our consolidated operations at the end of 1968 was provided to the extent of $138 million by shareholders' equity; $498 million in borrowings on securities having maturities at the time of issue of more than one year, and $255 million of short-term borrowings, that is, borrowings having maturities of less than one year at the time of issue, and $43 million in demand loans from most of the chartered banks of Canada. It will immediately be seen that the rapid turnover of much of the borrowings of the types we use makes mandatory the maintenance of a high standard of credit.

Among the voluntary steps we have taken to avoid any suggestion of a deficiency of credit for our companies is the maintenance of reserves in the form of a substantial portfolio of short-term investments of the nature of treasury notes, government bonds with short maturities and very high grade commercial paper. Our consolidated holdings of this type of paper

to held cushion fluctuations in the availability of funds in the money markets are ordinarily in the area of $45 million. In addition, we carry aggregate lines of credit with Canadian chartered banks in amounts in excess of $160 million and with United States banks in amounts in excess of $70 million.

It will immediately be seen that a potential problem could arise in having to rely for credit, such as I have just mentioned, upon some of our greatest competitors in our fields of operation, that is, the chartered banks.

I think the foregoing remarks summarize our background position sufficiently, so I will now come more specifically to our interest in Bill S-17.

The Chairman: Before that, could you tell us something about the company and its shareholders?

Mr. Nichol: Yes. It is contained in detail in our brief, but IAC is a Canadian company, federally incorporated, and this is our forty-fourth year in business. We were originally a subsidiary of a United States company, operating as a branch office in Canada, handling the wholesale and retail financing requirements of Studebaker Corporation exclusively. In 1929–and in the interim the company had been incorporated as a Canadian company–the then Canadian management of the Canadian operations obtained an option for the purchase of the company from the U.S. parent. The financing at that time was arranged by way of $1 million equity issue and $1 million in debentures, and the company then became wholly Canadian owned, and has been since, and it has entirely Canadian management.

Up to yesterday we have had 10 million authorized shares, but at our board meeting yesterday a two-for-one stock split was proposed for the special meeting of shareholders to be held in April, so we will have 20 million authorized common shares, of which there will then be nearly 12 million outstanding.

Since the early thirties the stock has been listed on the Montreal Stock Exchange, the Toronto Stock Exchange and the Vancouver Stock Exchange.

Our company operates approximately 600 branch offices in Canada. Although it is 600 in total, that would include 10 branch offices in the New England States and eight in England.

Senator Walker: All your directors are Canadians?

Mr. Nichol: Except one, Arthur J. Morris, a resident of New York. He was the founder of our company. Indeed, he was the founder of consumer credit in North America, or in the world, for that matter. He was also the founder of the Morris Plan Banks.

Senator Thorvaldson: I presume you have some foreign shareholders, but not a great proportion?

Mr. Nichol: In excess of 95 per cent of our shareholders are Canadians, and they hold in excess of 95 per cent of the issued common stock. Does that answer your question, Mr. Chairman?

The Chairman: Yes, but in connection with the $498 million of borrowings having terms in excess of a year, what is the security? In what form do you raise that money?

Mr. Nichol: I will get Mr. Land to give the detail of that, but that $498 million represents in general borrowings of approximately a 20-year term. The secured long-term notes are secured by the pledge of our receivables, notes, conditional sales contracts and other negotiable instruments which are lodged with Montreal Trust Company as collateral for the noteholders, and it is maintained at a minimum, in the case of the parent company. Industrial Acceptance Corporation Limited, at 112½ per cent on that debt, and in connection with our borrowing subsidiary, Niagara Finance, the collateral is maintained at 107½ per cent.

In addition to the long-term secured notes, we have debentures of a long term which are not specifically secured but have a claim on the assets of the company after the secured noteholders have been satisfied.

Our bank borrowings are secured in the same manner as are our long-term and short-term notes –that is, borrowings of less than one year.

If you wish, I will carry on . . .

The Chairman: Yes.

Mr. Nichol: – to say that we do not in any way disagree with the necessity of action by the government in this general area. We are, however, very concerned that as the bill now stands, we may be just facing a continuance of procedures of the nature of investigations which, so far, have done little to re-establish the good repute of sound Canadian financial institutions. No one can deny that events like the insolvency of Alantic, Prudential and the like, have proven to be a serious detriment to the whole financial community in Canada, and particularly to a company such as ours.

Apparently, anyone who could rent a ten-foot office and afford to paint a name on the window has been able to say that he is in the finance business and, unfortunately, many investors, including those on the international scene, have been unable to distinguish between legitimate businesses and those which, through incapable management, dishonesty, or both, have caused untold harm.

It is true that the major debacles have been in the area of provincial companies, but the investment dealer in New York, the insurance company in Chicago or the banker in Los Angeles does not readily

distinguish between one type of Canadian company and another.

Subsequent to the major crashes of certain companies, the Federated Council of Sales Finance Companies, of which we are a member, has worked extensively with provincial government bodies to try to set up adequate reporting systems and to avoid, to the extent possible, a repetition of the great bankruptcies that have occurred. Unfortunately, there is no real assurance that these have ended.

I point this out because Mr. Humphrys and Mr. Hockin have expressed the desire of their departments to have an interval of two years during which they can study the general nature of the operations of each class of company which would come under their jurisdiction.

In the transcript of the proceedings before this committee on January 29, 1969, I note, at page 175, that Mr. Hockin, the Assistant Deputy Minister, Department of Finance, commented upon studies that had gone on with investment dealers concerning the business of finance companies and, as I understood Mr. Hockin, he said that this area is one in which more work has been done in the financial community than any other.

I have already had occasion to mention the joint studies made by provincial authorities and the Federated Council of Sales Finance Companies, and you will see, on page 1 of our brief, references to Appendix III and Appendix IV, which are filed with the clerk of this committee, which deal with the nature of the information which sales finance companies have agreed upon as adequate disclosure for provincial purposes.

Apart from these areas, there have, of course, been the extensive studies of the Porter Royal Commission on Banking, and honourable senators will find, at pages 4 and following of our brief, extracts from that report dealing with companies such as ours and recommendations which, in our view, would solve a great many of the problems relating to Canadian financial institutions, if adopted by Parliament.

Briefly stated, the recommendations of the Porter Royal Commission were:

(1) that all "near banks" such as our company, should be brought under federal jurisdiction;

(2) that provisions of the general nature of those in the Bank Act concerning inspection by the Inspector General of Banks, and the like, should be made applicable to "near banks";

(3) that such institutions should be given a title including the word "bank" which, like the title "Savings bank", would indicate the character or background of their business;

(4) that they be required to keep reserves in respect of their short-term obligations;

(5) that they be required to report to the Inspector General of Banks all loans or investments in excess of 5 per cent of capital and reserves, as well as any credits to directors or enterprises with which they are associated.

The only one of the recommendations of the Porter Commission which I have just cited which probably could not be initiated now with any substantial hope of accomplishment would be that requiring that all "near banks" should come under federal jurisdiction. We would support such a recommendation if presently feasible, but we have little hope that it could be promptly accepted in the present climate of federal-provincial relations.

We do think, however, that much of the intent of the recommendations of the Porter Commission in this respect could be accomplished by permitting provincial companies which met the required tests of the federal act to become licensed under the federal act. There is presently analogous legislation concerning provincial companies in relation to the insurance of deposits.

We are, therefore, submitting to the honourable members of this committee that all of the recommendations of the Porter Commission should be applicable to all federal companies failing within the class mentioned by the Commission and that:

> (a) they should be applicable to any provincial compagny which applies to be brought under the regulations and which fulfils the required qualifications; and
>
> (b) that there be provided a line of credit of last resort by the Bank of Canada or other governmental body in an amount equal to the reserves provided by such compagnies in order clearly to establish their credit.

We are convinced that the separate designation of such companies and the character given to them by the nature of the inspection, the reserves to be provided and the line of credit of last resort to be available, would almost immediately create in the minds of the international financial community the segregation between such corporations of a reputable nature and those which, in the past, could not be distinguished from them and have, in consequence, caused tremendous harm to the whole Canadian financial community.

The fact that preferred credit status would be accorded by the financial world to institutions falling within the class of such banking institutions which would be subject to federal jurisdiction, would very soon attract companies of provincial origin, whose acceptance of federal regulation would give them the

required status to permit of the financing of their operations in the amount required and at reasonable cost.

We have suggested that this class of banking institution might well be referred to as "industrial banks", but the title given is not of great importance provided that it includes the word "bank" with some qualifying adjective, as suggested by the Porter Commission.

At page 15 of our brief we have recommended that a new Part III should be included in Bill S-17 to incorporate the recommendations contained in our brief, and which I have just summarized. Whether done this way or by separate legislation is immaterial.

There has been some suggestion that the definition of companies to fall under legislation concerning "industrial banks", as found on page 9 of our brief, might not be sufficiently wide.

With all the respect that I have for those who might make such a suggestion, I would say to this committee that once we excluded chartered banks and trust and loan companies from the definition as would be done, it would be hard for any company of the class we are considering to carry on business and still not fall within the definition we have given.

Another objection I have heard is that credit lines of last resort, if provided, might also be requested for trust and loan companies. With the advent of deposit insurance, such credit lines are, of course, not nearly as necessary for trust and loan companies but, should experience demonstrate their necessity, then a provision requiring reserves such as we are recommending and the provision of such credit lines to those having the required reserves would, in our view, be of benefit to the whole country.

The past three or four years have seen some very unpleasant events occur in Canada, particularly of the nature of those relating to Atlantic, Prudential and the like, and I can assure the honourable senators sitting here today that we have had to devote a very great amount of time to the reassurance of the international financial community, particularly in the United States, concerning the basic solvency and good faith of reputable Canadian corporations.

Therefore, honourable senators, we do not think that the Canadian financial community can stand another two years of uncertainty.

It is our respectful submission to you that all of the basic information required for the enactment of effective legislation is now available and that it is clearly in the interests of the whole Canadian nation that prompt measures be taken to re-establish the credit of our Canadian financial community in the minds of the international financiers. In the recommendations contained in our brief and in my remarks here today, we do not overlook the fact that nothing is constant but change. We have in mind that it is in the best interests of our country as a whole, that a strong competitive climate be maintained as between one type of financial institution and another. We believe, after the most careful consideration, that the mesures we have suggested would be adequate for that purpose under present circumstances, but also wish to repeat that changes and improvements will probably be required as experience with these new measures develops over a period of time.

Mr. Chairman and honourable senators, may I once again express my most sincere appreciation of your courtesy in allowing me to appear, and your patience in listening to my presentation.

Senator Desruisseaux: Mr. Chairman, as the sponsor of this bill in the senate may I say that it had its birth in certain events that took place over the past few years. I think it is obvious that legislation such as this is needed, but there is something I should like some light thrown on. Mr. Nichol, you may possibly be aware of what is the counterpart of this legislation in the United States. Do you know what American legislation there is in respect to the control of finance companies?

Mr. Nichol: Senator Desruisseaux, I regret that I am not competent to answer that question, but I do recognize the fact that they have not had the proportion of bankruptcies, defaults, and problems such as have prevailed in Canada since early 1965.

Senator Desruisseaux: You are not aware of whether this is because of a certain law that exists that controls . . .

Mr. J. S. Land, Executive Vice-President, Finance, Industrial Acceptance Corporation Limited: I am not familiar, senator, with anything that by its nature imposes a control on the borrowing ratios related to capital and so forth in the United States. I think it would be reasonable to say that the disciplines imposed by the money markets and the capital markets are what have given stability in the United States. It does seem that perhaps institutional investors there have been sophisticated enough to be able to sort out the stronger companies from the weaker ones.

The Chairman: In the United States there is a law called the Investment Companies Act.

Senator Desruisseaux: I was trying to get that.

The Chairman: The administration of that seems to work in conjunction, in some way, with the Securities and Exchange Commission. It is quite a lengthy text and I have been busy wading through it from time to time. It is directly on investment companies. There is even a definition of companies that buy and sell securities and trade in securities; generally they are the ones covered there.

Senator Leonard: Is it a federal act?

The Chairman: It is a federal act, yes.

Senator Leonard: Applicable only to federal companies or applicable to all companies? Is it applicable to Californian companies, for example?

The Chairman: I would think it is applicable to all companies in addition to whatever the state legislation may be, in the same way as the S.E.C. is applicable.

Senator Desruisseaux: On page 14, in the second paragraph you say:

> What appears to be essential at the present time is to avoid the appearance of the provision of adequate regulation while doing nothing, in effect, but duplicating provisions, presently applicable under provincial statutes.

Are you aware of the statutes of, for instance, the Province of Quebec governing this matter compared with what we now have before us?

Mr. Nichol: Certainly in the Province of Ontario they are under the Ontario Securities Commission.

Senator Desruisseaux: But in Quebec?

Mr. Nichol: I do not think so.

Senator Desruisseaux: Or other provinces?

Mr. Land: Except that we file the prospectus that must be filed with the provincial securities branch.

Mr. Nichol: We file the prospectus each year in respect of our medium term issues over one year and under ten. That is the same prospectus that we file with the Ontario Securities Commission.

Senator Thorvaldson: I am intrigued by your recommendation concerning the term you use, "industrial banks". I was wondering if you would be prepared to comment on the effect it would have on a situation such as that of the Atlantic and Prudential failures if there were a federal system of investigation such as there is for banks and trust companies.

Mr. Nichol: I would say that for those companies to call themselves industrial banks they would have to be either a federally incorporated company or a provincial company licensed under the federal act; they would be required to maintain reserves, say to the extent of 12½ per cent as we have suggested, of their short term liabilities, and they would be required to report to the Inspector General of Banks or other governmental authority any loans in excess of 5 per cent of their capital and reserves.

You may recall that much of the trouble with Atlantic was due to particularly large loans not well secured. As I recall from the circumstances of that time, mid-1965, they had a very substantial amount advanced to a cattle raising farm in the Cornwall area, the amount being, I think, well over $1 million. I further recall that they had a loan of, I believe, $8 to $10 million made to a hotel beach resort establishment in the Bahamas. That is a lot of shareholders' equity or lenders' funds to put at risk in one risk venture. If they had conformed to requirements such as we have proposed, and as recommended in the Porter Commission Report, these companies would have been precluded from getting into that highly dangerous position.

Senator Thorvaldson: I am thinking of more than merely reporting. As I understand it, the Department of Insurance sends inspectors or accountant auditors into trust companies periodically.

Mr. Nichol: Yes, they do.

Senator Thorvaldson: They look at the books.

Mr. Nichol: They do.

Senator Thorvaldson: They talk to the people involved in these transactions. I understand there is a similar type of inspection for banks; there is considerable personal contact. Would that be a factor in improving conditions?

Mr. Nichol: I would say definitely, yes. We are strongly in favour of adequate inspection being carried out, such as is presently conducted by the Department of Insurance with the small loan companies, with casualty insurance companies, life companies and trust and loan companies, which I believe come under the inspection of the Department of Insurance. We have had considerable experience with the Department of Insurance inspection staff. They deal with three companies in our group at the present time: Merit Insurance Company, which is our casualty subsidiary; Sovereign Life, which is our life subsidiary; and Niagara Finance Company, which is our consumer loans subsidiary. We find that their inspections are frequent and thorough. In recommending inspection of industrial banks, merchant banks or what have you being carried out by the Inspector General of Banks, we concur mainly with the recommendations of the Porter Commission. On the other hand, we have the highest regard for the competence of the Department of Insurance and their inspections.

Senator Thorvaldson: I am sure we all have. Suppose before the collapse of the two companies we have been talking about Department of Insurance inspectors had been in there continually over a term of two, three, five or ten years, calling regularly upon

these companies. Do you not think they would have caught up with some of these things?

Mr. Nichol: I think it would have come to light sooner. Had there been appropriate ligislation at that time I think the bankruptcies may well have been prevented, because these high risk lending activities in large individual amounts would have prevented by the regulations of the act.

Senator Connolly (Ottawa West): I think Senator Thorvaldson is quite right in stressing the unfortunate results of the bankruptcies of the two concerns he mentions. Have you any information whether there were a comparable number of bankruptcies of comparable size in the United States in this industry?

Mr. Nichol: An extremely smaller proportion. I can think of perhaps two or three, but that is out of a great multitude of companies of this type.

Senator Connolly (Ottawa West): Not of the size that has been mentioned?

Mr. Nichol: Not one proportionately of the size of Atlantic, for example.

Senator Connolly (Ottawa West): Mr. Nichol, your statement this morning was very clear and your brief is a very good one. I wondered if it would be appropriate to suggest that perhaps the brief might be printed as an appendix to our proceedings of today.

The Chairman: Does the committee so order?

Hon. Senators: Agreed.

(For text of brief, see Appendix "A".)

The Chairman: Now may I ask you a question, Mr. Nichol. It is quite obvious from reading the definition of "Business of investment" in the bill that your company would come under that description. In other words, you do borrow money on the security of bonds, debentures etc?

Mr. Nichol: Yes.

The Chairman: You do make loans of a secured nature?

Mr. Nichol: We make loans. We do not invest in equities.

The Chairman: You make loans.

Mr. Nichol: May I say, with respect to the Prudential affair, Prudential was not a finance company in our sense of being a finance company nor would it qualify as, say, an industrial bank such as we propose, because much of Prudential's activity was the borrowing of money, short term as well as long term, and reinvesting those borrowings in equities. We do not invest in equities. We do more purely a banking or lending function in the consumer, industrial, and commercial fields.

The Chairman: As I understand you, you do support and believe in the matter of inspection.

Mr. Nichol: Yes, we do very strongly.

The Chairman: To prevent fraud and to catch some of these developments before they get to a stage where there are losses. What you say is that the finance company should be excluded from the general application of this bill and should be the subject matter of a separate bill or a separate part of this bill.

Mr. Nichol: Yes, because we do not consider that we are an investment company in the general description or definition that would apply to investment companies. I believe the term investment company has traditionally applied to the investment dealers and stockbrokers and mutual funds, for example.

The Chairman: So that you, for the reasons stated in your brief and stated here this morning, think there should be a separate part in the bill or a separate bill and that the procedures for inspection, et cetera, should be pretty well in line with those which are followed in relation to banks?

Mr. Nichol: Yes.

The Chairman: In life insurance companies?

Mr. Nichol: Yes.

The Chairman: And small loan companies?

Mr. Nichol: That is right.

The Chairman: Yes.

Senator Leonard: Mr. Nichol, would you refresh my mind on the Porter Commission recommendations. Your suggestions, of course, are that you agree with these recommendations in so far as federally incorporated companies, like your own, are concerned. Did the Porter Commission also stipulate that in that case you would have the right to take deposits?

Mr. Nichol: No, I do not believe they did. We are not seeking the right to take deposits.

Senator Leonard: The proposed definition of deposits, would really be demand or savings obligations and would exclude your type.

Mr. Nichol: It would exclude demand deposits or savings accounts and current accounts. I feel we should be subject to the inspections and controls as recommended by Porter, because we do issue short-term secured notes of a maturity of 30 days to 365 days, and I think the Porter Commission Report referred particularly to notes of a term of up to 100 days.

Senator Leonard: That would be the dividing line of defining a deposit?

Mr. Nichol: We feel we should be subject to inspections, notwithstanding the fact we do not take demand deposits. We have no demand liabilities outside our bank loans.

Senator Leonard: Then you recognize that this requirement could not be applied to provincially incorporated companies of your character unless they voluntarily applied and in that case if they did not apply they would not be entitled to use the word bank?

Mr. Nichol: That is right. They are a different animal and the lender recognizes that they are not subject to federal inspection.

Senator Leonard: If they wanted to use the word bank . . .

Mr. Nichol: They would have to conform to the provisions of the legislation.

The Chairman: Are there any other questions?

Senator Connolly (Ottawa West): I think it has been clear what Mr. Nichol said in so far as the industry that he is engaged in and perhaps represents, because there are other companies in it. It seems to be in quite a different category from what is contemplated in the definition of investment companies as defined in the bill.

The Chairman: Exempt. You remember when Mr. Humphrys was giving evidence, he said they drew it as broadly as possible in the beginning and you do have one provision and that is the use of some or all of the assets of the company for making loans, whether secured or unsecured.

Senator Connolly (Ottawa West): There is no doubt about that. This catches them. This is the basket provision that catches them, but this seems to be an industry that is of a different order from the others that you have been describing in answer to Senator Leonard's and Senator Thorvaldson's questions.

Senator Phillips (Rigaud): Mr. Chairman, as the initial critic of this bill I would like to put a question. On the assumption that the definition of investment companies was changed and contracted, would you have any basic objection of your company coming under this bill and the supervision of the Superintendent of Insurance rather than being shifted over and regarded as a banking institution and coming under the supervision of the Inspector of Banks?

Mr. Nichol: I would feel, Senator Phillips, that even recognizing such a change, that investment companies, as they are generally known, would still be carrying on a business entirely different from the type of business which we carry on.

Senator Phillips (Rigaud): So you would adhere to the fundamental principles?

Mr. Nichol: Yes, we would, but I would say on the subject of inspection by the Department of Insurance that we would have no objection to supervision and inspection being carried out by the Department of Insurance.

Senator Phillips (Rigaud): Do you wish to be segregated from the normal. . .

Mr. Nichol: Yes, I feel in the interest of stability and sound financial structures in corporations of our type it should be spelled out in detail, as recommended by the Porter Commission and be separate.

The Chairman: As I understand it, Senator Phillips, what he is saying is that the label investment company is not the kind of a label that they should be obligated to wear or should march under, because their business is not in that sense investment.

Senator Phillips (Rigaud): There might be a question of a revision in the definition and it might be desirable to take a review in due course, having regard to the proposed revision that this committee may suggest in the terms of the definition.

The Chairman: The brief does propose a definition.

Senator Phillips (Rigaud): Yes, I know, but the brief proposes a definition on the assumption that the present definition of the investment company is not changed. It is in the light of the present definition of an investment company that the representations were made.

Senator Connolly (Ottawa West): Is not the emphasis, Senator Phillips, the other way? As I understand what has been said and in the brief, regardless of what may be in the definition with respect to investment companies as such, this industry is an industry of its own order and therefore should be segregated in a separate section of this bill to meet the requirements of this special industry in another bill.

Senator Thorvaldson: May I ask the witness a question in that regard? Supposing your thinking was adopted in regard to industrial banks and supposing you did have the inspections which we have talked about, is there any reason why the same principles should not apply to the other companies that are real investment companies, as we know them? Is it fair to ask you that question?

Mr. Nichol: I would say it is not fair to ask me that question. I am not in a position to speak for the investment companies. It may well be that special inspections, supervision and controls apply to them. The nature of the business of investment companies is completely different from the nature of our business.

Senator Thorvaldson: That is why I asked your opinion. Had there been inspections of Prudential and Atlantic over a period of years, by the Department of Insurance, is it your opinion that the things that brought about their failure might have been caught?

Mr. Nichol: Yes.

Senator Willis: Do I understand the brief will be annexed to the proceedings today?

The Chairman: Yes. Thank you, Mr. Nichol and thank you Mr. Land.

Mr. Nichol: Thank you very much, Mr. Chairman and senators.

The Chairman: Honourable senators we turn now to witnesses on behalf of the Canadian Manufacturers' Association. We have Mr. H. J. Hemens, chairman of the Legislation Committee of that association. Mr. Hemens, would you introduce those whom you have with you?

Mr. H. J. Hemens, Q.C., Legislation Committee, The Canadian Manufacturers' Association: Mr. Chairman, honourable senators, I have with me Mr. H. S. Shurtleff of The Canadian Manufacturers' Association and Mr. J. E. Hughes, who is acting as counsel to me on this occasion.

Permit me initially to express our appreciation on behalf of The Canadian Manufacturers' Association, my colleagues and myself, of this opportunity to be heard by you on this bill. Like my predecessor, Mr. Nichol, I would ask your tolerance to permit waiving the reading of our brief, which I think you have before you and which is not very lengthy, and in lieu thereof comment briefly on some aspects of that brief and on some aspects of the bill.

Essentially, we, The Canadian Manufacturers' Association, are concerned here this morning with the status of manufacturing companies under Bill S-17 and our brief is therefore pointed essentially to the designation of investment company and business in investment.

We find it rather strange that the drafters of this bill have been unable to find a definition of "investment company" for the purposes of such an act, when such definitions in fact exist. In the case of the United States of America, a very sophisticated country in this field, the definitions clearly exclude the manufacturing area.

The answer may lie in the various statements of Mr. Humphrys, Superintendent of Insurance, before your committee, to the effect that he is not quite sure what he is looking for other than masses of information. If the Government were to require all men whose age is 50 and over to report to the police station daily and describe their activities so that in due course the Government might decide what a crime is, I think we would find it a matter of some wonderment—and yet, essentially, this is not a very different proposition.

Surely one should start by knowing what public interest it is desired to protect, and then proceed to protect it. It is submitted that we might start with the narrow definition and expand it as experience dictated such an expansion.

Despite Mr. Humphrys' views, fulfilment of the requirements of the act will be costly. Senator Molson spoke to such effect in the hearings before the committee. Not only would it be costly, but wasteful and unproductive, at a time when serious attempts are being made by manufacturing companies to keep their costs down. It is suggested that we might operate on a basis to make a filing of information and requesting exemption; but if I read Mr. Humphrys' testimony correctly before this committee, there would be no hope of achieving any exception in the period at least of the first year.

We are concerned also with the manufacturing company which might well be caught in a temporary position. I am informed—I am not an expert in the field of finance—that there will be occasions when a surplus of cash entering the coffers of the company might well be placed, over a very short period, with a view to earning interest. In that event, a company otherwise not caught by the definition, on a very temporary situation might be caught.

It is submitted that consideration should be given in respect of a proper definition to provide for a minimum period of time during which the excessive assets described in the bill would be used for the purposes set out in order to qualify as an investment company—it may be this should be a period of six months.

I am informed, on what I believe to be good authority, that we have some rather difficult situations throughout the country. A manufacturing company, I understand, in the Province of Quebec must incor-

porate a Quebec corporation for mining, gas and oil leases. I do not know whether this is true in other provinces or not, but if it were you could have a manufacturing company intended only for the purposes of manufacturing, required by the laws of the provinces, so to structure itself and possibly to be caught under the present definition of the act.

Reference has been made on occasion to so-called designated area companies. I am not too aware of all the intricacies of this matter but I am told, on reasonably good authority, that it was considered desirable, in respect of the former legislation on "designated areas" to set up separately incorporated companies. Again it is a question of structure. It does not seem to me that a structure based on provincial requirements, on tax requirements, or on sound commercial reasons, unless it is otherwise immoral or fattening, subjects a manufacturing company to provisions intended for investment companies.

The Chairman: Mr. Hemens, on that point, in order that a manufacturing company might be brought into the purview of this bill, it must employ 25 per cent or more of its assets in investment, and it must be a company that has borrowed money on the security of its assets. Now, when you were saying that possibly there should be a period, say of six months, within which a company could temporarily use surplus money without being required to account, there is the other aspect, too, that it may well be that the borrowing of such a company can be identified in the structures that exist and in the equipment for their commercial and manufacturing operation, and that the borrowing in no sense is tied into the money which they use for the purpose of investment. The major question, then, would be whether in those circumstances, unless the borrowing is tied into the money that is used for investment, whether they should come under the scope of the bill at all. What do you say to that?

Mr. Hemens: To answer that, Mr. Chairman, first of all I do not believe they should come under the scope of the bill in any event.

Secondly, without being an expert in the field of accountancy, it seems to me that, to ensure at all times beyond reasonable doubt that moneys raised by way of loan, debenture, security issue, etc., have not been used for the purpose of investment in the shares of the controlled subsidiary, may well require a degree of accountancy beyond that which is justified for commercial use.

The Chairman: I should have added a qualification. When I was using "investment" I meant "outside investment" because I do not think there is any intention in this committee—it may be that I am speaking too generally at the moment—to ask that investment of a parent in a subsidiary, which is a tool to help it to carry on some of the manufacturing operations, should be an investment for the purposes of this act.

Mr. Hemens: On that basis, Mr. Chairman, you, I think, have answered most of our problems.

The Chairman: Well, I was only expressing a viewpoint for the purposing of inviting some discussion.

Mr. Hemens: May I just refer to two other points rather briefly? It is noted that, because of the jurisdictional aspect, the bill can extend only to federally incorporated companies. Of course, that allows for a great area of excape by simple incorporation of provincial companies, which I do not believe would be for the benefit of the country as a whole, under those circumstances. One brief reference to, I think it is clause 22, the provision which permits of the establishment of regulations. As a matter of principle, Mr. Chairman, we find ourselves opposed to any provision which permits of the establishment by regulation of substantive law. We think that substantive law should be found in the statute and that regulations should deal with matters of administration.

Thank you very much, Mr. Chairman.

The Chairman: Are there any questions?

Senator Thorvaldson: Mr. Chairman, I was going to ask if you would follow-up to a certain extent your remarks in regard to the personal view that you expressed. How far are you willing to back that personal view up? If you say that you are convinced that that is so, then I am willing to follow it up. Would you care to comment on that again?

Senator Connolly (Ottawa West): You are making the Chairman the witness.

The Chairman: Mr. Hemens is the witness, senator. We have not reached the stage yet where I have to firm up the views that I express. That will take place after we have heard all the submissions. We must hear also Mr. Humphrys' replies. I was indicating, or suggesting, a viewpoint to Mr. Hemens in order to invite his comments. You should be able to judge—maybe you can—whether that reflects a solid view that I have or whether it was merely for the purpose of inviting discussion.

Senator Thorvaldson: Your viewpoint, Mr. Chairman, is more mature than mine.

Senator Connolly (Ottawa West): Mr. Hemens, I take it, is quite firm in his view that manufacturing companies with subsidiaries really do not fall into the class of investment companies as such. We have a brief

here, for example, from Massey-Ferguson and others from Dominion Textile and Alcan.

These companies make a very special case, as being manufacturing companies with subsidiaries which do their financing for themselves sometimes and for the subsidiaries. Do you think that they should be excluded from the general basket definition of investment companies because the main purpose of their business is manufacturing? Is that the message that you want to get across?

Mr. Hemens: That is fair. As a matter of interest, you are probably well aware that the definition of "investment company" in the Investment Company Act, 1940, of the United States, definitively and clearly excludes such companies.

Senator Connolly (Ottawa West): Yes. I see that in the appendix to the brief memo that you have made. In other words, what you are saying to us, and really what you said to us at the end, is that when it comes to clause 22, inevitably, the person who exercises the discretion for the making of regulations is going to have to compartmentalize these various industries. And, speaking for manufacturing industries, you think that they will have to be put into a special class and dealt with in a special way—namely, excluded from the provisions of this act.

Mr. Hemens: I would much rather they were excluded completely from the provisions of the act. Then we would have no problem of regulation-making in that area.

Senator Leonard: What would you say, if a company like General Motors Corporation owned and controlled a company called General Motors Acceptance Corporation which handled all or a good portion of the finances of the sale of the motor cars? Could General Motors Acceptance Corporation be an investment company?

Mr. Hemens: That is a very difficult question, senator. My personal view would be that they are subject to the views expressed here a little earlier by I.A.C. They would be, in my opinion, an investment company and should be subject to the provisions affecting investment companies.

Senator Leonard: Mr. Nichol did not think they should be an investment company, but rather that they should be a near bank or type of industrial bank.

Mr. Hemens: I defer to Mr. Nichol in that area, sir. I know nothing about it.

Senator Desruisseaux: Mr. Chairman, in the submission of the witness, it is suggested that the definition of "investment company" as set out in clause 2(1) (f) (i) and (ii) should be amended so as to replace the words "25 per cent of the assets" by the words "50 per cent of the assets". What is the basis for changing it to 50 per cent?

Mr. Hemens: There are two thing involved, senator. First of all, I take the view that an act respecting investment companies is or should be intended to deal with companies primarily concerned with investment. Consequently, 25 per cent of the assets, in my view, would not constitute "primarily". Fifty per cent of the assets would come very close to so doing. Secondly, the Investment Company Act of the United States refers to 40 per cent. It seems to me that 50 per cent is a fairer division.

Senator Desruisseaux: It is arbitrary.

Mr. Hemens: I think they are both arbitrary, sir.

Senator Phillips (Rigaud): Have you available for the guidance of this committee, sir, a definition of a manufacturing company, on the assumption that manufacturing companies will be excluded from the purport of this act?

Mr. Hemens: That is a very good question, senator. I do not have one. I would be glad to draft one and submit it.

Senator Phillips (Rigaud): I think it would be very helpful, because, personally, I believe that the exclusion should be based not upon the amount of assets that are being used for investment, on account of the confusion to which our Chairman has referred in respect of the money being used, and the like. But, basically, it should not be too difficult, with your experience, to give us a definition of "manufacturing company".

Senator Connolly (Ottawa West): Just following that suggestion, Mr. Chairman, in view of the fact that we have specific briefs from various manufacturing companies of the type described by Mr. Hemens, if any of them are here and are to be heard later today, perhaps they might be able to help in providing such a definition as Senator Phillips (Rigaud) suggests, which I think would be helpful.

The Chairman: We will watch for it.

Senator Thorvaldson: Mr. Chairman, in regard to the definition of "investment company," it seems to me that there is a real contradiction between subclause (f)(i) and (f)(ii), because (i) says:

> (i) incorporated after the coming into force of Part I of this Act primarily for the purpose of carrying on the business of investment, . . .

And I note the word "primarily", and (ii) says:

(ii) that carries on the business of investment and at least twenty-five per cent of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b), . . .

Now, I make the suggestion that there is a real contradiction here and that the company described in subparagraph (ii) is not primarily in the investment business, whereas that is what seems to be intended by the former subparagraph.

The Chairman: Quite true, and there is even confusion added to the contradiction you are talking about, because the definition of the "business of investment" means you must borrow money, and then you must loan or invest money or assets of the company at the stage when the company is incorporated.

Say this bill passes into law and the company is incorporated, it may take powers to carry on the business of investment, but the mere fact it is incorporated in that form after the passing of this bill makes it an investment company before it borrows a nickel, and before it makes any investment. What has it to make a return on at that stage?

These are things we will have to look at when we get to a consideration of the bill, and I do not think we should attempt to work this out with Mr. Hemens. I think this is a job we have to do.

Senator Thorvaldson: Yes, Mr. Chairman. I brought it up following the honourable senator's remarks.

The Chairman: Since the Canadian Manufacturers' Association have filed a brief, I think it should be appended to the proceedings of today.

Hon. Senators: Agreed.

(*For text of brief, see Appendix "B".*)

The Chairman: Did you have a question, Senator Desruisseaux?

Senator Desruisseaux: No, I was going to ask that very question.

Senator Connolly (Ottawa West): Mr. Chairman, to save time, perhaps unless we otherwise say so, all of the briefs should appear as appendices.

The Chairman: I think the ordely way to deal with it is that if people are being heard here and have filed a brief, we will print it. Whether we will print those that have been subsequently filed is another question.

Senator Connolly (Ottawa West): Yes, I was speaking of those who are here.

The Chairman: Yes.

Thank you very much Mr. Nichol and Mr. Land.

The next group is the Association of Canadian Investment Compagnies, headed by its Vice-President, Mr. J. V. Emory. Would you introduce your delegation, please?

Mr. J. V. Emory, Vice-President, The Association of Canadian Investment Compagnies: Mr. Chairman, I have with me Mr. W. I. M. Turner, President, Power Corporation of Canada Limited; Mr. R. de Wolfe MacKay, our legal counsel and counsel for Power Corporation of Canada Limited, who has also assisted in the preparation of the brief; and Mr. Esmond H. Peck, former Secretary-Treasurer, Association of Canadian Investment Compagnies.

The Chairman: You have filed a brief?

(*For text of brief see Appendix "C".*)

Mr. Emory: Yes, we have filed a brief, Mr. Chairman. My participation this morning is more in the way of opening remarks, if I may.

The Chairman: You can assume, correctly, that we have read the brief. I may as well have an order now to print the brief of this association as an appendix to today's proceedings.

Hon. Senators: Agreed.

(*For text of brief, see Appendix.*)

Mr. Emory: Mr. Chairman, honourable senators: The Association of Canadian Investment Compagnies appreciates this opportunity to make some supplementary representations to this committee respecting Bill S-17 and our brief, which was submitted last month.

Membership in the association now stands at 17 compagnies, as listed in Appendix "A" to the brief, having net assets exceeding $500 million.

About half of the member compagnies are investment funds which hold rather broadly diversified portfolios; three or four might be termed management holding compagnies, having a relatively small number of investments and being actively involved in the management of some or all of the compagnies concerned. Then there are a few which combine the above characteristics in varying degrees.

Of the 17 member companies, 10 have no debt apart from current bank loans. Twelve have federal charters, but only five of these have any debt and they would appear to be the only ones subject to Bill S-17 in its present form. Nevertheless, our entire membership, together with the other companies also listed in Ap-

pendix "A" who have supported our submission, are greatly concerned about the bill and its possible serious threat to their effectiveness as pools of Canadian investment capital.

As you can see from the brief description of the association which I have given, it is composed of a variety of companies with different charters, different capitalizations, different objectives and different problems, all of which are loosely grouped under the heading of closed-end investment companies. In broad terms, however, our members can be divided into two classifications: the first, management holding companies, the largest of which is Power Corporation; and the second, porfolio investment companies, the largest of which is United Corporations Limited.

In deciding who should represent the association before this committee it seemed to us that it would be impracticable to ask representatives of all our members to present their various individual points of view in detail. For this reason we decided to limit ourselves to representatives of Power Corporation, speaking as a management holding company, and myself, representing United Corporations Limited and speaking for the portfolio investment companies. Furthermore, in order to prevent overlapping and to save time, we decided that I should speak in general terms and leave any detailed discussion of the bill itself to the representatives of Power Corporation. May I add that I intend to be as brief as possible.

I am sure you will understand, Mr. Chairman, that I can only speak with sure knowledge about United Corporations Limited, of which I am president, but I feel that in giving a short description of the operations of that company I will be describing to the members of this committee a typical representative of the portfolio type of closed-end investment company. Obviously, however, there will be differences of detail among various individual companies.

Briefly, then, as far as United Corporations Limited is concerned, we are a federal company but have had no debt outstanding since 1958. We would, therefore, not be subject to the terms of Bill S-17 at present but would immediately become so if we issued debt to the public at any time in the future. While we have preferred shares outstanding in the hands of the public, they represent less than 10 per cent of the total capitalization of the company at the end of 1968. Our Class "B" shares, which are our common shares, are listed on the Toronto, Montreal and London (England) Stock Exchanges, and we have approximately 1,700 registered shareholders of those Class "B" shares.

At the end of 1968 the aggregate market value of the company's assets slightly exceeded $88 million, of which over $76 million was in the form of the common or convertible shares of 80 different companies. No one portfolio holding, other than government bonds, exceeded 3 per cent of our total assets.

We have qualified from the beginning as an "investment company" as defined in Section 69 (2) of the Income Tax Act. I will return to this point in a moment and I will simply say, at this juncture, that in so qualifying we are probably in a minority among Canadian portfolio investment companies, whether of the closed-end or open-end, more usually referred to as the "mutual fund", type.

Our operations are managed by what we feel is an experienced group of investment specialists under the overall control of a responsible board of directors, all of whom have a very real feeling of dedication to the best interests of our shareholders. Should it, in our judgment, be in the best interests of those shareholders at some point in the future to apply a moderate amount of leverage to our capitalization in the form of debt, we would follow the normal underwriting procedure with all that it implies by way of full disclosure and compliance with the regulations of the securities commissions and the stock exchanges.

Furthermore, and I think this is extremely important, the market place itself would be the judge as to whether any debt instrument which we might issue was attractive enough by way of asset and income coverage to be acceptable to potential investors.

The Chairman: May I interupt you there Mr. Emory. I am thinking in terms Atlantic Acceptance. The market place did not make a very good assessment there on some of the securities that were issued.

Mr. Emory: With this I agree, sir. The majority of our debt that we had outstanding was held by what might be called professional investors. I think there is a major distinction between the type of operation that accepts deposits, or advertises widely that it would like to issue short term paper, or whatever is may be, and one that goes through the normal underwriting procedure—and by that I mean going to an underwriting house with full disclosure, and everything else that is involved.

The Chairman: Yes. Go ahead.

Mr. Emory: Gentlemen, I have described United Corporations, and I ask you whether this is really the type of company that you feel requires the kind of close and detailed supervision and regulation by a government department as provided by this bill. My own feeling is that it is not, and should you gentlemen agree with me I suggest that there is a much simpler and considerably more clear-cut method of excluding such companies than by subjecting each one as an individual case to the full regulatory procedure as set out in the bill. Aside from my innate distaste for the type of regulation involved—and by this I mean

legislation by regulation—I feel that the procedure laid down in the bill is, at least in the case of portfolio investment companies, unnecessarily complicated, expensive, and time-consuming both for the company, and for the government department concerned.

This brings me back to section 69(2) of The Income Tax Act, to which I made previous reference. In returning to it let me hasten to say that I have no intention today of entering into a discussion on the taxation of investment companies. This was, in fact, the subject of a separate submission by the Association to the Minister of Finance in November of last year, a copy of which is attached as Appendix "B" to our brief to this committee.

Senator Connolly (Ottawa West): At what page is that?

Mr. Emory: It is the separate blue book.

Senator Connolly (Ottawa West): Yes.

Mr. Emory: Reference is also made to Appendix "D" setting out the form which Section 69(2) would take if our recommended changes were implemented.

The point that I am making, and which is referred to at the top of page 4 of our brief is that here is a definition of an "investment company" which might well be the starting point for an exemption from the regulatory provisions of Bill S-17. It is important to realize in this connection that the definition given in section 69(2) is set out for taxation purposes, and that certain of the restrictions on investment policy, particularly sub-section (ba) which limits the amount of income receivable from foreign sources and which is the principal reason for many portfolio investment companies disqualifying themselves under the present section, are not really relevant to the requirements of Bill S-17. It seems to me, however, that it should be quite possible to work out a definition covering, on the one side, a reasonable requirement for portfolio diversification and, on the other side, a reasonable limitation of the ratio of debt to total capitalization and to specifically exclude any company falling within that definition from the regulatory provisions of Bill S-17.

In short, as far as portfolio investment companies are concerned, we feel that we should be exempt from government regulation providing we operate within very broad, but clearly defined, limits. Furthermore, we feel that these limits should be defined by statute rather than by departmental regulation. May I add that we would be delighted to cooperate in any way possible in arriving at a mutually agreed-upon definition of those limits.

Mr. Chairman and honourable senators, with your permission I would like now to turn the floor over to Mr. Turner who will speak for Power Corporation.

The Chairman: I would like to ask you a question, Mr. Emory. In the broad sense, the business of investment is the subject-matter of the operations of your company?

Mr. Emory: That is right, sir.

The Chairman: Now, you are proposing that there be an exception?

Mr. Emory: I am proposing that instead of the department having to examine each individual company in detail—mark you, I have no objection to reporting providing we stay within broadly defined limits, and I feel these limits should be set out in the bill, and should not be defined by departmental regulation—we should have a blanket exemption other than for reporting purposes.

The Chairman: Do you mean that the bill should be drawn with such definitions and guidelines in it so that you would be able to make the determination as to whether your operations brought you under it or not?

Mr. Emory: That is exactly it.

The Chairman: And you would make the first decision as to whether you were obliged to file or not?

Mr. Emory: I would not be averse to filing, sir, in order to have the finger kept on us, if you like. I do not think the detailed regulations which are provided by the bill are necessary providing we stay within what this committee, and the bill itself, define as proper limits.

Senator Connolly (Ottawa West): Are the guidelines the ones suggested at . . .

Mr. Emory: The guidelines are on the last page of the brief, sir—Appendix "D", which is page 13 of the yellow book.

These are our suggested recommendations for Section 69(2). In effect, these suggestions widen the range somewhat from the present act. Our suggestions, I must confess, were made for taxation purposes, and not for the purposes of Bill S-17.

The Chairman: What is a little confusing to me, Mr. Emory, is that you say these guidelines should be specifically set out, and as long as you operate within them you then have no obligations under the act, and yet you would be prepared to file. I cannot relate those two things.

Mr. Emory: By using the word "filing" I may have misled you, sir. What I meant was that we have no objection to the department's keeping an eye on our operations in order to be sure that we stay within this

definition, and this can be done by way of filing annual reports with the department. But, as soon as we go outside this definition then, whatever the full terms of Bill S-17 are, they would apply to us.

The Chairman: But you realize that once you have a definition setting out guidelines then the superintendent, if he is to exercise any function at all, must have the authority to check and inspect in order to make sure that you are within the guidelines.

Mr. Emory: I have no real objection to this. What I am looking for is a clearly defined area in which we can operate without regulation, particularly the type of regulation that seems to be implied in Bill S-17, where it is not what I would call statutory.

The Chairman: It may be that the exemption provisions in the bill go far enough for what you want.

Mr. Emory: Yes. I think my particular quarrel, if you like, Mr. Chairman, is with the definition of an investment company. I think it is all-embracing.

Senator Carter: Mr. Emory, you say you have 17 members in your association. Have you any idea of how many investment companies there are which would be affected by the act as it is presently drawn?

Mr. Emory: As a matter of fact, taking the act as it stands now, this would be impossible to forecast.

The Chairman: No, how many are there right at this moment?

Mr. Emory: How many investment companies are there?

Senator Carter: Yes.

Mr. Emory: Again, it depends upon your definition of "investment company".

The Chairman: Take the definition in the bill.

Mr. Emory: In the bill?

The Chairman: Yes.

Mr. Emory: I would find this quite impossible to answer because it seems to be all-embracing. I think may be we shall be dealing with this point in a few moments.

The Chairman: How many carry on investment in some form and do not borrow money?

Mr. Emory: I am afraid I cannot answer that.

The Chairman: Those are not under the bill.

Senator Thorvaldson: You listened to the discussion that the members of the committee had with Mr. Nichol of Industrial Acceptance Corporation Limited concerning his proposal for inspection and so on. I was wondering if it would create any great problem for you if such a system were decided upon and there were legislation requiring inspection, of a type similar to that made by the Department of Insurance or under the Bank Act, of all investment companies. Would that be very cumbersome for your company?

Mr. Emory: I do not think so particularly. I think what we would be frightened of, if you like, would be if the inspector, through the mechanism of the bill, reported; we would not know where we stood. We are getting into a detailed discussion of the bill now, which I would rather leave to the Power Corporation representatives, if I could. To answer your specific question, I do not think it would be particularly onerous for us to have an inspector come in and look at us.

Senator Thorvaldson: I think one of the main things we in this committee wish to avoid is to have a bill which creates a huge basket to take in myriads of companies that do not need inspection at all. Obviously, in the case of a company such as your own, as you have described it, with your assets, an inspector would come in and after his first visit would, I believe, determine that there was not very much to inspect, and future inspections would be fairly cursory. I mean, you do not borrow money. A system of this kind would lead to creating a large basket in which everybody has to file extensive returns and employ additional staff to do it. Would you be opposed to it?

Mr. Emory: I would be in favour of doing it which ever way is easiest. If it is easier for an inspector to come in and look at our books it presents no problem at all.

Senator Beaubien: Do you not publish very detailed reports anyway?

Mr. Emory: Yes, we do.

Senator Beaubien: What would an inspector find that was not in those detailed reports?

Mr. Emory: We normally publish our portfolio on a quarterly basis.

Senator Beaubien: You show everything there.

Mr. Emory: Everything.

The Chairman: You have to look at it more objectively than that. You would have to be prepared to make an assumption that at the end of the year the financial statement contains information that indicates

everything is going along properly. If a company is subject to the act I do not think you can make any such assumption. You may have all the good will in the world, but you would have to go in and check.

Senator Beaubien: One has there the auditor's report and everything else. They show their holdings, every holding they have. Anybody can look at it and see the true position, unless there were gross dishonesty. The custodian holds the securities; the auditor would check the bank balance and everything else.

The Chairman: Yet with all that we have had some colossal failures, have we not?

Senator Thorvaldson: I was going to say, that is exactly the problem here. With Atlantic and Prudential the auditors' statements apparently did not disclose the defects in those companies and the dangers. That is what we are talking about.

Senator Phillips (Rigaud): I should like to refer to the section of the act dealing with the right of inspection it is proposed to give and the right of putting a company into bankruptcy if it is obvious that it is heading for disaster. On the assumption that investment companies were exempt from the broader application of this bill involving regulation and so on, would you object to the right of supervision and the right of the Superintendent of Insurance, if he found your type of company was heading for disaster, to move in?

Mr. Emory: As a matter of principle, no. We are no more anxious to cause a calamity than anybody else.

Senator Phillips (Rigaud): That is all I wanted to know.

The Chairman: Now that Mr. Emory has made his statement I think we should order that the brief which has been filed be appended to the proceedings today. Is that agreed?

Hon. Senators: Agreed.

Senator Carter: I had supposed that all across Canada there would be at least one association of investment companies. Your association has only 17 members. Do you have a special definition of "investment company" or a special condition which restricts membership of your association?

Mr. Emory: No, we do not. This is a voluntary association. We lay down no regulations. The open-end funds, the mutual funds, have an association representing themselves in tax matters and matters such as this. We felt that broadly defined investment companies of the closed-end type should have a similar association. As I pointed out, our membership is rather diverse; we consist of different types of companies. I would, if you like, define my particular company, a portfolio investment company, as being a true example of an investment company, but the definition is difficult to arrive at.

Senator Carter: But other investment companies are also associated in different organizations?

Mr. Emory: This I cannot speak to. As a matter of fact, the publicly-owned closed-end investment companies in Canada are not very numerous.

Senator Thorvaldson: Is Argus a member of your association?

Mr. Emory: Argus is not a member. This was a matter of choice on their part.

Senator Thorvaldson: Is the membership of your association given in your brief so that it will be in the appendix to the proceedings?

Mr. Emory: The membership is given as an appendix.

The Chairman: Even when we look at the list of members appearing in appendix A, it would seem to me that the title, the Association of Canadian Investment Companies, is drawn too broadly. For instance, the corporations supporting this submission are not members, are they?

Mr. Emory: No, they are not members.

The Chairman: There are such companies as Massey-Ferguson, Domtar and the Distillers Corporation. I am sure they have investments, but obviously their primary business is not investment.

Mr. Emory: They are not members of the association.

Senator Thorvaldson: It had been my view—perhaps I am wrong—that Power Corporation, say, was not really an investment company but more a holding company. Am I wrong?

Mr. Emory: I would prefer to let them speak on their own behalf in reply to that question.

The Chairman: Then perhaps we should hear from Mr. Turner. Thank you, Mr. Emory.

Mr. W. I. M. Turner, President, Power Corporation of Canada Limited: Mr. Chairman, honourable senators, I think the style of this presentation may involve the president of a company coming here and saying, "This is a good bill. Let us redefine it, but exclude me." No matter how we thought of redefining it, we

could not exclude ourselves, so we have to address ourselves to the bill and not the exclusions.

We would like to approach the matter in two ways. First we would like to have our counsel, Mr. de Wolfe MacKay, talk about the specific articles of the bill and then, if feasible, have myself talk in more general terms on how we would like to bring to this committee's attention our philosophy related to the bill.

As you know, sir, we are a closed-end holding company; under some people's definition a management holding company, and, under other people's, a conglomerate or an international company. We find it difficult not to take this bill extremely seriously. In addition to the people that are up in front, our comptroller of the company, Mr. Knowles, who is sitting in the back, is able to provide additional information if the senators require it. If I may, sir, I would like to introduce Mr. MacKay.

Senator Connolly (Ottawa West): Before Mr. MacKay starts, is he going to address himself from this blue brief that he has?

The Chairman: No, he is going to address himself, as I understand it, to the provisions of the bill.

Senator Connolly (Ottawa West): Thank you.

Mr. Turner: We are delighted obviously to answer any questions anyone may bring up . . .

Senator Connolly (Ottawa West): I wanted to get the paper straight.

Mr. Turner: . . . on the comment or the question one senator raised about closed-end funds. If you define these types of companies as those who have public shareholders, there are very few other closed-end funds that are not in this association. Argus is a very conspicuous example of one that is not. You can count those missing on two hands.

Mr. R. de Wolfe MacKay, Legal Counsel, The Association of Canadian Investment Companies: Mr. Chairman and honourable senators, in answer to the question as to what the scope of my remarks are to be, they are essentially not so much directed to the terms of the brief excepting that we have helped to prepare it. Any questions related to the brief I am quite prepared to answer and assist in that respect. My position at the moment before this committee is essentially representing Power Corporation and to give you some of the views we have about the severity of the bill in its present form and also to give you perhaps one or two examples of just how it would have affected our normal day-to-day transactions. I thought this committee would be more interested in how this would apply to us in the present form than it would be to general interpretations in the Senate and its proceedings here. My purpose before you is more to say, as Mr. Turner said, we can be called a conglomerate, an investment company, a management company or called most anything and we therefore feel that when it comes to the definitions, the severity of the penalties to be imposed, the direction and control and the discretions, we had better show you some specific examples of how this would have affected us if the bill had remained in its present form.

I have prepared for your guidance a chart of Power Corporation and its various holdings. Mr. Chairman, if I may then proceed with the remarks which I have been instructed to give on behalf of Power Corporation. Power Corporation of Canada Limited is an investment, development and management company of the closed-end type. Directly, and through its investment company subsidiaries, it invests primarily in equity securities and normally takes an active role in the development of the enterprises in which it has committed funds, except for a small number of holdings of a purely portfolio nature. To accomplish its stated objective of investing creatively in Canada's future, Power seeks to make long-term equity investments in industries which have the potential for substantial growth and profitability; to concentrate its holdings in a relatively limited number of companies—suitably diversified by industry—which are or can become leaders in their respective industries; to assist each company to realize its full potential through developing and supporting competent self-contained management; and to encourage the development of improved management techniques and new technology, products and markets. Its shares are held by more than 18,500 persons, over 90 per cent of whom are Canadian.

The submission, in January, to the Senate Committee on Banking, Trade and Commerce by the Association of Canadian Investment Companies with the support of the group of Canadian corporations concerned with investment of necessity could only touch on the highlights of those portions of Bill S-17 which on the face of them appeared to those making the representations to be pertinent, and some of the comments and recommendations by the same token had to be rather general in their terms.

At the time the submission was made, the only information available to those submitting the representations was the text of the bill itself, together with, of course, the general remarks made by members of the Senate at the time of its first reading. Since that time we have had the advantage of reading the *Hansard* transcripts of certain senators' remarks at the time of second reading and of the proceedings before the committee and, in particular, the remarks made by the Superintendent of Insurance and the Assistant Deputy Minister of Finance. A somewhat clearer picture of the purposes of the bill has therefore emerged from the representations made by these two Government

officials and we are most appreciative of the committee's agreement to postpone our appearance before the committee until after the Government had made its submission.

We think that the Superintendent of Insurance has made it abundantly clear that at the present moment he is struggling in the dark and that his basic requirements at the moment are for information. We would suggest, however, that when the proposed legislation comes to the point of imposing restrictions on the activities of companies before the problem has been analysed.

We think the committee will understand the uncertainty and apprehension that is bound to exist in the minds of the boards of directors and of management of closed-end investment companies and of industrial holding companies when they feel that they are exposing themselves and their companies to the severe indictments and penalties provided by the bill in their normal day-to-day carrying-on of their business.

We would suggest, therefore, that the Government officials move slowly deliberately and carefully so as to ensure that legislation, when it is brought down, will be effective and that, in the interim, normal business operations will not be unduly interfered with.

We would suggest for the consideration of the committee the answers to certain basic principles, that is, a question and answer method of inquiry.

These questions of principle may be divided into six categories, substantially as follows:

1. What are the purposes of the bill, (a) subjectively, in the sense of what is stated to be the intent of the bill by its proposers or by Government officials, on the other side, what are the purposes of the bill and/(b) objectively, in the sense of what objectives can be derived from the provisions of the bill itself? Unquestionably, the subjective intent, as stated by the proposers or Government officials or by notes, is very useful but cannot of itself constitute an interpretation of the specific provisions of the bill.

In this respect I would remind the committee that the Superintendent of Insurance and the deputy minister, from time to time, did make remarks. We can appreciate very much that this is what their purpose and intent is, but all we can look at is what are the terms of the bill, not how the Government intends to make use of the bill or interpret it themselves. The second question I would like to ask:

2. What are the objectives as appear from the bill itself?

3. Are such objectives to be accomplished by the specific terms of the bill or by regulations?

4. Does the bill clearly state how these objectives are to be achieved?

5. Does the bill go farther than is necessary to accomplish the objectives?

6. Is the bill likely to interfere unduly with normal acceptable business operations?

The answers to these questions seem, briefly, to be the following:

1. The purposes of the bill, subjectively and objectively: Subjectively, the primary purpose of the bill appears to be to protect the public investing in debt securities, either by the discretion of the minister appointed to administer the bill or by the broad powers to regulate by orders in council. The secondary objective appears by implication to be to protect the public investing in equity securities by similar measures.

It is with this secondary objective that of course we are most concerned. Mr. Nichol has expressed the views of those compagnies that are in the debt market, and we are not, and we have no recommendation to make in that respect. We are directing our minds solely to investment compagnies in the normally accepted sense of that term.

2. Secondly, what are the objectives as appear from the bill itself? For this purpose, the significant sections of the bill could perhaps be divided into three separate categories. They are:

(i) those sections which deal with the gathering of information such as gathered through the various extensive and detailed returns by the Bureau of Statistics or under the Corporations and Labour Unions Returns Act, the Canada Corporations Act and the Income Tax Act, most of which, with the exception of annual returns under the Canada Corporations Act, is confidential information;

(ii) disclosure to the public of information obtained, which is the basic purpose of the Securities Acts of the various provinces including, what we understand is presently being proposed, a National Securities Act, the purpose of which is to give to the public full information in order to enable them to reach an impartial judgment concerning securities offered whether they be of an investment debt or equity nature.

(iii) apart from gathering information and the disclosure of that information, there is the imposition of certain restrictions on the activities by and with those whom I broadly call "insiders", that is, the 10-per-centers, the directors holding offices, as well as on corporate financial and investment practices.

Here I am referring to the extensive powers granted to the Governor in Council to issue regulations.

3. The third question is: Are such objectives to be accomplished by the specific terms of the bill or by regulations? Although the bill defines "investment compagnies" and the "business of investment," the definitions themselves are subject to clarification by regulations to be adopted pursuant to section 22 of the act, with no assurance that such regulations will be published at the time the bill comes into force and effect as a statute, or whether two years later, or perhaps some time in the intervening period. It would furthermore appear that such regulations, if as and when adopted, would have the same force and effect as if they were specifically incorporated in the bill.

For example, definitions of "business of investment" (2(1)(b)) and "investment company" (2(1)(f)), make reference to the use of some or all of the assets of a company or the use of 25 per cent thereof; but until a regulation is brought down to define the "valuation of assets", the definition has no meaning, and cannot be used as a criterion.

For example again, although Part I defines the persons to whom the bill applies and prescribes in section 8 the prohibitions, the Governor in Council may make regulations under section 22 which go far beyond the prohibitions contained in section 8. He may make such regulations as he considers appropriate to secure the establishment and maintenance of a sound financial structure for investment companies. This is a very broad power. He may make regulations pertaining to the levels of paid-up capital and surplus, the ratios of outstanding debt to paid-up capital and surplus, liquidation of assets–in other words, he can order any company coming under the ban to liquidate its assets–and the maximum permissible single investments–he has power by regulation to tell any one company whether it shall invest in another or say "you shall not invest in that particular company"–or loans of investment companies, and whether those transactions are dealt with through insiders or outsiders, and whether covered by section 8 or otherwise.

The Chairman: I wonder if you would comment on this. It strikes me that there is a provision in the Interpretation Act, that the use of the singular or the plural number imports the other.

Mr. MacKay: That is right.

The Chairman: I am wondering here, in relation to section 22 of the regulations, which speaks of "investing companies", might that not imply the authority to enact regulations relating to "an investing company"

Mr. MacKay: This is what I am afraid of, Mr. Chairman. Again, I have read the comments of the Superintendent of Insurance and of Mr. Hockin–I have forgotten which–in which he said, when these regulations have been brought down they will be brought down to cover a broad field. But in order to reach a regulation that is to cover a broad field you have to have one instance at least; so I think, following the chairman's remarks, that the orders in council, while they may be general in form, they can be applied to or directed specifically at "a" company.

This may be necessary, but at the present moment our companies are operating, and they are faced with the possibility, at any time, if this bill goes through as it is, of having a regulation brought down the next day saying "Mr. So and So, you cannot buy any more shares in that particular company in which you have invested." This may be an exaggeration, but I suggest it is a provision which it may be very difficult to operate under the bill.

4. The fourth question: Does the bill clearly state how these objectives are to be achieved?

(1) On the gathering of information, the objectives with regard to gathering information consist of the following:

> (a) In the definition of those from whom information is to be gathered, that is to say, "investment companies", as defined, "carrying on business", as defined in the act.

The Chairman: Would you stop there? What would you say as to a provision, or at least a form of bill, which did not pretend to regulate the kind or nature of investment at all and simply dealt with authority in relation to the quality of the investment? In other words, there is no attempt to establish guidelines as to the categories or classes of investment in which you might put your money. That would be a freedom of choice; but the quality of the investment could be a matter of the supervision and control by the proper authority.

Mr. Turner: On that point, which we will get to further a little later on, what we are concerned about is this. We certainly do not mind being judged on what we invest in, but we question whether anybody in the civil service in Ottawa is necessarily in a position to tell us, giving us a better definition than we have ourselves, as to what is quality. We are very cognizant of this many times when many of our companies are making investments.

The Chairman: I used it in the broad sense, that you have exercised your judgment, you have made an investment; under the act there is authority to go in and assess the value.

Mr. Turner: We have no objection to anyone coming in and assessing this afterwards. What we do not want is to have someone coming along to tell us what we can or cannot do *a priori.*

The Chairman: That was not the purport of my question. You have freedom of choice but then you are subject to supervision afterwards.

Senator Connolly (Ottawa West): Could we follow up the chairman's question? It may be too late after the event, if they made a bad investment.

The Chairman: They say the smallest loss is the initial loss. You do not let it develop.

Senator Connolly (Ottawa West): That is the answer?

Mr. Turner: In our business, there are many examples where there is the sheer complexity of the decision, or the time involved in making the decision. If I may use one example which we did not make, but which had wide publicity, the case of the Labatt Company. Following the announcement that the family were going to sell the shares, the management appealed to some Canadian people to rally round to keep this company under Canadian control. We responded to a situation where in about thirty-six hours we got to the point of making or contracting a $30 million bid for the stock that the family was contemplating selling. That involved making some extensive borrowing arrangements with a number of our chartered banks; it involved making decisions at 3 o'clock in the morning at a board meeting which had gone on from 9 o'clock the previous evening and which finally broke up about 10.30 the next morning, when the members went home to shave.

Senator Connolly (Ottawa West): You are worse than this committee.

Mr. Turner: Now, that kind of investment would simply be impossible. First of all, I would doubt that anyone else would have the wisdom to tell us we had or had not made a good decision in deciding to do that at that point of time. I doubt very much that any regulatory body could respond within the restrictions of time, even if they had the wisdom.

We are saying that the normal conduct of our business and the conduct of those people with whom we compete is such that we have to enter these things with a businessman's judgment, knowing that, if we are doing something that is discriminating against other shareholders or doing something improper, there is a body of legislation that deals with that kind of situation already.

Senator Connolly (Ottawa West): Namely, the Securities Act of the province.

Mr. Turner: The Securities Act of the province, yes. In some of these cases, senator, these companies get complex enough that they fall under the Securities Exchange Commission of the United States. It is very likely that we are going to have national securities legislation here. We are fully cognizant of the fact that we have a problem here, because we do not have a national body of legislation. There are always means by which minority shareholders can bring suit against directors, if they believe the directors have acted improperly or have been using company funds or have been issuing shares not for real value. These are all things that I think really alert managers and directors know they have to exist under. There is a whole body of regulations now with which we entirely concur about the adequacy and fullness of disclosure of what you do. This should be done promptly and in a knowledgeable form so that outside people can form judgments on your activities. We are all in favour of that sort of thing.

Senator Connolly (Ottawa West): The corollary is that you probably admit you can make mistakes, but the regulatory and investigatory powers are not necessarily going to prevent those mistakes being made.

Mr. Turner: Exactly, sir.

The Chairman: My question was related to the suggestion that there would be no interference with your freedom of choice. Let us assume you had made the decision to bid for these Labatt shares and that you had succeeded in acquiring them. That would be a question of freedom of choice. Nobody had any authority to interfere with that. At some later date in the operations of your company, however, the relationship of those shares in your portfolio to a lot of other shares and your finance position might dictate that you should lighten the load somewhat. If you were not prepared to do that in the interests of the shareholders, the Superintendent might then make a direction.

Mr. Turner: We are quite prepared to have anybody come and tell us, after the fact, "Look, Power Corporation, you made a mistake doing this," or, "It is not in the interests of your shareholders". If that case can be sustained, obviously . . .

The Chairman: No, you are putting words in there that I did not use. I did not say that they would come afterwards and tell you you had made a mistake in making the investment. The director would speak in relation to the circumstances that were exixting at some later date in relation to all the investments of the company, and even in relation to the status of this investment, and, if he formed a judgment on that, to the effect that there would be some peril were that situation to continue, then he might issue some kind of order. Would you object to that kind of supervision?

Mr. Turner: I think it depends upon how sophisticated it is. If he applies some standard set of ratios, I

am not sure that he can draft up legislation that will meet all the particular requirements. If he said to us, "Look, in view of the market performance of your securities, your ratio of debt to equity, you cannot cover your bonds," or something like that, then I would not have any objection to somebody telling us that. In fact, we would already have acted on it.

Senator Thorvaldson: In effect, you would really have a super board of directors. How would you like to operate a company under that situation?

Mr. Turner: I do not think it is proper in our kind of society.

Senator Thorvaldson: I am agreeing with you.

Mr. Turner: To have somebody come and tell us, on a judgment basis, "You know, it is our judgment that you people are erring in this fashion, and it is our judgment, the judgment of the management of the Power Corporation that you are not." If they can quantify it in some way, that is different.

Senator Connolly (Ottawa West): Let us carry it one step farther; let us admit, as we would, that Power Corporation manages its affairs properly.

Mr. Turner: But we do make mistakes. There is no question about that.

Senator Connolly (Ottawa West): By and large, however, you are a very reputable company. But what about the case of another outfit that is anything but reputable and which does some of the things that Senator Hayden has mentioned? In that case what would you have to say about regulations?

Mr. Turner: In my opinion—and this is only an opinion—I do not think the federal Government or anybody else can regulate against a deliberate fraud and prevent that sort of thing happening. The case mentioned earlier this morning of Atlantic Acceptance, was, in my opinion, a fraud. It was interpreted in the United States, by the corporate treasurers who had moneys invested in short-term securities in that company, as another example of poor Canadian management, and no corporate treasurer was going to risk for an eighth or a quarter of a point percentage keeping money in Canada. As a result of that fraud, $600 million disappeared out of our short-term pool of moneys within approximately six weeks in Canada. This is the major thrust that caused the problems for the other finance companies. The banks or somebody else had to come and step in.

The Unites States, in all its wisdom, has not found a way of stopping a Mr. Di Angelos from deliberately telling people he has oil in a series of tanks, when, in fact, when the tanks are inspected it turns out that there is no oil in them. For fraud of that nature you cannot write a set of rules entirely stopping it.

We have to address ourselves to incompetent management. That is something where proper inspection and disclosure may very well bring to light something that can be done better.

Senator Connolly (Ottawa West): But it will bring it to light only after the event.

Mr. Turner: In my opinion, nobody is going to show that fraud before it happens. I would have answered differently from the gentleman from I.A.C. I would say that, even if you had a super-plus law containing 15 more degrees of reporting, it might result in catching the fraud somewhat earlier, but, if the fraud is going to be there, it is going to be there.

Senator Thorvaldson: Just awhile ago you referred to the Securities Act of the province. What province were you referring to? Were you referring to Quebec or Ontario or others as well?

Mr. Turner: Well, in my judgment, senator, I think Ontario's act is probably the best among the provinces, and I think it causes the fullest disclosure. That act plus the rules and regulations of Toronto and Montreal stock exchange now force any publicly licensed company to make pretty adequate disclosures of what they are doing, and we have these 10 per cent rules and that sort of thing now. I am all in favour of that. I think the trend towards full disclosure is a very desirable public tool. In fact, we anticipated it. We have always been a couple of jumps ahead of these acts. We have told our own shareholders, for example, our own break-up value monthly since 1964. On the other hand, the Toronto stock exchange only got round to legislating quarterly estimates coming in at the beginning of 1967. We favour this idea of the public being fully informed of what goes on.

Senator Thorvaldson: The fact is, of course, that you are continually reporting to the Ontario Securities Commission and perhaps others as well.

Mr. Turner: Yes, those of British Columbia and Quebec.

The Chairman: I have a question I would like to direct to Mr. MacKay. It seems that the authority of the Superintendent under this bill, when he makes inspections, gets returns and calls for more information, is all with the object of deciding whether he should make a special report to his minister as to the ability of the company to repay all money borrowed by it on the securities of its bonds, debentures, and so on and so forth. His report has to say that there is inadequate security to do all that. When you come to the power by regulation, it seems to me that it goes much further than that—that, as in clause 22, to lay

down general guidelines, in connection with the establishment and maintenance of sound financial structure for investment companies, does not arise out of the primary purpose and responsibility of the Superintendent and the minister under this bill.

Mr. MacKay: That is right, Mr. Chairman.

The Chairman: And, therefore, maybe there is no place for section 22, in its terms, and there should just be the power to make regulations for the better administration of the act.

Mr. MacKay: That is perhaps one of the main purposes of our objection to the bill in its present form. It is that section 22 does not contain the usual, normal provisions of any bill or act providing for regulations, which is that the minister appointed to administer, or the Superintendent of Insurance, or whoever the official is, is given certain administrative rights by regulation.

As a matter of fact, I might suggest that you do not need anything except section 2 and section 22, and the rest of the act is unnecessary because under those two sections alone the Government could get everything it is asking for by the other section of the act.

The Chairman: Well, you would need a couple of other sections. You would need to decide who was going to be subject to the bill.

Mr. MacKay: Yes, that is section 2, as I say.

The Chairman: And you would need some sanctions and general authority to provide all kinds of guidelines.

Mr. MacKay: I was really taking up your remark, Mr. Chairman, on the powers of the Superintendent—they are limited to making recommendations, and that is all the Superintendent has—as to section 22 and all the other powers.

The Chairman: That is right. I do not think that he is entitled to them.

Mr. MacKay: Mr. Chairman, if I might revert to my prepared statement, and coming now to the question of restrictions, this is as to whether the bill accomplished these objectives. Section 8 provides for prohibition of what might be called "insider" transactions, retroactive from the date the bill is enacted as a statute to November 12, 1968. I do not want to dwell on that retroactive feature, but merely wish to point out that as from November 12, 1968, unless any changes in the bill should be enacted as a statute, say, next month, if means everything that has been done since November 12 comes within the ban of this bill, subjecting directors and officers to penalties and what-not. It is a frightening thought.

It is not known what effects, if any, the possibly restrictive regulations under section 22 would have in the fulfilment of the purposes of the bill. Three things are clear. The first thing is that the bill, in its present form, provides for legislation by regulation. I think that has been reiterated over and over again and does not need stressing. The second thing is that the bill vests in the discretion of the minister the determination of the persons to whom the bill is to apply, as in section 3 he has the right to give exemptions, which means he has the right to say that nobody is exempt. Certainly, any information sought to be obtained is not confidential, but may be made public, and I might revert to your remark on section 15, when the Superintendent comes to any given conclusion, after full examination of the detailed and confidential information of sales, costs of sales, and whatever is necessary, then he makes his recommendation to the minister who is then in a position of having to table the recommendation which, in effect, discloses to Parliament and the public the details of the business operation of any given company which have not been made available to the shareholders or creditors of the company, which normally should be done. As in the case of the Bureau of Statistics or any information returns, other than under the Canada Corporations Act, any information which the Superintendent obtains, either by questions or by inspection by his inspectors, we feel should be confidential and should not be made use of publicly.

What is not clear is the category of companies to which the bill is to apply. The definition is so broad that it extends far beyond what appear to be its express or even implied purposes. Any company that has indebtedness and that has investments is, until clarification, subject to the terms of the bill, whether or not such companies are investment companies as the term is normally used.

The inference can be drawn from the terms of Section 22 that, in due course, there will be a debt-capitalization ratio required in the determination of the scope of return "borrowings" and that there will be a realistic percentage of investments to "other assets". Until the valuation of assets and the debt-capitalization ratio have been defined, it is almost impossible for any given company to determine with any accuracy what is the pertinent percentage of their assets to be used in investments, or what are to be the feasible limits of the debt which they will be allowed.

The fifth question is: Does the bill go further than is necessary to accomplish the objectives?

It is, we think, very clear that the bill goes far beyond what would appear to be the primary purposes of the government. We think it can clearly be inferred from the hearings to date that industrial holding companies, which carry on an integrated business indirectly through wholly-owned and controlled subsidiaries, were to be excluded. If so, it is, we would

suggest, not sufficient for this subjective intent of the government to be stated in the hearings. It should be specifically included by definition in the bill.

Likewise, it is suggested that the term "investment" should specifically exclude controlled operating subsidiaries. Such companies should not be in the position of having to ask for an exemption if it is the intention of the government that such companies should be exempt.

If the bill, in order to protect equity shareholders, is intended to govern or control or supervise investment companies, then the criteria of borrowings and investments become meaningless. If it is intended that current bank loans should be excluded from the term "borrowings", then the bill should clearly so state.

I might say that Mr. Emory pointed out that of the investment companies in the association, I think, only five had indebtedness—that is, of those subject to the act.

I think there will be briefs coming in—and there have been already—which show, for example, that the debt happened to be less than one-half of one per cent of the total equity. What is the difference between no debt and one-half of one per cent debt to equity? There must be some rationale in a definition that you cannot arbitrarily cut off at one dollar on bank loans. There must be some, whatever it may be, we do not state or even agree there should be this, but if this is what is intended, it should be in the act and not left to order in council or the discretion of the minister.

Finally, the sixth question: Is the bill likely to interfere unduly with normal acceptable business operations?

Generally speaking, we think it is clear that, so long as section 3, that is regarding the minister's power to exempt, section 8, the prohibition section, and section 22, the power to make regulations, remain in the bill, particularly if section 8 is to have the retroactive feature of having all transactions contemplated by that section prohibited as and from November 12, 1968, the bill creates, and since November 12, 1968, has created, uncertainty which will, as matters progress, become greater and greater unless some clarifications and limitations are put on its scope.

For example, any public company, or let us perhaps say the great majority of the public companies whose shares are listed on the stock exchanges, and who have complied, in their borrowings, in their reporting and in their business transactions, with the requirements of the Securities Acts of the various provinces, cannot, without danger of invocation of the severe penalties of Part III, enter into a normal stock purchase plan or stock option plan for employees, pursuant to the provisions of section 15 of the Canada Corporations Act, if such plans are, as they usually are, made available to officers, including, by definition, in the bill the spectrum of officers, everything from president to assistant treasurer or assistant secretary, who, by no stretch of the imagination, could be called an "insider".

Inter-company transactions between parents and subsidiaries are likewise subject to attack, and the directors and officers subject to penalties, whether or not in the normal course an inter-company indebtedness is incurred.

I think possibly even amalgamations between parents and subsidiaries, or between sister companies, could be prohibited under the terms of this act.

The volume of the submissions and the variety of the submissions which have been made to the committee, and which, we are quite sure, will be made to the committee, clearly indicate the concern of the business community resulting from the lack of clarity and ambiguities of the bill itself, the power that is to be invested in the Governor in Council to issue regulations, and the arbitrary discretion of the minister in determining whether or not the bill applies to any given company, be it a finance company, real estate company, closed-end portfolio or management company, industrial holding company, or an operating industrial, commercial or servicing company.

In order to illustrate just exactly how serious confusion can arise by reason of the application of the provisions of section 8 alone to existing closed-end management investment companies, I present to you a chart of the corporate organization of Power Corporation of Canada, Limited. If you will look that chart you will see in the far left-hand corner the box for Trans-Canada Corporation Fund, which is 100 percent owned by Power Corporation.

Perhaps the most striking example of possible effects of the prohibitions of section 8 of the bill is the acquisition in May, 1968 by Power Corporation of all of the shares of Trans-Canada Corporation Fund. Had Bill S-17 been in force and effect at the time as a statute of Canada, the directors and officers of the two companies would, we suggest, have had grave and serious doubts as to whether the transaction above mentioned would have been entered into without first obtaining a specific exemption from the minister under section 3, for fear that the transaction would have been contrary to the provisions of section 8.

Another example can be given by a reference to the chart, and the investment in Consolidated-Bathurst Limited. This is on the left-hand side. There is the box for Shawinigan Industries Limited, and then you follow the line until you get to Consolidated-Bathurst Limited, 16.5 per cent. An offer was made in 1966 by Consolidated Paper Corporation Limited to acquire all the Class "A" common shares of Bathurst Paper Limited, including the shares held by Power Corporation of Canada, Limited which, at that time, owned more than ten per cent of the voting shares of

Bathurst—and of Consolidated. In other words, at that time Power Corporation owned more than 10 per cent of the stock of Consolidated Paper and Bathurst Paper.

Under the provisions of section 8 Consolidated would not have been authorized or permitted to buy the shares of Bathurst from the Power Corporation, even though there was an offer made to all the shareholders, including the Power Corporation. In view of the fact that Power Corporation had more than 10 per cent of the stock of Bathurst, Consolidated would have been prohibited from making the offer it did to all the shareholders of Bathurst, and obtaining all of the shares of Bathurst so it became a wholly owned subsidiary. Eventually Consolidated changed its name to Consolidated-Bathurst in order to indicate that the operations of the two companies were integrated.

In respect of Trans-Canada I have here a copy of the offer, which indicates exactly the extent of the disclosure and the extent of the information which was given to the shareholders of Trans-Canada as a result of which all of the shareholders, and not only the insiders accepted the offer. I have also the offer . . .

Senator Isnor: What is the date of that offer?

Mr. MacKay: That was made on May 31, 1968. I have also the formal offer by Consolidated Paper to Bathurst Paper.

The Chairman: I think, Mr. MacKay, since these transactions were carried out, we can assume that you complied with all the securities laws in the various provinces, and that there was full disclosure.

Mr. MacKay: That is right.

The Chairman: We do not need to read the prospectuses.

Mr. MacKay: Perhaps you are right, sir. The point I was making is that notwithstanding all of this we would still be faced, had the bill been in force in its present form, with the fact that we could not enter into this transaction without getting the consent of the minister. I might suggest that the minister under the act would have had a very difficult time in trying to decide whether or not he was going to grant an exemption for this sort of transaction. I would not have liked to have been in his position, as a matter of fact, had the proposition been put before me.

I have another example. You will see that one of the investments of Power Corporation is in Dominion Glass Limited. That is the third box from the left. Power Corporation owns 63.4 per cent of Dominion Glass. This again was an offer made to all of the shareholders of Dominion Glass by Power Corporation and by Consolidated-Bathurst to acquire a given percentage of the shares of Dominion Glass. The offer was made in April, 1967, and as a result each acquired about 8 per cent of the stock. In due course, in 1968, Power Corporation acquired from Consolidated-Bathurst the shares that it had jointly acquired in Dominion Glass.

This again was a question of putting everything to all of the shareholders, who could either accept or reject the transaction. Nonetheless, had the bill been in force and effect at that time I suggest we could not have gone through with what is a normal transaction in the acquisition by a company such as Power Corporation of a substantial investment in a company which has growth potential and to which it proposed to give technical assistance.

The Chairman: It is preferable to say that you might not have been able to do it.

Mr. MacKay: Yes, Mr. Chairman. Although I am a lawyer by profession I am not by any means trying to give any interpretation, or to go into details of interpretation, other than to say in respect of the provision regarding beneficial ownership covers the whole spectrum of ambiguity.

Shawinigan Industries and Trans-Canada Corporation Fund—the two companies on the left hand side—are investment companies in the ordinary sense of the term, and they are both wholly-owned subsidiaries of Power Corporation of Canada. Power Corporation treats both of these wholly-owned subsidiaries and their operations as an integral part of their own, and switches or exchanges of securities between one or other of the subsidiaries and the parent have been made as appropriate occasions arose. Balances of payment very often arise in these transactions which would, if the bill had been in force and effect as an act at that time, be contrary to the provisions of such act.

Shawinigan might transfer some stock to Power Corporation and leave a balance of indebtedness, and Power Corporation might then transfer stock to Shawinigan Industries. But, this is all within the family. If you look at the chart you will see that the company has, apart from Dominion Glass, a large investment in Chemcell Limited, Northern and Central Gas Corporation Limited, North America Cinema Centres Limited, and Inspiration Limited:

If the terms of the bill were in force at the present time this would mean that if Power Corporation decided to increase its investment in any one of these large companies it would not be able to do so using the moneys of their wholly-owned subsidiaries, Trans-Canada Corporation Fund and Shawinigan Industries Limited. In other words, the bill as applied to the specific operations of Power Corporation within the framework of this bill means that almost any transaction that the Power Corporation proceeds with, such as a transaction to increase its investment in one of

these companies, or to lend money downstream in respect of inter-company indebtedness–all that is normal in the company's operations–the directors would be in the position that they could not do it without first asking an exemption for the company itself from the minister, or an exemption on each transaction as it comes up.

Mr. Turner has explained in the example of Labatt's how impossible it would be to make an acquisition such as that if you first had to go to the minister and say: "Please may I invest $30 million in Labatt's so as to keep it in Canada? " If that were the case there would be no deal.

Mr. Chairman, there are other things that I was going to mention, but perhaps they have been covered. I do wish, however, to refer to the fact that the members of this committe, and also the superintendent of insurance, seem to take great interest in the Investment Companies Act of 1940 of the United States. I do not want to go into the question of whether or not industrial holding companies–that is, companies which operate through operating subsidiaries as distinct from investment companies of a portfolio nature–are specifically excluded. I think, Mr. Chairman having looked at the act, that if you want to get a definition of "investment company" you have to read about 93 pages, and look at the numerous examples of divisions and categories of companies. I might add that that act is applied in circumstances that are very different from those that exist in Canada. Conditions in the United States may very well want the powers that are being granted in their Investment Companies Act, but I suggest that such an act is not warranted in Canada.

For example, in the United States I believe that some states have cumulative voting; that is, if you have 10 per cent of the stock you can elect one or two directors to the board. They have a provision whereby a company can purchase ist common equity stock. They have a provision whereby interest on indebtedness is deductible for tax purposes whether or not the debt was incurred for any particular reason. In other words, a company in the United States wants to buy back its common stock, it uses board money to do so and it not only gets back the common stock but is able to deduct the interest on money borrowed for that purpose.

I do not want to be categorical here because my knowledge of United States law is very superficial. However, the law and conditions in the United States are so totally different from those in Canada that I think it is very dangerous for our government in Canada to use any national statute and adopt, either in or out of context, portions of an act there and apply them in Canada without first determining exactly what the effect will be.

In any event, there was a remark made in a volume issued by Arthur Weisenberger and Company, investment dealers in New York I think, called *Investment Companies 1968* on the subject of the Investment Company Act, 1940. These comments were:

> The Act (Investment Company Act of 1940) was adopted after the S.E.C. (Securities & Exchange Commission of the United States), at the direction of Congress, had made a thorough study of investment companies and their practices as they existed in the 1930s. Many responsible persons in the investment company business cooperated with the S.E.C. in the final drafting of the law and actively encouraged its adoption.

I think this in essence is what Power Corporation is trying to say.

Let me conclude very bluntly by summarizing our position. We agree that it may be desirable to regulate certain activities of certain companies for the benefit of the investing public as a whole.

We are strongly of the view that, in order to determine the nature and activities of the companies to be regulated and the form of legislation appropriate for that purpose, full information should first be gathered in order to ascertain what companies and what activities should be regulated and in what manner.

Finally, it is our view that the present bill should be amended to limit its effect to the accomplishment of the information-gathering process which, when completed, will permit the drafting of appropriate legislation without in the meantime disrupting normal and ordinary proper operations of the business community which we feel the bill in its present form would do.

We reiterate that we are most willing to co-operate with government officials in their search for all pertinent information in order to help them decide the specific terms of a bill appropriate to the circumstances. We reserve to ourselves only the request that if an amended bill is brought forward for third reading and it is in any respect changed from its present form we be permitted at that time to make any comments we feel would be appropriate and helpful.

The Chairman: Thank you, Mr. MacKay. We did some questioning while Mr. MacKay was presenting his brief?

Mr. MacKay: I am sorry, Mr. Chairman, did somebody ask a question? I did not hear it.

The Chairman: No, I interjected. If there are no further questions, shall we move on to the next submission?

Mr. Turner: Mr. Chairman, I should like to add a couple of points. It will not take very long.

The Chairman: Go ahead.

Senator Thorvaldson: Before Mr. Turner does that is it agreed that this submission will be printed into the record?

The Chairman: Yes.

Mr. Turner: Many of the things I had in mind were answered as the questions were asked, but I think there are two points worth mentioning. What we have really tried to address ourselves to is establishing a number of international companies based in Canada and run by Canadians. Our view is that strategy in the west is that international companies are growing, they will become bigger and bigger, and European experience tends to substantiate this. If we put together companies of this type, I suggest it is not yet entirely clear that the corporate form of such companies has been entirely delineated within the jurisdiction and structure of any one nation. That is to say, a number of people in this field are addressing themselves to a code of conduct for these kinds of companies. There have been all kinds of discussions, in this country and elsewhere, on whether that type of company ought to have national shareholders and what form the company should take. In discussing the Power Corporation there was active consideration of perhaps a closed-end type of company, but yet with the privilege of buying back its own shares. I personally feel it is premature for us to accept the structure of such a company, which will be competing in world conditions, would have even in its corporate form, with a law that tends to deal in broad brush fashion with investment companies. As Mr. MacKay has said, the 93-page document in the United States is a very sophisticated thing.

The second general point I would like to suggest is that when one makes these kinds of investment one of the problems is the real need to know the ground rules before putting your $30 million into something. A bill may by regulation suddenly change the ground rules so that after a certain date the company is on notice that it may not be quite appropriate. When that broad brush treatment, in our view, seems to get into the very fabric of what we do, obviously we are concerned, and that is why we are here.

The Chairman: The next submission is from Canadian Pacific Investment Ltd. and Canadian Pacific Securities Ltd. We have here Mr. van den Berg and Mr. Levesque.

Mr. Donat J. Levesque, Assistant General Solicitor, Canadian Pacific Investment Ltd. and Canadian Pacific Securities Ltd: We wish to thank the committee for giving us this opportunity to present the views of these companies on Bill S-17. I understand that the joint brief submitted by the two companies has been circulated to all members of the committee.

The Chairman: Yes.

Mr. Levesque: The brief is short and, if it is agreeable to the committee, I would like Mr. van den Berg to read it so that it will form part of the record.

The Chairman: We can make it part of the record without his reading it. We have read it already. I wondered whether Mr. van den Berg wanted to make some supplementary comments on his brief.

Mr. Levesque: I am sure Mr. van den Berg will want to make some supplementary comments. I would again stress that the brief is short, if the committee would not mind hearing it read, otherwise I might take it upon myself to summarize what we have in the brief.

The Chairman: I guess the shortest way would be to have it read. The summary might take as long.

Mr. Levesque: Thank you, Mr. Chairman.

Mr. G. J. van den Berg, President, Canadian Pacific Securities Ltd. and Vice-President, Canadian Pacific Investment Ltd.: Mr. Chairman, and honourable senators, our brief reads:

> C.P.I. was incorporated in 1962 under the Canada Corporations Act as a wholly-owned subsidiary of Canadian Pacific Railway Company to carry on the business of an investment and holding company. The more important subsidiaries of C.P.I. include Cominco Limited (53 per cent owned) and the following wholly-owned companies: Canadian Pacific Hotels Limited, Canadian Pacific Oil and Gas Limited, Pacific Logging Company Limited, Marathon Realty Company Limited and Canadian Pacific Securities Limited. A chart showing the relationship between the larger Canadian Pacific affiliates is attached as Appendix "A".
>
> On November 1, 1967, C.P.I. sold publicly at par 5,000,000, $20.00 par value, 4 3/4 per cent cumulative redeemable convertible voting preferred shares, Series A. As at December 31, 1968, C.P.R. owned 50,000,000 of the 50,015,582 outstanding common shares of C.P.I. Assuming full conversion of the preferred shares and exercise of all warrants Canadian Pacific Railway Company would own 77 per cent of C.P.I.'s common shares.
>
> C.P.S.L., a wholly-owned subsidiary of C.P.I., was incorporated in 1965 under the Canada Corporations Act. It has been raising money to assist in the financing of capital projects and working capital requirements of affiliated companies. Moneys so raised have come mainly from Canadian money market dealers, banks, trust companies and large concerns. Some amounts have come from institutional investors in the U.S.A. All C.P.S.L. borrowings have been unconditionally guaranteed by C.P.I.

It is the submission of C.P.I. and C.P.S.L. that the bill goes further than is necessary to protect the lending public and that the bill will unnecessarily and adversely affect business generally and in particular the business of C.P.I. and C.P.S.L.

As it stands the bill could apply to any company regardless of its financial strength which has at least 25 per cent of its assets invested in the types of security or other properties described in section 2(1) (b) (ii) of the bill. Another company, regardless of its financial strength, with less than 25 per cent of its assets invested in such securities is not so affected. As a result a company which may have followed a prudent policy of retaining in liquid form for purposes of expansion in the future some of its retained income must comply with the Act whereas its competitor which has followed a different course and may not even be so strong financially is not affected by the act.

There will be companies which are not in the business of borrowing and loaning money which will be brought under the Act by reason of the 25 per cent rule in section 2(1) (f). While the minister is given power under section 3 to grant exemptions if he is satisfied that the business of investment carried on by a company is incidental to the principal business carried on by it, it is submitted that the scope of the act should be defined not by the minister but by Parliament.

For the purposes of the 25 per cent rule shares of corporations are included (2(1) (b) (ii) (B)). As a result efficient organizations which have established corporate profit centres could, by reason of share ownership of subsidiaries, be subject to the bill whereas competitors operating on a departmentalized basis could be exempt. It is suggested that where subsidiaries are involved such share holdings should be excluded from section 2(1) (b). In the case of C.P.I. this would exclude shares of such companies as Canadian Pacific Hotels Limited, Canadian Pacific Securities Limited, Cominco, Marathon Realty Company Limited.

From the viewpoint of the protection that the bill purports to extend to the lending public, it is not clear why the borrower of money on secured obligations should be brought under the act. So far as the lender is concerned, his rights are entrenched in a trust deed or similar document and his load is presumably secured to his satisfaction. Yet if the borrower is affected by the 25 per cent rule such borrowing will bring that company under the act.

Section 8:

Under this section an investment company is precluded from making a loan to a corporation that is a substantial shareholder, i.e. a corporation that owns directly or indirectly more than 10 per cent of the voting rights in the investment company. This prohibits upstream loans and would prevent C.P.S.L. from lending monies to C.P.I. and possibly Canadian Pacific Railway Company which through its interest in C.P.I. has more than 10 per cent voting strength in C.P.S.L. In addition, section 8 prohibits loans by an investment company to a corporation in which substantial shareholder of the investment company has a significant interest. A substantial shareholder has a significant interest in a corporation if it owns directly or indirectly more than 10 per cent of the capital stock of that corporation. As C.P.I. is a substantial shareholder of C.P.S.L. and also has a significant interest in companies such as Cominco, Canadian Pacific Hotels Limited, Pacific Logging Company Limited, Marathon Realty Company Limited (all of which companies have borrowed from C.P.S.L.) C.P.S.L. would be prevented under Bill S-17 from making lateral loans to its sister companies as indicated in the appendix herein. Furthermore if C.P.S.L. had subsidiary companies it could possibly be prevented from lending to such companies as C.P.I. would indirectly have a significant interest in those companies. Thus the bill as presently worded would not only prevent upstream and lateral loans but could also prohibit downstream loans. Accordingly in its present form section 8 would defeat the very purpose for which C.P.S.L. was incorporated, namely, to centralize borrowings and through efficient operation provide a reduction in borrowing costs.

It is submitted that loans to subsidiaries of the same parent should not be prohibited so long as the parent guarantees repayment of the borrowings of the investment company and that section 8(1) (c) (iii) be amended to read as follows:

> "(iii) Any corporation that is a substantial shareholder of the company except where the borrowings of the company are guaranteed by such shareholder, or"

It is recognized that the Governor in Council should have powers to make regulations relating to the administration of the act. However it is submitted that decisions as to matters of substance should not be left to regulation but should be dealt with clearly in the act. Section 22 gives to the Governor in Council power to make regulations in relation to levels of paid-up capital and ratio of outstanding debt to paid-up capital and surplus, liquidity of assets and maximum permissible single investments or loans of investment companies and to prescribe rules relating to the valuation of assets and liabilities. It is submitted that these are all important matters of substance and companies affected by the act should be clearly told by the act itself where they stand in relation to these matters.

Right of Appeal:

The bill confers very broad power on the minister to vary or even cancel the right of an investment company to carry on business without any right of appeal being specifically granted to the investment company from a decision of the minister. It is submitted that there should be provision for an appeal to the courts against the minister's decisions.

Deregistration:

The bill further provides that once a company becomes a registered investment company, the certificate continues to be renewed without application. So long as the company is registered it continues to be considered as an investment company although it may not be actively engaged in the business of an investment company. It is submitted that provision should be made whereby a company could apply for deregistration.

Directors' Liability:

If an investment company borrows at a time when it does not hold a valid certificate of registry the directors of the company are jointly and severally liable to the creditors of the company as guarantors although they may never have been privy to the decision to borrow the monies. It is submitted that the liability should be limited to directors who consented to the borrowing.

Conclusion:

We have tried to show some of the difficulties which will flow from Bill S-17 as presently worded. It is hoped that the foregoing observations will bring forth a further examination of the objectives which inspired the introduction of this bill bearing in mind that protective legislation should not unnecessarily impede the development of business and the economy generally. Representatives of the parties to this submission are happy to appear before your committee and should your committee wish them to do so will attempt to answer questions arising out of this submission.

Senator Connolly (Ottawa West): Would there be any reason for either C.P. Investments or C.P. Securities Limited to look for deregistration in view of the character of those companies?

Mr. van den Berg: I do not think, Senator Connolly, it would necessarily apply to C.P.S.L. or C.P.I., but it could apply to other companies.

The Chairman: This is a general comment.

Senator Connolly (Ottawa West): I see. All right.

Senator Phillips (Rigaud): If the Superintendent of Insurance, realizing the importance of the C.P.R., were to exempt C.P.S.L., would you then abandon your opposition to this bill?

Mr. van den Berg: No, I do not think so. I think it should be incorporated in the act.

Senator Thorvaldson: The superintendent might change his mind.

The Chairman: Any questions?

Senator Connolly (Ottawa West): I have a couple of questions here, Mr. Chairman. In regard to your suggestion about the amendment to section 8(1)(c)(iii), adding the words "except when the borrowings of the company are guaranteed by such shareholders," I take it that what you are getting at is this. If there is such a guarantee, you are proposing that not only upstream loans–which would apply to, say, the railway company itself–or downstream loans–which might apply to one like Canadian Pacific Securities Limited and the one, two, three, four or five subsidiaries below . . .

Mr. van den Berg: Those are laterals.

Senator Connolly (Ottawa West): Those are laterals. In any event, both laterals and downstream loans would be adequately protected by the guarantee that is provided in the manner suggested?

Mr. van den Berg: I think that the rationale for this bill or for these provisions is gone as soon as the shareholder has a dominant interest in the company, provided he has a fully iron-clad guarantee.

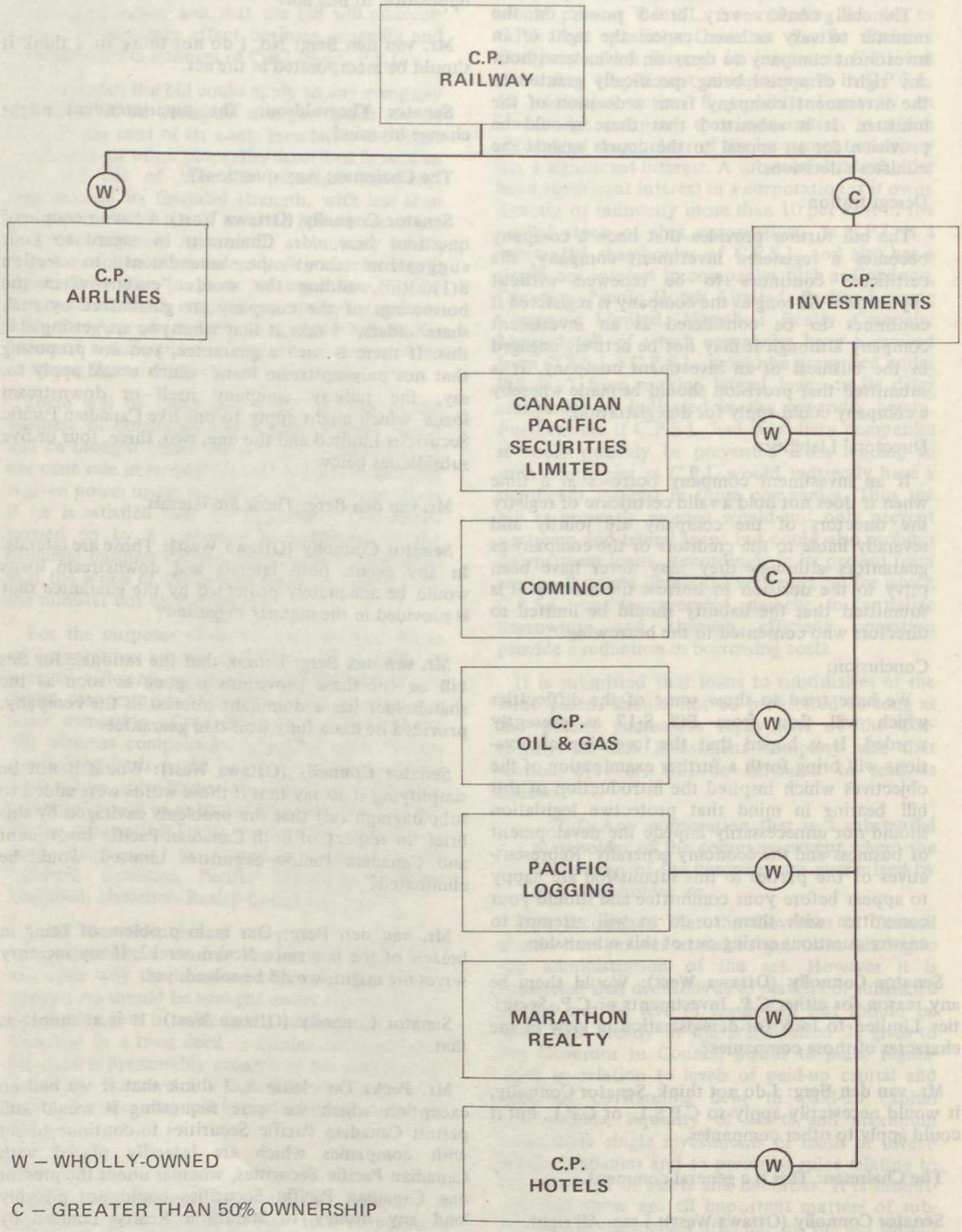
Senator Connolly (Ottawa West): Would it not be simplifying it to say that if those words were added to subparagraph (iii) that the problems envisaged by this brief, in respect of both Canadian Pacific Investment and Canadian Pacific Securities Limited, would be eliminated?

Mr. van den Berg: Our main problem of being in breach of the law since November 12, if my memory serves me aright, would be solved, yes.

Senator Connolly (Ottawa West): It is as simple as that.

Mr. Peck: On clause 8, I think that if we had an exception which we were requesting it would still permit Canadian Pacific Securities to continue to act with companies which are laterally placed with Canadian Pacific Securities, whereas under the present one Canadian Pacific Securities could not possibly lend any money to Marathon Realty Limited by reason of the prohibition which is made. I think we would have to assume that Canadian Pacific Securities Limited comes within the definition. Our main bone

(Appendix to C.P. Securities and C.P. Investment Ltd.'s brief)



of contention is that the definition section is much too broad.

The Chairman: We can clear that by an exception.

Mr. Peck: By an exception or by proper definition.

Senator Connolly (Ottawa West): Mr. Chairman, I do not like to refer to my own speech on this.

The Chairman: Why not? Everybody has read it.

Senator Connolly (Ottawa West): The kind of situation that I envisaged, when I spoke on the bill, indicated that in the rather sophisticated financial world today, specialist vehicles like this are useful. I suppose it would be possible to have the Marathon Realty Company go out on its own and borrow money and do the investment, but for the others such as Cominco, Canadian Pacific Hotels, Oil, Gas and others, from the point of view of expedient and efficient operation, it is better to have what I call a security company do this work for these various subsidiaries of Canadian Pacific.

Mr. van den Berg: It is the financing arm of Canadian Pacific Investment, which could just as well have been a section or department of C.P. itself.

Senator Connolly (Ottawa West): If it were a department, you would not need the act.

Mr. van den Berg: That is right, apart from the downstream part.

Senator Connolly (Ottawa West): But again the individual companies themselves would have assets that would enable them to go to the market and get all the financing they need.

Mr. van den Berg: They could, at a higher price.

Senator Connolly (Ottawa West): This is the least efficient operation?

Mr. van den Berg: Yes.

The Chairman: This is the fact, that this is the situation, and this is the method these people have selected for providing the money they need in their operations; and we have to look at it in that light and not in the light of what we could or may do. We have to see whether, in these circumstances, there should be an exception. That may be a simpler way of dealing with it, if we decide it should be dealt with, than by altering the definition, to exclude this.

We have not made up our minds. We need not write the definition immediately. We cannot settle it now, as to whether we are going to deal with that C.P. situation and exempt them, or whether we are going to make this an exception, or whether we are going to change the definition. But, from the tenor of the discussion that has gone on here, one might reasonably draw a conclusion that we have ideas on the matter of proper definition and also in relation to the scope and effect of prohibited transactions, and certainly in relation to section 22, on the regulations.

It is too early to make any public commitments, until we settle our own minds on it; but this would appear to be a case that is worthy of very careful consideration.

Senator Connolly (Ottawa West): I think, too, Mr. Chairman, that perhaps the committee should hark back to some of the things that the Governor of the Bank of Canada has been saying, that flexibility in the financial markets and in the structure of the companies which are engaged in financing, is essential to the more efficient conduct of business. I take it that the witness in this case has been indicating that there is here a special way of doing something and what he is suggesting is that it should be properly guaranteed, then it is an efficient thing and it is a good thing.

The Chairman: I think we have got that, senator. Are there any other questions or, have you anything further to add?

Mr. van den Berg: No, Mr. Chairman.

The Chairman: Thank you very much.

Honourable senators, the next witnesses before us this morning are representatives of Massey-Ferguson Limited. We have here Mr. John G. Staiger, the General Vice-President and Mr. R. M. Snelgrove, Senior Solicitor. Mr. Staiger, we have had your brief with us for some time and have read it. Do you wish to read it or make a statement?

Mr. John G. Staiger, General Vice-President, Massey-Ferguson Limited: Honourable senators, your chairman assures me that you have done your homework and have read our brief. Therefore I will not in any way attempt to read it to you; that would be most presumptuous.

We did tell you in the brief what kind of company we are. We are an international industrial holding company. I do not believe we intended to be that when we started many years ago. Our company is now 122 years old, going back to Mr. Massey and Mr. Harris. We have gone into this because this is the best way to use Canadian management and Canadian know-how in competition with the largest farm machinery manufacturers in the world, and we compete against the top three. Of this we in Canada I believe are both proud.

We believe sincerely that it is not the intention of this legislation to include an international industrial

holding company of our nature and our type of business within the network or the mesh of this kind of regulation, inquiry, etc.

We are very very public. We live practically in a goldfish bowl, which is the only way you can live if you are going to borrow money in the money markets of the world, in which we have to borrow money, or if you are going to go before the numerous security publics that we must go through to get equity capital. We abide by all the rules of the SCC. We are registered in the United States. We are registered in the stock exchanges in London, England, New York and from New York into the other exchanges across the United States. We are registered on the big board in New York and we are registered in Toronto and Montreal.

For these reasons alone, the disclosures we must make, including my own personal salary every year, go away beyond what the Insurance Commissioner could possibly achieve, and we are therefore always subject to the inquiries of not only our shareholders and those who lend money to us, but also security analysts, people who are simply selling our stock along with other stocks, people who include our stocks or investment companies who include our stocks in their total investment portfolio, et cetera.

I feel further, sir, that our new annual report which is now being distributed to the honourable senators who are members of the committee, further enhances this statement of full disclosure. Full availability of facts for lenders protects them for investors in equities and investors in shares.

For this reason, Mr. Chairman, honourable senators, we simply appear here not to really read our brief, but to supplement it with a personal appearance to answer any questions that you may care to direct to me or to my two associates, one of whom, Mr. Snelgrove, is chief counsel and solicitor, and the other one of whom is assistant secretary, Mr. William Munso.

The Chairman: Looking at your consolidated balance sheet as of October 31, 1967, there is an item under "investments" noted as "wholly-owned finance companies, at equity in net assets"; following that is, "associated companies, at cost".

Is it a fair conclusion to draw from that that the sum total of investments that your holding company has would be investments in subsidiary and associated companies?

Mr. Staiger: That is true.

The Chairman: And that you would not have outside investments or what we commonly call a portfolio of investments in outside and unrelated companies?

Mr. Staiger: No, sir. The maximum investment we might have would be short-term investments in Government tax certificates which would probably derive the highest income until taxes became due. This is about the only investment we are in.

The Chairman: Looking at your statement of the various countries in which you operate, it would appear that what might otherwise be called your branch operations are in corporate form, because that is a more economic way or more feasible way of carrying on these operations.

Mr. Staiger: In many countries of the world, unless you operate as an independent subsidiary, wholly-owned perhaps, but nevertheless independent, it is impossible first of all to borrow money locally. A branch has to get its money put in. Therefore, it would require Canadian dollars going into Germany, for example, which I would consider at this point in time to be a great economic and financial fallacy—to finance this coming year's German production of combines and harvesters and machines of that kind during the period when we must finance before we make retail sale, for example.

We borrow this kind of money locally on the German market because we are a German company in Germany. We are, in fact, rather a management and international or multi-national management company that is an umbrella over all of these various subsidiaries in the 18 countries in which we operate, sir.

The Chairman: So you have what I might call corporate industrial tools of your management holding company. They are arms.

Mr. Staiger: Yes, sir.

The Chairman: But the combination is an industrial operation. The combination of the holding company and these tools, that is. You just elect for various reasons to do it in this form. If I were describing the holding company, it is really the management and carrying on of industrial operations in various countries through subsidiary corporate entities.

Mr. Staiger: Yes. The principal and practically only objective is the manufacture and sale of farm machinery and smaller groups of other products. Whatever is needed to support that manufacture and sale is what we otherwise engage in. Our captive finance companies are there solely because that is a pattern of industry. It is the only economical way to support the retail sales of our products.

The Chairman: This is really clear-cut and quite easy to follow.

Senator Connolly (Ottawa West): This has nothing to do with this bill, really, but may I ask the question, Mr. Chairman? I notice under the heading of "South Africa, Rhodesia and Malawi", that you have a

company in Malawi. In the Commonwealth Parliamentary Association we have been anxious to promote the development of the agricultural industry in these under-developed countries within the Commonwealth. In the equitorial area, is Malawi the only country where you think the agricultural development is sufficiently advanced to establish yourself?

Mr. Staiger: Oh, no. It is a matter of the economics of the situation. Malawi happens to be a country from which we can export to most of the other African countries. It is a way of getting certain products that have to be exported to all the South African countries out of South Africa itself.

Senator Connolly (Ottawa West): And out of Rhodesia.

Mr. Staiger: Which are excluded from these areas as sources of supply. In other words, we just take products that are being banned and are being considered as contraband because they are made in South Africa and put them in Malawi, which we are perfectly free to do. Incidentally, this is the largest single production item we have. We make ten to twelve million of them. They are hoes. The hoe is a very primitive one, about this wide (indicating a width of approximately a foot and a half), and weighing several pounds and having an eye at the top. This is the principal item we make in Malawi. We also make plows and plowshares–items of a rather primitive type for the more elemental agricultural situations in that area. We are, however, engaged in negotiations through the FAO, which is the Food and Agricultural Organization of the United Nations, in opening a school for farmers and for mechanics in Kenya. As soon as this becomes viable we shall also be opening additional assembly and manufacturing plants.

Senator Connolly (Ottawa West): So you look for a more sophisticated development in the field of agriculture in these under-developed countries?

Mr. Staiger: Yes, sir. The fact, of course, is that until you get a local industry that can support the production of tractors and can support the production of more sophisticated agricultural equipment, it is far cheaper for the under-developed country to get the necessary farm exchange and buy and import rather than try to make.

Senator Connolly (Ottawa West): Are you known as a Canadian organization?

Mr. Staiger: Yes, sir.

The Chairman: Are there any other questions? Thank you very much, Mr. Staiger.

Mr. Staiger: Thank you, sir.

The Chairman: May we have an order to print in the appendix the brief which Massey-Ferguson has filed.

Hon. Senators: Agreed.

(*For text of brief, see Appendix "D"*)

The Chairman: We also have a brief from the Canadian Chamber of Commerce, in the form of a letter. The Canadian Chamber of Commerce does not propose to appear and make any representations. What they are submitting is contained in their brief, so I think we should print it as an appendix to these proceedings.

(*For text of brief, see Appendix "E"*)

The Chairman: This concludes the submissions available for today.

Senator Connolly (Ottawa West): Could I ask you, Mr. Chairman, whether you have received–because I have, and perhaps other members of the committee have–a letter from Osler, Hoskin and Harcourt? I have read it, but as it only came yesterday I have not read it with all the care I would have liked. I take it it is not going to be the subject matter of a submission here.

The Chairman: No, and before I discuss it with the committe–and I think I might do that next time–I want to digest it myself.

Senator Connolly (Ottawa West): That would be helpful to us.

The Chairman: We have further submissions, at least two so far, that we know of, for next week. These people will be appearing next Wednesday, March 5, and that may conclude the submissions.

After that, of course, we will then get down to the business of dealing with Mr. Humphrys and see what his answers are. Then, of course, later we have to have our own meetings to settle on what we are going to do with the bill. So, we will reconvene next Wednesday at which time we will have other work to deal with as well.

The committee adjourned.

APPENDIX "A"

THE STANDING SENATE COMMITTEE

ON BANKING, TRADE AND COMMERCE

BRIEF

SUBMITTED BY

INDUSTRIAL ACCEPTANCE CORPORATION LIMITED

IN RESPECT OF

BILL S – 17

AN ACT RESPECTING INVESTMENT COMPANIES

The Company

Industrial Acceptance Corporation Limited commenced business in Canada in 1923 as a branch office of a U.S. company. The branch was converted into a federally incorporated company on February 7th 1925 and was then a wholly-owned subsidiary of the U.S. parent. In June of 1930, Canadian investors purchased this subsidiary and it became wholly Canadian owned and managed. Later, the stock was listed on the Montreal, Toronto and Vancouver exchanges and although some shares have been purchased from time to time on the open market by other than Canadian investors, the latest count (Dec. 9, 1968) showed that out of 14,108 common shareholders, over 95% were Canadian residents and they owned 94% of the number of common shares outstanding. No one shareholder or group of shareholders beneficially owns a controlling interest or is specially represented in that sense on the Board or on the Board of any subsidiary. With the exception of one person, the entire board of directors and all of the senior management are Canadian citizens, residing in Canada.

The corporation as a whole now employs over 3600 people in Canada and has 575 outlets for its various services throughout the 10 provinces and Yukon Territory.

For the further information of the Committee one copy of each of the following IAC reports has been filed with its Secretary as appendices. More copies will be provided if needed.

Appendix I - Annual Report - December 31st, 1967

Appendix II - Supplement to the Annual Report - December 31st, 1967

Appendix III - CANSAF (Canadian Sales Finance Long Form Report) - December 31st, 1967

Appendix IV - Robert Morris Questionnaires - December 31st, 1967

Introduction

I.A.C. is a member of the Federated Council of Sales Finance Companies which represents a large segment of the sales finance business in Canada while Niagara Finance Company Limited, our consumer loan subsidiary is a member of the Canadian Consumer Loan Association.

We expect that one or both of these associations will be submitting a brief to your Committee. Our decision to proceed individually, however, should not be interpreted as meaning a disassociation from a brief from either association. It should rather be viewed as an attempt to present an individual point of view which we felt would be useful to this Committee. Also we felt it would be useful to the Committee to have specific data such as contained in the appendices to this brief, and which would not be available on an industry-wide basis.

"Investment Companies"

It is recognized that Bill S-17 is the result of investor losses in recent years relating to Canadian companies such as Atlantic Acceptance and Prudential Finance. Both of these companies and all others where trouble has developed, were of provincial origin so it must be pointed out that no legislation which is applicable solely to federal companies can provide suitable remedies unless provincial authorities enact comparable legislation — or steps are taken which would permit and induce provincial companies to come under federal legislation.

In any event the law should provide a clear distinction for investors between those companies which do come under the legislation and which would therefore be more secure from an investment point of view, and those which do not.

The designation "investment companies" seems to us to be somewhat less than satisfactory and may cause some confusion. The word "investment" has long been associated with security underwriters and dealers, stock brokers, mutual funds, holding companies etc. In the Report of the Royal Commission on Banking and Finance, Chapter 13 deals with "Insurance, Invest-

ment Companies, Pension Funds." Investment companies (page 251) are described as "intermediaries selling securities to the public and investing the proceeds in diversified investment portfolios." There follows then in this section a description of the operation of Mutual Funds, both open and closed-end.

The definition of "business of investment" found in section 2 (1) (b) of the Bill and the definition of "investment" found in section 2 (1) (f) of the Bill would seem to us to be much too broad to be meaningful.

For example, without attempting to enumerate the various corporations that would be included under the Bill as presently drafted, it would include such large and diverse federal companies as Canadian Pacific Investments Limited, Power Corporation and our own company (Industrial Acceptance Corporation Limited.)

It may well be that legislation is required for all of these types of companies, however the nature of the business of each is substantially different.

I.A.C.'s business is primarily the financing of instalment obligations, leasing and the making of direct loans. Our receivables are divided into approximately equal proportions between consumer and business transactions with the business portion growing at a faster rate than the consumer portion in recent years.

In contrast, for example, Power Corporation may be described as a holding and management company with controlling or substantial interest in public utility, oil and gas pipeline, finance, chemical, pulp and paper, transportation, mining, real estate and other industries.

It would appear to us that the great variety of corporations that would be included with the definitions as they presently read in Bill S-17 cannot all remain subject to similar legislation.

"Near Banks"

The Porter Royal Commission on Banking and Finance in its report dealt extensively with what it referred to as "near banks" which would include companies such as I.A.C. Chapter 18, "An Approach to Banking Legislation" and Chapter 19, "Regulation of Banking Institutions" make many recommendations which we feel merit the attention of this Committee.

The main points, insofar as I.A.C. and similar companies are concerned, may be summarized as follows: (All quotations are from the Report of the Royal Commission on Banking and Finance.)

1. Federal Banking legislation should be extended to cover all financial institutions issuing banking type liabilities. There could however be certain exemptions as outlined in the Porter report.

> Page 378 -
> "Thus in our view the federal banking legislation must cover all private financial institutions issuing banking liabilities .... — we would include among the banking liabilities all term deposits, whatever their formal name, and other claims on institutions maturing, or redeemable at a fixed price, within 100 days of the time of original issue or of the time at which notice of withdrawal is given by the customer."
>
> ....."The banking legislation should also exempt institutions which do borrow from a broad public but whose only short-term liabilities are in the form of marketable paper not redeemable on demand or short notice and which sell these liabilities through independent dealers or other agencies subject to the prospectus and other requirements of the securities acts."

The exemptions of institutions who sell marketable paper through independent dealers does not seem to be merited, although our sale of short-term notes is handled in that way.

2. Financial institutions coming under banking legislation should be permitted to use the word "bank" in their names. However, those which are not chartered banks or savings banks should be required to qualify the word bank in their names by the use of other words indicating their type of business. We have considered various names that might be suitable for companies like ours, such as merchant banks and industrial banks, and would suggest the designation industrial banks or industrial banking companies as being the most appropriate. Firms classified as industrial banks in the U.S.A. are similar in many respects to sales finance companies in Canada. (We might also point out that the counterpart of the Federated Council of Sales Finance Companies in the U.S.A. is called the American Industrial Bankers Association. This association being an amalgamation of the former American Finance Conference and the former AIBA).

It may be that a more appropriate name can be determined but for the purposes of this brief we will use the term "industrial banks".

> Page 379 -
> "In order to avoid creating the false impression that the new legislation had suddenly removed all differences in the particular types of banking business done by the different institutions, we recommend that only the present chartered banks and others incorporated in the same way by Act of Parliament should be entitled to use the name 'bank' without qualification. The two savings banks could continue to use the term 'savings bank' if they wished, while other institutions licensed under the banking legislation — some of which would be federal corporations and some provincial — should be required to qualify the word bank in their names by the use of other words indicating the character or background of their business."

3. Responsibility for supervision and inspection for all banking institutions should rest with the Inspector General of Banks.

> Page 380 -
> "The essential feature of banking regulation must be good and thorough supervision and inspection such as that which now takes place within the framework of the Bank Act and contributes so much to the soundness of our chartered and savings banks...
>
> It is also essential to make this supervision as flexible and free of rigid rules and regulations as possible in order to avoid inducing an unnecessarily conservative approach by our financial institutions to the conduct of their business."

> Page 381 -
> ...."we recommend that the federal authority have power to require regular returns from the institutions under its jurisdiction (as is now the case for the chartered banks and Quebec Savings Banks) and to require that all such institutions maintain adequate internal inspection procedures and be subject to regular outside audit. The auditors should be chosen from a panel of highly qualified auditors approved by the authorities (as in the present Bank and Savings Bank Acts)" etc.....
>
> "The staff of the Inspector General of Banks would have to be enlarged to undertake these new responsibilities. The cost of supervision should continue to be assessed on the institutions in proportion to their size, or perhaps on the basis of some more equitable measure of the expenses incurred by the supervisor's office."

4. There should be a provision that banking institutions have an adequate capital investment, probably equivalent to that now required under the Bank Act.

Page 385 -
..."the legislation regulating financial institutions should not establish statutory ratios of capital to assets. It should set a relatively low statutory minimum for starting up a banking institution so as not to discourage the entry of smaller specialized companies, but at the same time it should give the Inspector General power — subject to appeal to the Treasury Board — to set such high requirements as may be necessary to ensure the soundness of enterprises with more ambitious plans, and in particular to absorb the likely expenses of establishment and early operations. This, we understand, is the actual position under the Bank Act at the moment. The present Bank Act requirement that a new bank have paid up capital of at least $500,000 as a minimum legal requirement seems appropriate. Other qualifications for a charter or incorporation should be kept to a minimum, although we feel the Act should require that applicants be of sound reputation and proven business experience."

5. We support the recommendation of the Porter Commission that all loans or investments in excess of 5% of capital and reserves should be reported to the Inspector General and also the Commission's recommendations in relation to credits to directors or enterprises with which they are associated.

Page 385 -
"One way in which the capital soundness of an institution can be seriously compromised is by the making of excessively large individual loans or investments. We therefore recommend that all loans or investments in excess of 5% of capital and reserves should be reported to the Inspector General. The banks should not advance or commit in any form more than a reasonable amount in relation to capital and reserves to a single borrower. The Inspector General should continue to see that prudent lending practices are followed. The present provision of the Bank Act which precludes individual directors from participating in decisions about credits to them or to enterprises with which they are associated should be retained, as should the requirement that such credits in excess of 5% of the bank's capital be approved by two thirds of the other directors present. In addition, copies of the relevant statements regarding directors' interests and details of the individual loans or other credits should be forwarded to the Inspector General; similar disclosure arrangements might be made with respect to the total of salaries and bonuses paid to officers and directors.

The Inspector General would then be put in a position to notice any undesirable trends and should be given the power to require each institution to publish the amounts involved in its annual return to shareholders or more frequently if deemed necessary. In addition, he would of course have the overriding power to require any institution to desist from making any loans to directors or others if these seemed likely to imperil the soundness of the institution concerned."

6. Liquid asset requirements are dealt with in the Porter Commission Report pages 394 - 396. In brief the Report does not recommend that statutory liquidity ratios should be imposed for the purposes of public protection but goes on to say:

> "We would expect the institutions concerned to support wise supervision in a matter which bears so directly on their own best interest. Indeed, they might well co-operate with the Inspector General of Banks in working out appropriate guide-lines: some institutions have already taken such steps privately within their own associations. We find it difficult to offer any specific advice as to these guidelines or as to the classes of assets which would be included. However, the chartered banks have operated soundly with between 20% and 25% of their assets invested in cash, day and call loans and short-dated federal government obligations. These assets are held against liabilities which are virtually all chequable, a fact which suggests that somewhat similar ratios would be appropriate against demand and chequable liabilities — with somewhat higher ratios being held against current accounts and perhaps somewhat lower ones applying to liabilities redeemable at short notice. The experience of institutions dealing more in genuine term deposits suggest that liquidity ratios against such liabilities might vary from as little as 10% to 20%, depending on the various factors affecting their liability and asset structure mentioned earlier. Nevertheless, the supervisory authorities and institutions are in a better position than we to work out appropriate and more precise guide-lines."

Our view of an appropriate guide-line in respect of short-term obligations would be a liquidity reserve of 12½% of such short-term paper. Such reserve should not include cash but should be invested to a minimum of 50% in readily marketable investments such as:

Short Canadas (3 years or less)

Treasury Bills

Day Loans

Bankers Acceptances

Negotiable Notes of the Chartered Banks (bearer discount notes)

with the remainder invested in the short-term paper issued by major corporations of undoubted repute.

7. We suggest that consideration might be given to the provision of lines-of-last-resort for financial intermediaries qualifying under this Act, particularly where the commercial paper market is used. Such lines should be provided by the Bank of Canada or some other government agency.

Most segments of the short-term money market do have such facilities available. The chartered banks and money market dealers for example have lines of credit with the Bank of Canada.

Properly managed "industrial banks" now voluntarily maintain open lines of credit with Canadian chartered banks and United States banks. But it seems unsound in principle for a class of financial intermediaries to depend upon their largest competitors - the chartered banks - for such facilities. It is also undesirable to have to rely too heavily upon foreign banks in this regard.

While the present lines of credit would have to be substantially maintained the mere existence of governmental credit lines-of-last-resort would reduce the volatility of short-term money and actually render the probability of calls on such lines unlikely.

Line-of-last-resort facilities, and such inspection and regulation as might be appropriate, would create an atmosphere of greater confidence in the minds of investors (especially foreign investors) and thus protect the "industrial banks" against possible abrupt fluctuations in liquidity over which they might have no control.

Definition

As we stated earlier it would appear to us that the great variety of corporations that would be included within the definitions as they presently read in Bill S-17 cannot all remain subject to similar legislation.

Therefore, in line with our support of the Porter Commission recommendations to extend banking legislation to near banks (industrial banks or finance companies) such institutions will have to be defined to differentiate them from "investment companies."

An appropriate definition would be the one found in Regulation 101 - 67 of the Ontario Securities Commission and which was quoted by Senator Connolly in the Debates of January 22nd.

Following this format an industrial bank would be:

> A company its subsidiaries or affiliates for which a material activity involves,
>
> a) purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services,
>
> b) factoring, or purchasing and leasing personal property as part of a hire purchase or similar business; or
>
> c) making secured and unsecured loans.

Regulation

Having defined the type of business to which the legislation should apply we should now consider what type of regulation is necessary and would be effective.

a) Reporting and Inspection

The provisions of Part I of Bill S-17 concerning the filing of financial statements periodically or on demand are copies of like provision found in part of the provincial Securities Acts. As the legislation would only apply to companies which borrow money for the purpose of their businesses all of them become subject to the Securities Acts relating to the issuance of debt securities. Taking as an example the Ontario Securities Act, 1966 we see in Sections 119 - 130 of that Act provisions concerning the filing of financial statements which are much more extensive than the provision contained in Part I of Bill S-17.

Effectively then this section of Bill S-17 simply adds to the paper work required of corporations without any remedial results.

The Act as now drafted also provides for inspection powers, but in view of the enormous number of individual receivables comprising the assets of even medium-sized companies, it is suggested that something like the following procedure be adapted from the Bank Act. Companies could be required to report quarterly to their directors with a certified copy of such a report to the Minister, listing each account on the company's books where the total owing by any one person or company equals or exceeds 5% of the company's net worth. There could also be included in such a report, a list of non-current accounts, the individual amounts of which equal or exceed 1% of net worth. For this purpose, non-current accounts could be defined to mean those with arrears of principal or interest or both of 90 days or more as well as accounts less than 90 days in arrears where any action has been taken to realize on security, repossess, or where for any reason the account is deemed unsound by the management. If inspections were aimed at verifying by tests, the accuracy of such returns, then spot checks of other material plus balance sheets, supplements, and certificates of auditors satisfactory to the Minister, should provide an adequate view of a company's affairs without incurring excessive costs.

b) Registration

The provisions of Part II of Bill S-17 concerning Certificates of Registry are of great concern to us.

First of all we consider that a maximum term of one year for registry could be disturbing to prospective investors. We wonder if something more like the provisions of the Bank Act where 10 years is provided would not be more appropriate.

Section 10, sub-section 2, paragraph (b) is disturbing because it appears to give the Minister power to run the company with the implication that there could be conflict with the Canada Corporations Act and that such powers of the Minister could supersede the powers and duties of directors, officers and shareholders. One wonders how this would affect the position of creditors relying upon trust deeds and whether such powers could result in alteration of a company's by-laws. We think the Minister should be required to consult with auditors and trustees and that there should be provision for appeal to protect against arbitrary ministerial decisions.

With respect to Section 14, sub-section 1, the question arises as to the standards which might be used in determining if there is an inadequately secured position. Presumably, if nothing untoward is revealed by returns, statements or inspections, if the terms of trust deeds or other borrowing arrangements are being complied with by the company and if creditors are not complaining, it should be assumed that security is adequate.

Having regard to the necessity to control expenses, we question the value of the paper work implicit in Section 20. Most financial intermediaries are now publishing comprehensive annual reports and supplements, prospectuses are increasingly detailed and we would suggest that companies could be requested to supply such additional information or explanations as might reasonably be required but that otherwise, published data now available should be sufficient.

We particularly question in principle, the soundness of the provisions of sub-paragraph 2 of Section 20. In our view, no official should have powers to alter financial statements which have been concurred in by reputable auditors, boards of directors and managements whose integrity is not otherwise in question. A suitable alternative we suggest is the recommendation found on page 381 of the Porter Commission report that auditors should be chosen from a panel of highly qualified auditors approved by the authorities.

c) Regulations

Section 22 of the Bill provides that the Governor in Council may make such regulations as he considers appropriate to secure the establishment and maintenance of a sound financial structure for investment companies. Such regulations may pertain to levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets, rules for valuation of assets and liabilities and so on.

The discretionary powers this section vests in the Governor in Council are too wide. Also we are opposed to any statutory imposition of extensive asset, liability and capital ratios.

Our views in this regard are supported extensively in the Porter Report and we would refer you to the pertinent sections found on pages 357 - 358, 375, 380, 383 - 385, and 394 - 395 of that Report.

The conclusion of the Porter Commission concerning asset ratios and the like is found at page 375 where the Commission states:

> "The safety of the public's funds and the responsiveness of the instituion to monetary measures is not promoted by the imposition of extensive asset ratios or prohibitions on banks and their competitors."

and at page 357 of the same report:

> "An effectively executed and well designed system of regulation need not lead to excessively rigid and detailed procedures which increase the cost and reduce the efficiency and flexibility of the

> financial systems. In our view, the goal of protecting the public against loss can best be achieved with three basic legislative safeguards — adequate disclosure, competent supervision, and legal powers giving the authorities the right to force the correction of unsound and unfair practices and to prosecute those engaged in fraudulent or criminal activities."

We fully support the views quoted above on how the goal of protecting the investing public can best be achieved. We have already indicated that proper supervision - under the Inspector General of Banks - would be desirable. Of equal or greater importance, however, would be the requirement for adequate disclosure.

Such disclosure is presently being provided by I.A.C. and similar companies to investors through the CANSAF (Canadian Sales Finance Long Form Report) and Robert Morris Questionnaires as well as through the individual company's own financial forms of report.

As noted earlier in our brief we have filed copies of all of these reports for I.A.C. with the Secretary and we hope they will be of assistance to the Committee.

Conclusion

While it is realized that the setting-up of an adequate system for the operation of industrial banks is not simple, the enactment of a statute containing the provisions mentioned above would provide reasonable protection for investors in companies carrying on industrial banking business and having substantial short-term liabilities. A more detailed statute might be devised in the future but, for the time being, such of the provisions of the Bank Act as appear appropriate could be made applicable to industrial banks by reference.

What appears to be essential at the present time is to avoid the appearance of the provision of adequate regulation while doing nothing, in effect, but duplicating provisions presently applicable under provincial statutes. The investing public, and particularly international investors, wish to have some way of identifying the large well-managed and adequately protected financial institutions.

Should the financial institutions carrying on the business of industrial banks be designated under the law as registered industrial banks, licensed industrial banks or chartered industrial banks and be required to maintain adequate reserves and be provided with credit lines-of-last-resort, such federally incorporated companies would quickly become recognized and disassociated from the type of company which has no sound financial foundation.

A provision which would permit companies of provincial incorporation to become registered as industrial banks upon fulfilment of the requirements of the Act in relation to capital, inspection, reserves, credit lines-of-last-resort, and the like would soon attract the better provincial companies and, by necessary implication, exclude from the corporations entitled to the confidence of investors all corporations which do not become so registered.

RECOMMENDED AMENDMENTS OF BILL S-17

The amendments recommended in respect of Bill S-17 in order to incorporate the basic provisions relating to "Industrial Banks" would require that this class of institution, which has been the subject of extensive study by many governmental bodies in the recent past and which merit prompt attention, should be dealt with in a separate part of the Act.

This would mean that a new Part III should follow Part II, and the general provisions such as contained in the present Part III should be designated as Part IV.

The provisions of Part III would be, in summary, the following:

(1) a definition of "Industrial Banks" similar or analogous to that contained in Regulation 101-67 of the Ontario Securities Commission, which is set out earlier (on page 9) of this brief;

(2) a provision that all federally incorporated companies falling within that definition should be required to register as "Industrial Banks";

(3) a provision analogous to Section 16 of the Canada Deposit Insurance Corporation Act, Chapter 70, 14-15-16 Elizabeth II which would permit a provincially incorporated company to apply for registration as an "Industrial Bank";

(4) provisions relating to cancellation of registration analogous to Section 25 and following of the Canada Deposit Insurance Corporation Act;

(5) the inclusion by specific legislation or by reference to the following sections of the Bank Act:

(a) Section 29 concerning reports to be made to the directors in relation to non current loans;

(b) Sections 60 to 62 inclusive, concerning annual and other statements to be submitted to shareholders;

(c) Section 63 concerning the appointment of and reporting by auditors;

(d) Sections 64 to 68 inclusive concerning the Inspector General of Banks and his powers and duties;

(e) Sections 103 to 107 inclusive concerning returns to be made to the Minister;

(f) Sections 139 and 140 concerning inspection;

(g) Sections 152 and 153 concerning penalties for failure to make returns and for false statements.

(6) a provision requiring the maintenance of reserves of securities of a kind approved by the Inspector General of Banks in an amount equal to 12½% of outstanding debt securities of such a bank which have been issued with a maturity of one year or less;

(7) a provision providing for a credit line-of-last-resort available to "Industrial Banks" while their registration is duly maintained, in an amount equal to the amount of the reserves required of and maintained by such banks.

THE CANADIAN MANUFACTURERS' ASSOCIATION

67 YONGE STREET, TORONTO 1, ONT.

OFFICE OF EXECUTIVE VICE-PRESIDENT AND GENERAL MANAGER

February 21, 1969

The Honourable Salter A. Hayden, Chairman
and Members of the
Senate Committee on Banking, Trade and Commerce,
The Senate,
Ottawa, Ontario.

Gentlemen,

Bill S-17, An Act respecting Investment Companies

The Canadian Manufacturers' Association appreciates this opportunity of submitting to you its views on Bill S-17, An Act respecting Investment Companies.

The Canadian Manufacturers' Association was established 98 years ago with the object and aim of promoting manufacturing in Canada. It is a non-profit, non-political organization of approximately 6,800 manufacturers in every branch of industry situated in 600 communities from coast to coast. Its membership includes firms of all sizes, three-quarters of which individually employ fewer than 100 persons. It is estimated that the production of its members amounts to about 75 per cent of Canada's total manufacturing output.

The Association is concerned that the proposed legislation goes far beyond the ordinary concept of an investment company to include a number of manufacturing companies. This is evident from Sections 2 and 3 of the Bill.

It is provided in Section 3 that the Bill applies to all investment companies. "Investment company" is defined in Section 2(1)(f)(ii) to include a company "that carries on the business of investment and at least twenty-five per cent of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b)...." The "business of investment" is in turn defined in paragraph (b) of Section 2(1) to mean "the borrowing of money by the company on the security of its bonds, debentures, notes or other evidences of indebtedness, and the use of some or all of the assets of the company for .... (ii) the purchase of

(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,

(B) shares of corporations,

(C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality,

(D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or

(E) instalment sales contracts".

As a consequence of the wording of these definitions it is clear that manufacturing companies which are in no sense investment companies can be subject to the proposed legislation by reason of their borrowing of money and their ownership of the shares of a subsidiary company. An example of this would be a small or moderate-sized company which owns the shares of a large subsidiary. The specified percentage of assets set out in the above definition need not, however, consist wholly of shares of corporations, but could be made up in whole or in part of government or corporation bonds or other evidences of indebtedness or of certain real property. It should also be noted that a manufacturing company would come under the legislation if the use of its assets for the purposes described temporarily exceeds the 25 per cent limit.

The Canadian Manufacturers' Association is of the opinion that the Bill, by reason of the definitions contained in Section 2, is too wide in its coverage. It submits that the scope of the legislation should be restricted to what are ordinarily understood as investment companies and not include manufacturing companies. We do not agree that the broad coverage can be justified as a means of enabling the Government to study and obtain information regarding investment and related companies in order to ascertain what regulatory provisions are appropriate for certain types of companies.

While it is recognized that under Section 3(2) of the Bill the Minister is empowered to grant exemptions from the application of the Act where the business of investment is incidental to the company's principal business, it is submitted that manufacturing companies should not be subjected to the burden of making such applications. In the Association's view the Act should be so worded that manufacturing companies are excluded from the definition of investment company rather than the matter be left to the discretion of the Minister on the application of the company.

The Association therefore urges that the scope of Bill S-17 should be narrowed by more precise definitions so that it would apply solely to companies which are in the generally accepted sense investment companies and not to manufacturing companies.

In this respect, it is submitted that the definition of "investment company" as set out in paragraph (f)(ii) of Section 2(1) of the Bill should be amended along the following lines:

(1) Replacement of the words "25 per cent of the assets" by the words "50 per cent of the assets";

(2) By providing that loans to, and investments in, operating subsidiaries or affiliates engaged in the production, processing and/or sale of goods or non-financial services or in the ownership of facilities used, or acquired for use, in the production, processing and/or sale of goods are excluded from the definition.

Alternatively it is suggested that consideration be given to adoption of the definition of "investment company" as found in the Investment Act of 1940 of the United States. A copy of Section 3(a) of that Act together with a reference to Sections 3(b) and 3(c) is attached for your information.

It should also be noted that for other significant purposes of the Canadian Government a definition of "investment company" may be found in Section 69(2) of the Canadian Income Tax Act.

Respectfully submitted,

J. C. Whitelaw.

Enc:

APPENDIX

Extract from United States Investment Companies Act of 1940 (Public Law Number 768 - 76th Congress)

Section 3(a)

When used in this title, "investment company" means any issuer which

(i) is or holds itself out as being engaged primarily, or proposes to engage primarily in the business of investing, re-investing or trading in securities,

(ii) is engaged or proposes to engage in the business of issuing face-amount certificates of the instalment type, or has been engaged in such business and has any such certificate outstanding, or

(iii) is engaged or proposes to engage in the business of investing, re-investing, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuers total assets (exclusive of government securities and cash items) on an unconsolidated basis.

As used in this section, "investment securities" includes all securities except

(a) government securities,

(b) securities issued by employees "security companies", and

(c) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

Section 3 also contains sub-sections (b) and (c) which contain a number of specific exceptions to the foregoing. One of particular interest in the context is Section 3(b)(i) "Any issuer primarily engaged, directly or through a wholly owned subsidiary or subsidiaries, in a business or businesses other than that of investing, re-investing, owning, holding or trading in securities".

APPENDIX "C"

SUBMISSION

TO THE

SENATE COMMITTEE ON BANKING AND COMMERCE

BY

THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES
WITH THE SUPPORT OF
A GROUP OF CANADIAN CORPORATIONS
CONCERNED WITH INVESTMENT

REGARDING

THE SENATE OF CANADA BILL S-17

JANUARY 1969

INDEX

	Page
Introduction	1
Interpretation and Application (Sections 1, 2, 3 and 4)	2
Annual Statement and Inspection (Sections 5, 6 and 7)	4
Prohibited Loans and Investments (Section 8)	5
Certificates of Registry (Sections 9 to 20)	6
Assessments and Regulations (Sections 21 and 22)	8
Concluding Remarks	9
APPENDICES	
A - List of Association Members and Corporations Supporting this Submission.	10
B - Copy of Submission of the Association of Canadian Investment Companies to the Ministers of Finance and of Consumer and Corporate Affairs, November, 1968. (Separate Cover)	11
C - Examples of Four Distinct Groups of Canadian Investment Companies Showing Capitalization Ratios and Numbers of Equity Holdings.	12
D - Section 69(2) of the Income Tax Act, as Amended in Accordance with Recommendations of the Association of Canadian Investment Companies in Submission of November, 1968.	13

SUBMISSION TO

THE SENATE OF CANADA COMMITTEE ON BANKING AND COMMERCE

REGARDING BILL S-17

INTRODUCTION

This submission is made by the Association of Canadian Investment Companies, supported by a group of Canadian corporations which are concerned with investment. The names of members of the Association and supporting corporations are listed on Appendix "A", page 10. Total assets of these, at consolidated 1967 book value, approximate $3 billion and substantially more with investments valued at the market.

At the outset, it must be stressed that by no means are we averse to the appropriate supervision and control of corporate activities by government authorities, wherever this is demonstrated as being necessary for protection of the public. Nevertheless, we are firmly convinced that the extremely broad application of Bill S-17, combined with some of its most restrictive regulatory provisions and the discretionary powers given thereunder to the responsible Minister, would result in an uncertain and inhibiting situation with respect to Canadian corporate affairs and investment by Canadians in Canadian equities.

Reference is made to a recent submission of the Association of Canadian Investment Companies to the Ministers of Finance and of Consumer and Corporate Affairs (Appendix "B", separate cover.) This submission relates mainly to the Report of the Watkins Task Force; and it contains proposals aimed at achieving more effective participation of closed-end investment companies, including the proposed Canada Development Corporation, in increasing Canadian ownership and control of economic activity in this country. It is contended that, if enacted in its present form, Bill S-17 would have completely the reverse effect.

A large number of Canadian manufacturing and service corporations, which hold investments in operating subsidiaries, would be subject to the provisions of the Bill. This could have a most detrimental effect on the efficiency of their operations and might even make it impossible for many of them to raise capital and carry on business. Other similar companies would be exempt by reason of absence of debt in their capital structures, or because they are operating under provincial charters.

We propose, in this memorandum, to discuss in some detail the specific sections and subsections of the Bill which would be, in our opinion, most detrimental to the effectiveness of normal corporate and inter-corporate activities. We include certain recommendations which may assist you in the study of this proposed legislation, with a view to the achievement of the desired end results.

INTERPRETATION AND APPLICATION (Sections 1, 2, 3 and 4)

It is our opinion that application of the proposed Act to "all investment companies," coupled with the interpretations of "investment company" and "business of investment" under sections 2 and 3, would subject many more corporations to supervision and regulation than is necessary to reasonably protect those lenders and investors that need protection in present circumstances.

Reference is made to Appendix "C" on page 12, which is a comparative tabulation showing capitalization ratios and numbers of equity holdings of selected investment companies, divided into four distinct groups. These are finance, property development, operating (or manufacturing) and closed-end investment companies, many of which actually would not be subject to the proposed Act. The table brings out the pattern of normally high debt ratios of finance companies, ratios generally not exceeding 66 2/3% on the part of realty and operating companies, and very modest proportions or absence of debt in the case of closed-end investment companies.

The assets supporting the borrowings of these corporate groups are very different in nature. Those of the closed-end investment companies, for the most part, are securities of established and soundly diversified Canadian corporations; operating company assets are mainly plant, machinery and equipment; realty companies borrow against revenue producing properties and long-term leases; and the assets of finance companies consist in very large measure of short and medium term finance receivables.

Practically every Canadian company in operation at one time or another must have occasion to "borrow money" and also must have occasion to make "loans." Section 14 of the Canada Corporations Act recognises the notion of the investment of surplus funds of a company from time to time as distinct from the operations of a company in the ordinary course of its business; and certain loans are recognized as proper for all companies under section 15. In our opinion, there should be a general exemption for parent-subsidiary or inter-company financing within a pure holding company structure, or one of a mixed operating-holding company.

We firmly object to the concept of a Minister granting exemptions, as under subsection (2) of section 3. If the proposed Act properly defines the scope of the companies to be covered, then the burden is on each company concerned to see that it keeps within the terms of the Act. The Minister would be amply protected by the provisions of sections 5, 6 and 7 regarding the filing of annual statements and investigation by the Superintendent of Insurance. Moreover, we are concerned particularly by the possible consequences of subsections (4) and (5) of section 3, which effectively give priority to the provisions of the proposed Act in the event of any conflict with Letters Patent or an Act of incorporation.

While it may have a low priority amongst the list of items to be attacked, section 4 of the Bill is also the potential source of much ambiguity. In view of the broad definition on the one hand and the limited importance of corporate powers and the ultra vires rule on the other hand, it would be difficult for anyone to know whether a company was really incorporated "primarily for the purpose of carrying on the business of investment." Is there an implied suggestion that the scope of the Act will apply or fail to apply depending upon whether or not there is such an insertion in the Letters Patent? In other words, the Government authorities who issue the Letters Patent will have to make a guess as to future operations which in some cases is bound to be wrong one way or the other.

We cannot over-emphasize our following convictions, which have particular reference to sections 2, 3 and 8, as well as to certain sections of Parts II and III of the proposed Act:

1) The Act should be clear and specific and all definitions and interpretations should be included therein rather than partly by regulation;

2) No discretion should be vested in the Minister and all decisions by him should be subject to appeal in the courts;

3) The Act should not override the provisions of any other Act and, particularly, should not apply to cases contemplated and covered by the Canada Corporations Act - e.g. loans to employees and officers (section 15 of the CCA) and prospectus provisions (section 77) - and should not duplicate the work of the securities commissions.

Recommendations

Section 2 -
It is recommended that paragraph (b) of subsection (1) be replaced by the following:

(b) "business of investment" with respect to a company means the borrowing of money by the company on the security of its bonds, debentures, notes or other evidences of indebtedness, but excluding borrowings under a prospectus made for a term of eighteen months or more, or borrowings from banks, insurance companies, trust companies and other exempt institutions, or from substantial shareholders of the company within the meaning of paragraph (b) of subsection (3) of section 8, and the use of some or all of the assets of the company for

(i) the making of loans whether secured or unsecured maturing more than eighteen months after the date of issue, but excluding loans under the provisions of section 15 of the Canada Corporations Act, or
(ii) the purchase of
(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,
(B) shares of corporations,
(C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or municipality,
(D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or
(E) instalment sales contracts,

but does not include inter-company transactions between parent and subsidiary corporations, between subsidiaries of the same parent corporation, or between associated and affiliated companies within a holding company or an operating-holding company structure.

It is further recommended that paragraph (f) of subsection (1) be amended by replacing subparagraph (ii) by the following:

(ii) that carries on the business of investment and at least 25% of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b), valuation of such assets being determined in accordance with accepted accounting principles consistently applied throughout the fiscal year of the company;

and by inserting after the word "applies" on line 32 of page 2:

> or a corporation to which Part II of the Canada Corporations Act applies, or a company that carries on directly or indirectly through subsidiaries an active industrial or commercial business, or a company which qualifies as an investment company under section 69 of the Income Tax Act.

It is further recommended that subsection (2) of section 69 of the Income Tax Act be amended in accordance with the recommendations on pages 4 to 7 of Appendix "B", to read as shown on Appendix "D" hereto.

Section 3 -
It is recommended that subsections (2), (3), (4) and (5) be eliminated.

Section 4 -
It is recommended that this section be eliminated.

ANNUAL STATEMENT AND INSPECTION (Sections 5, 6 and 7)

It is our experience that subject companies would be put to considerable additional expense and difficulty in meeting the required filing deadline established by subsection (1) of section 5, as no large company normally is likely to have its annual financial statements prepared before the end of at least 120 days. It is also our contention that the information contained in such statements, as well as in the statements of subsidiaries submitted pursuant to subsection (3), should not be public information, but solely for the purposes of the Superintendent of Insurance and his staff.

Moreover, we feel strongly that it would be improper for the Superintendent to have direct access to a company's auditor, as provided under subsection (6) of section 5. The auditor is not a company officer and acts in a strictly professional capacity. In addition, he is prohibited from divulging information to anyone outside a company for which he is acting without the permission of its directors.

Reference to "oral" statements should be eliminated from subsection (b) of section 7, as this would only lead to possible accusations against either the officers or government inspectors. In view of the very severe penalties for any breach of the proposed Act, such conflicts would be most undesirable.

Recommendations

Section 5 -
It is recommended that subsection (1) be amended to provide that statements be filed "120 days" after the end of its fiscal year, instead of two months, and that subsection (6) be amended by striking the word "auditor" on the third line.

It is further recommended that an additional subsection be included, as follows:

> (7) All information submitted to the Superintendent under this section, or made available to an inspector under section 6, shall be solely for the purposes of the Superintendent and his staff and shall not be public information.

Section 7 -
It is recommended that subsection (b) be amended by inserting the word "wilfully", at the start of line 36, and eliminating the word "orally" from line 37 of page 6.

PROHIBITED LOANS AND INVESTMENTS (Section 8)

It is quite proper that there be prohibitions against certain loans and investments where there may be a conflict of interests. However, it is our contention that these should be applied equally to all Canadian corporations and not in such a way as to inhibit the effective operations of a selected group of companies.

Financial assistance to shareholders or directors of a company already is covered by section 15 of the Canada Corporations Act. If abuses have occurred, we maintain that this section of the Canada Corporations Act should be amended appropriately, so as to apply the necessary restrictions to all companies incorporated thereunder. We also contend that one of the best means of protecting the investing public is adequate disclosure of corporate operations and financial position, as well as insider and non-arms-length transactions, and that this should be effected through the anticipated federal securities legislation.

Application of paragraphs (b) and (c) of subsection (1) of section 8 of the Bill to a company could have some very unfortunate results. For example, they could prevent it from effecting the take-over of a second company by way of a share exchange offer should the second company have more than a 10% interest in the first, or acquire such an interest in order to abort the offer, or should an individual holding interests in the two companies increase each such interest to more than 10%. Furthermore, exchanges of holdings between parent and subsidiary corporations, or subsidiaries of the same parent, could be prevented in cases where payments or balances of payments could only be made by way of promissory notes. There are many other examples of advances and temporary transactions between associated companies, which greatly enhance the effectiveness and economy of their operations, but which would be prohibited under subsections (1) and (2) of section 8.

With respect to subsection (2), we maintain that as drafted, this already has created a most serious condition of uncertainty, and that any prohibitions under subsection (1) should be effective only from the date on which the proposed Act comes into force.

There can be no doubt that the application of stringent regulations to certain groups of companies, in many cases on the basis of what we believe to be irrelevant considerations, would result in such companies being placed in an unfair and impaired competitive position. We further believe that such broadly selective limitation of the present freedom of corporate action would encompass some of Canada's most creative and successful organizations. This could only discourage entrepreneurial activities and investments by Canadians in this country. Moreover, it would enormously hamper Canadian companies from acquiring other Canadian companies and would force sellers all the more certainly to look to American purchasers.

A future holding company type of operation would be absolutely prohibited. There could be no purchase of shares in the company where a director, officer or substantial shareholder has a significant interest. Where there are inter-corporate relationships, all kinds of new impediments to investment would arise. No doubt this was intended to offer some protection to the other shareholders concerned but in many instances it would narrow the market for their shares and cause a depreciation in values. The draftsman of the legislation perhaps wisely ignores the highly

practical problem of how a company is to recognise its own shareholders when the holdings may be recorded in the names of nominees.

It is our contention that the possibility of exemption from the prohibitions under section 8, as provided in subsections (4), (5) and (6), because of the resulting delays and uncertainties and the very broad discretionary powers given therein to the responsible Minister, would do little to ameliorate the unfortunate conditions discussed above.

Recommendations

Section 8 -
It is recommended that subsection (2) be deleted.

It is further recommended that paragraph (d) of subsection (3) be amended by replacing lines 30 to 35 of page 8 by the following:

> but does not include
> (A) an advance or loan, whether secured or unsecured, that is made by an investment company to a corporation and that is merely ancillary to the main business of the investment company,
> (B) a loan under the provisions of section 15 of the Canada Corporations Act,
> (C) an inter-company transaction between parent company and subsidiary, between subsidiaries of the same parent company, or between associated and affiliated companies within a holding company or operating-holding company structure, or
> (D) an advance or loan, balance of purchase price whether secured or unsecured, or extended terms of credit for payment of goods and services provided by the company.

It is further recommended that subsections (5) and (6) be eliminated and that any exemption under subsection (4) shall be irrevocable and shall not be subject to any conditions.

CERTIFICATES OF REGISTRY (Sections 9 to 20)

We must stress our objection to the fact that, as the Bill is drafted, the Certificate is granted only on the Minister's discretion and may be reduced, renewed and cancelled under such conditions and limitations as he may determine. We object, in particular, to the powers granted the Minister by subsection (2) of section 10 and under section 15. Moreover, we reiterate that all reports of the Superintendent to the Minister under sections 15 and 20 should be clearly stated to be confidential.

Reference is made to section 12. No doubt the framework of this section contemplated that a mandatory death sentence is the most effective punishment for wrong-doers. Given certain circumstances a company must be dissolved. What happens to any law suits pending at the time against the company, any litigious claims by creditors which are being contested or for that matter any tax issues currently under litigation? Once a company is dissolved, any law suits currently pending can no longer be prosecuted in the courts! When a company is "dissolved" there is at least a colour of right in distributing assets to shareholders. The unpaid creditors may have some claim against these shareholders, but suppose that they are numerous or that, in whole or in part, they are non-residents of Canada.

It is noted that under subsection (4) of section 13 the directors are subject to a double liability, one under that subsection and one under the general provisions of Part III. This requires clarification.

It is essential, with respect to sections 14, 16 and 17, that the company concerned has adequate opportunity to make representations and the right of appeal to the courts, also that the Minister can exercise the rights under sections 16 and 17 only in the case of fraud or dishonesty.

We submit that implementation of the provisions of subsections (2) and (3) of section 20 could make it virtually impossible for a company to carry on business. It is our opinion that directors and auditors would refuse to approve the financial statements of a company subject to these provisions.

Recommendations

Section 9 -
It is recommended that this section be eliminated, as well as reference thereto in section 11.

Section 10 -
It is recommended that subsection (2) be struck out, as well as all references thereto in the Bill.

Section 12 -
It is recommended that this section be eliminated in its entirety.

Section 13 -
It is recommended that subsections (4) and (5) be eliminated.

Section 15 -
It is recommended that this section be amended to eliminate all provisions relating to the withdrawal of certificates of registry, i.e., paragraphs (b) and (c) of subsection (3) and subsections (5), (6) and (7), also that the following be added at the end of subsection (1) on line 12 of page 16:

> all information contained in such report being solely for the purposes of the Superintendent, the Minister and their staffs and the company and shall not be public information.

It is further recommended that a new section, 18, be inserted to follow section 17, providing for the right of appeal to the courts by a company against any decision of the responsible Minister with respect to: (a) his refusal to issue a certificate of registry, under section 14, or to renew such a certificate; (b) an application made on his behalf to a superior court, under subsection (1) of section 16; or an application made on his behalf to a court, under subsection (1) of section 17. The new section 18 also should provide that rights of the Minister under sections 16 and 17 can only be exercised in the case of fraud or dishonesty. As a result of this, the numbers of all following sections would be increased by one.

Section 20 -
It is recommended that this section be amended by striking out subsections (2) and (3) and replacing them by a new subsection, as follows:

(2) All information submitted to the Minister under this section shall be solely for the purposes of the Superintendent, the Minister and their staffs and shall not be public information.

ASSESSMENTS AND REGULATIONS (Sections 21 and 22)

We are greatly disturbed by two sections of Part III of the Bill, namely sections 21 and 22.

Our contention is that expenditures incurred for or in connection with administration of the proposed Act would be related, for the most part, to relatively few companies whose financial condition and affairs might require particular scrutiny by the Superintendent of Insurance and his staff. Indeed, it is our opinion that the companies subject to the proposed Act should in no way be assessed to cover the cost of its administration, and that this would be a particularly repugnant form of taxation.

Supervision and regulation of insurance companies, trust companies and loan companies are now carried on by the Superintendent of Insurance under the Department of Insurance Act. Government expenditures relating to administration of the various special Acts are allocated as follows:

Insurance companies - in proportion to net premiums
Loan companies - in proportion to income
Trust companies - " " " "

Clearly, similar types of companies are treated in a relatively consistent fashion.

In contrast, expenditures relating to administration of the proposed Act, under section 21 would be assessed on the basis of income against companies wherein the relationships of income (so far undefined) to assets or capital employed might be widely divergent.

We are firmly convinced that application of section 22, as drafted, would be so unacceptable to most sound and reputable corporations that they would be forced to reorganize and seek charters in other jurisdictions. It is our belief that directors of such companies would not remain in office and surrender their normal responsibilities and prerogatives to this degree.

The scope of the regulations, which the Governor in Council may make, should be given in full detail and circumscribed and limited to regulations necessary for the enforcement of the proposed Act in accordance with its provisions and not, as apparently is the case according to the draft, to have the same force and effect as if the regulations form part of the Act.

Recommendations

Section 21 -
Should any assessments be imposed, it is recommended that they be on the basis of a fixed tariff and that this be applied in relation to each subject company's unconsolidated debt, including short-term obligations. There would be a certain logic to this basis of assessment as it would relate directly to the main purpose of the proposed legislation, i.e., the protection of creditors.

It is further recommended that provision be made for the right of appeal by a company in an appropriate court of law against the determination of expenses or the assessment.

Section 22 -
It is recommended that this section as drafted be struck out.

CONCLUDING REMARKS

Although our above comments and recommendations are strongly critical of certain provisions of the Bill, it must be stressed that they are submitted in all sincerity in an effort to be of some immediate assistance in producing a sound and practical piece of legislation.

In view of its far-reaching effects on the affairs of the companies concerned, as well as on the nation's economy, we urge that the Bill be given the most thorough study, that your Committee employ every opportunity to hear and consider constructive opinions and suggestions from all interested parties, and that it be amended appropriately prior to its enaction. In particular, representatives of the group of companies responsible for this submission request the opportunity of appearing before your Committee, at its convenience, in order to answer questions and make such further representations as may be required.

Respectfully submitted,

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

Henry R. Jackman
President

J.V. Emory
Vice-President

APPENDIX "A"

MEMBERS OF THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

All Canadian-American Investments Limited
Canadian & Foreign Securities Co. Limited
Canadian International Investment Trust Limited
Central Fund of Canada Limited
Consolidated Diversified Standard Securities, Limited
Dominion & Anglo Investment Corporation Limited
Dominion-Scottish Investments Limited
Economic Investment Trust Limited
The Fulcrum Investment Company Limited
Great Britain & Canada Investments (1968) Limited
Life Investors Limited
Magnum Fund Limited
MPG Investment Corporation Limited
Pacific Atlantic Canadian Investment Company Ltd.
Power Corporation of Canada, Limited
Toronto and London Investment Company Ltd.
United Corporations Limited

CORPORATIONS SUPPORTING THIS SUBMISSION

Distillers Corporation-Seagrams Limited
Domtar Limited
Massey-Ferguson Limited
Southam Press Limited
Standard Broadcasting Corporation Limited
Warnock Hersey International Limited

APPENDIX "B"
(Separate Cover)

SUBMISSION

OF THE

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

TO

THE MINISTER OF FINANCE

AND

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

REGARDING

1. THE REPORT OF THE TASK FORCE ON THE STRUCTURE OF CANADIAN INDUSTRY
2. PREVIOUS SUBMISSIONS OF OUR ASSOCIATION
3. SECTION 69 OF THE INCOME TAX ACT
4. CLOSED-END INVESTMENT COMPANY INCENTIVES
5. THE CANADA DEVELOPMENT CORPORATION

NOVEMBER 1968

APPENDIX "C"

EXAMPLES OF FOUR DISTINCT GROUPS OF CANADIAN INVESTMENT COMPANIES

SHOWING CAPITALIZATION RATIOS AND NUMBERS OF EQUITY HOLDINGS

(Amounts in Millions of Dollars)

Company	Charter	Consolidated Debt Ex. Bank Loans		Preferred Stock		Common Stock & Retained Earnings		Total Capitalization		Approximate No. of Equity Holdings
FINANCE INVESTMENT COMPANIES		Amount		Amount		Amount		Amount		
Industrial Acceptance Corp. Ltd. (1967)	Fed.	$ 720.2	82.3%	$ 21.5	2.5%	$ 132.6	15.2%	$ 874.3	100.0%	13
General Motors Acceptance Corp. of Canada Ltd. (1967)	Fed.	449.0	96.1	-	-	18.5	3.9	467.5	100.0	-
Traders Group Ltd. (1967)	Fed.	351.7	81.9	14.6	3.4	63.0	14.7	429.3	100.0	20
Avco Delta Corp. Canada Ltd. (1967)	Ont.	206.2	81.2	18.4	7.3	19.1	7.5	243.7	100.0	5
Laurentide Financial Corp. Ltd. (1968)	B.C.	112.8	70.1	26.6	16.5	21.5	13.4	160.9	100.0	4
Union Acceptance Corp. Ltd. (1967)	Ont.	46.0	83.0	2.5	4.5	6.9	12.5(1)	55.4	100.0	4
REALTY INVESTMENT COMPANIES										
Canadian Interurban Properties Ltd. (1967)	Ont.	$ 46.8	66.1%	-	-	$ 24.0	32.9%	$ 70.8	100.0%	7
Revenue Properties Company Ltd. (1967)	Ont.	56.8	81.0	-	-	13.3	19.0	70.1	100.0	4
M.E.P.C. Canadian Properties Ltd. (1967)	Ont.	24.0	62.0	$ 2.5	6.5%	12.2	31.5	38.7	100.0	8
Bramalea Consolidated Developments Ltd. (1967)	Ont.	21.0	63.5	-	-	12.1	36.5	33.1	100.0	11
Peel-Elder Limited (1967)	Ont.	10.5	69.1	-	-	4.7	30.9	15.2	100.0	6
Canadian Allied Property Investments Ltd. (1967)	B.C.	8.5	71.4	-	-	3.4	28.6	11.9	100.0	3
OPERATING INVESTMENT COMPANIES										
Canadian Pacific Railway Co. (1967)	Fed.	$ 448.8	24.7%	$ 91.0	5.0%	$ 1,281.3	70.3%	$ 1,821.2	100.0%	40(2)
Alcan Aluminium Limited (1967)	Fed.	698.9	46.2	118.0	7.8	696.4	46.0	1,513.3	100.0	75(2)
Massey-Ferguson Limited (1967)	Fed.	161.2	26.9	-	-	437.1	73.1	598.3	100.0	48
Noranda Mines Limited (1967)	Ont.	85.2	24.0	-	-	269.9	76.0	355.1	100.0	45
Consolidated-Bathurst Limited (1967)	Fed.	117.5	35.9	45.3	13.9	164.2	50.2	327.0	100.0	14
Dominion Textile Company Ltd. (1967)	Fed.	52.0	41.4	1.4	1.1	72.3	57.5	125.7	100.0	9
CLOSED-END INVESTMENT COMPANIES										
Power Corporation of Canada Ltd. (1968)	Fed.	$ 31.0	12.7%	$ 88.1	35.9%	$ 126.1	51.4%	$ 245.2	100.0%	20
Argus Corporation Ltd. (1967)	Ont.	10.0	11.9	53.0	62.9	21.2	25.2	84.2	100.0	7
United Corporations Limited (1967)	Fed.	-	-	6.0	11.0	48.7	89.0	54.7	100.0	90
Canadian General Investments Ltd. (1967)	Ont.	-	-	8.0	20.4	31.1	79.6	39.1	100.0	45
Great Britain and Canada Investment Corp. (1967)	Que.(3)	1.5	5.9	6.0	23.6	17.9	70.5	25.4	100.0	70
Dominion-Scottish Investments Ltd. (1967)	Fed.	2.0	11.5	3.0	17.2	12.4	71.3	17.4	100.0	56

Notes: (1) Including participating preferred.
(2) Including holdings of subsidiaries.
(3) All assets being transferred to new federally chartered corporation and capital exchanged.

APPENDIX "D"

SECTION 69(2) OF THE INCOME TAX ACT, AS AMENDED IN ACCORDANCE WITH RECOMMENDATIONS OF THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES IN SUBMISSION OF NOVEMBER, 1968

69(2) "Investment company" defined. In this Act, "investment company" means a corporation that, in respect of the taxation year in respect of which the expression is being applied, complied with the following conditions:

(a) at least 80% of its property was, throughout the year, shares, bonds, debentures, short-term notes, marketable securities or cash,

(b) not less than 90% of its income for the year, excluding management fees, was derived from investments mentioned in paragraph (a),

(ba) not less than an average of 75% of its gross revenue for the year and the two preceding years was from sources in Canada,

(bb) not more than an average of 35% of its gross revenue for the year and the two preceding years was from interest,

(c) at no time in the year did more than 25% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,

(d) at no time in the year was the number of shareholders of the corporation less than 50, none of whom at any time in the year held more than 25% of the shares of the capital stock of the corporation, and

(e) an amount not less than an average of 85% of its taxable income plus exempt income for the year and the two preceding years (other than dividends or interest received in the form of shares, bonds or other securities that have not been sold before the end of the taxation year) minus

(i) 21% of its taxable income for the year, and

(ii) taxes paid in the year to other governments,

was distributed to the shareholders before the end of a 60 day period following the end of the year,

but should the corporation find itself in default with respect to any of the above conditions, as the result of inadvertent oversights, or for reasons beyond its control, it shall be permitted a period of 60 days from discovery thereof to rectify such default or defaults.

(To accompany Submission to the Senate Committee on Banking and Commerce by the Association of Canadian Investment Companies, regarding Bill S-17.)

SUBMISSION

OF THE

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

TO

THE MINISTER OF FINANCE

AND

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

REGARDING

1. THE REPORT OF THE TASK FORCE ON THE STRUCTURE OF CANADIAN INDUSTRY
2. PREVIOUS SUBMISSIONS OF OUR ASSOCIATION
3. SECTION 69 OF THE INCOME TAX ACT
4. CLOSED-END INVESTMENT COMPANY INCENTIVES
5. THE CANADA DEVELOPMENT CORPORATION

NOVEMBER 1968

INDEX

	Page
Introduction	1
Closed-End Investment Companies	2
Section 69 of the Income Tax Act - History	2
Recommendations with Respect to Section 69	4
Other Recommendations	7
Canada Development Corporation	9
The Carter Report	10
Concluding Remarks	10
EXHIBIT "A"	
Latest Quarterly Report on Asset and Share Values of Association Member Companies.	11
EXHIBIT "B"	
Percentage Distributions of Composite Portfolio of Association Member Companies.	12
EXHIBIT "C"	
Copy of Submission, dated October 1967, to the Minister of Finance regarding the Report of the Royal Commission on Taxation.	

INTRODUCTION

This submission by the Association of Canadian Investment Companies is made in response to the request for formal submissions on the Watkins Report. The members of this Association are vitally involved in the entrepreneurial and portfolio investment of substantial pools of savings, mainly in Canadian equities.

It is our belief that encouragement of the healthy growth and development of such investment companies would constitute one of the best means of achieving some of the objectives sought by the Watkins Task Force. In addition, we are convinced that many of our recommendations and comments in this submission apply with the same validity to the proposed Canada Development Corporation as to existing closed-end investment companies.

We submit that greatly enhanced scope and effectiveness of these investment companies will be required in order to permit them to fulfill their proper role under the "new national policy" anticipated in the Report's conclusion. We submit, further, that it is only by reducing present legislative restrictions and providing essential incentives that they will be enabled to attract equity funds and achieve the desired results.

Within the past five years, this Association has submitted the following briefs:

November 29, 1963	- to the Royal Commission on Taxation
April 29, 1966	- to the Minister of Finance regarding the refundable tax on cash profits
June 23, 1967	- to the Minister of Finance proposing certain equity investment incentives
October, 1967	- to the Minister of Finance regarding the report of the Royal Commission on Taxation.

This present submission constitutes a consolidation and up-dating of those earlier proposals and comments that are relevant to the recommendations of the Watkins Task Force, as well as to the continuing participation of closed-end investment companies in Canadian economic growth.

CLOSED-END INVESTMENT COMPANIES

A closed-end investment company is an incorporated company, the authorized capital of which is relatively fixed and frequently consists of debt securities and preferred shares as well as common shares. It is a vehicle through which the combined savings of many participants are invested with the objective of producing the greatest possible long-term return, with risk minimized through diversification and constant supervision by experienced investment managers.

The portfolios of closed-end companies usually comprise broadly diversified lists of holdings, mainly equities. However, a number tend to specialize in their investments, holding substantial interests in a few companies and participating actively in their management.

In contrast to the open-end, or mutual funds, the shares of closed-end companies are traded through a stock exchange, or in a few cases on the "over-the-counter" market. It is usual for closed-end companies to have a large list of shareholders, most of whom hold a modest number of shares; but there are examples wherein ownership has tended to become concentrated.

The market price of a closed-end company's shares does not depend on the market value of its underlying securities, but on the demand for and supply of such shares, dividend yields and other factors. The experience in Canada has been that the shares of closed-end companies have traded at substantial discounts below net worth based on net asset values. We believe that the market price of Canada Development Corporation shares would be subject to these same relationships and tendencies. This discount has made it virtually impossible for such companies to expand their operations through the sale of new equity securities. With today's high cost of debt capital, their only practical sources of funds for new investments are the sale of securities in their portfolios, or retained earnings.

According to the Dominion Bureau of Statistics, the composite investment portfolio of all reporting Canadian closed-end companies totalled $798 million, based on market values, at June 30, 1968, and this amount is higher today. The Association of Canadian Investment Companies represents seventeen closed-end companies with net assets totalling close to $500 million. Appended, as Exhibit "A", is a list of member companies, showing net assets, net asset value of their shares, market value and discount. Exhibit "B" shows the distribution of their composite portfolio, geographically, by class of security and by industry.

SECTION 69 OF THE INCOME TAX ACT - HISTORY

This section provides for a special tax rate of 21% (including the 3% old age security tax) on the taxable income of "investment companies", followed by a list of conditions which must be met by a company to qualify as such. Following are some brief historical notes on this section of the Act.

i) Until 1954 the Department of National Revenue recognized the principle that investment companies should not be taxed and, in fact, no tax was levied on their incomes provided 85% was distributed to their shareholders, in whose hands it was, of course, taxable as personal income. Without this exemption for investment companies such income would have been taxable three times: firstly through normal corporation tax, secondly as income to the investment company and thirdly in the hands of the investment company shareholder.

ii) In 1949, however, a 10% tax credit on all dividends received by individual tax-payers from taxable Canadian companies had been introduced and this was subsequently increased to 20% in 1953. The difficulty then arose that, if companies elected to take investment company status and thereby paid no tax, their shareholders forfeited the right to any dividend tax credit, even on dividends from taxable Canadian companies.

iii) Accordingly, in 1955, an amendment was made to eliminate this discrimination against the investment company shareholders as compared with the shareholder holding the same investments directly. The exemption of investment companies from tax on dividends received from other taxable Canadian companies was continued and an equalizing tax of 20% was imposed on all other income. This amendment thus enabled the shareholders of investment companies to qualify for the 20% tax credit on dividends received in the same manner as shareholders of other taxable corporations.

iv) With their shareholders qualifying for the 20% tax credit, however, it was felt that some restrictions should be placed on the sources from which the gross revenue of investment companies was derived and for this reason the 1955 legislation also provided that not less than 60% of an investment company's gross revenue must be derived from dividends from taxable Canadian corporations. As a result of representation against this restriction, it was amended in 1956 to provide that not more than 50% of gross revenue could be derived from interest.

v) Finally, in 1961, further legislation was introduced the effect of which progressively increased the restrictions imposed on investment companies qualifying under the Act.

From the above brief resume it can be seen that, since 1954, successive amendments to Section 69 of the Income Tax Act have narrowed the sphere of action of investment companies in this country. The broad freedom of choice and action they once possessed has been steadily diminished. It is mainly because of this that a number of closed-end companies with substantial portfolios no longer attempt to qualify as investment companies.

RECOMMENDATIONS WITH RESPECT TO SECTION 69

It is strongly recommended that the present provisions of Section 69 of the Act be reviewed at this time, and we urge that the conditions whereby a corporation qualifies as an investment company be reconsidered critically in the light of current economic practicalities and objectives.

In order to assist you and your staff in such a review, we respectfully submit, hereunder, our comments and proposals with respect to the actual conditions included under Section 69 (2) whereby a corporation qualifies as an "investment company." These are presented in the light of our collective experience, and reflect very real problems with which closed-end companies have had to contend over recent years.

(a) Actual

"at least 80% of its property was, throughout the year , shares, bonds, marketable securities or cash."

Comment

We do not consider this percentage to be unduly restrictive. However, the buying of short term notes by an investment company has become common as an outlet for defensive funds. Therefore, a literal interpretation of the Act might penalize a company which has been prudent or conservative during a particular year. Moreover, a literal interpretation of the word "bonds" might exclude debentures, also a common type of investment.

Proposed

That the paragraph be amended to include debentures, also short term notes.

(b) Actual

"not less than 95% of its income for the year was derived from investments mentioned in paragraph (a)."

Comment

It is the practice of a number of those closed-end companies participating in the management of corporations in which they have holdings to charge fees for such services, and these fees can exceed the 5% limit. Very often this management assistance is of vital importance to the company concerned and it is our belief the practice is beneficial and deserves encouragement.

Proposed

That the required percentage be reduced from 95% to 90%, and that management fees be excluded from the percentage.

(ba) Actual

"not less than 85% of its gross revenue for the year was from sources in Canada."

Comment

Although we appreciate the importance of stressing investment in Canadian equities, it is often impossible for the managers of closed-end companies to achieve prudent diversity in their investment portfolios without including some foreign securities. It is a demonstrable fact that shares of Canadian companies simply are not available in a number of major industries, and only on a limited scale in others. In addition, in order to share in the prosperity of foreign companies doing business in Canada and to obtain representation on their boards of directors, it is often necessary to invest in shares of the parent companies. This is particularly appropriate in the case of those companies in which there is a large scientific or technological content.

Another factor is the extreme difficulty of forecasting income with complete accuracy. It has become a habit of many corporations, both Canadian and foreign, to declare year-end extra dividends and the unexpected declaration of a sizeable extra dividend by a foreign corporation, or the omission of one by a Canadian corporation, can easily upset the anticipated income balance. The result is that closed-end fund managers must actually plan for less than 15% of income from foreign sources, as a hedge against the above possibilities.

Proposed

That the required percentage be reduced from 85% to 75%. We also submit that it would be of great assistance to permit the averaging of the income proportions over, say, three years. A further suggestion is that the regulations be changed to allow interest on non-resident loans or debentures negotiated in another country, against which only securities of that country have been bought, being charged against the relative non-resident income rather than being prorated by the Canadian tax officials between taxable and non-taxable income.

(bb) Actual

"not more than 25% of its gross revenue for the year was from interest."

Comment

It is our recent experience that the relatively high yields of debt securities and lower yields of common equities, as compared with earlier periods, have required investment companies to hold considerably less than 25% of the former in their portfolios in order to qualify under this paragraph. Investment in preferred shares, to make up part of the fixed income proportion when a defensive position is required, is not deemed to be an entirely satisfactory alternative because of the risk element and possible short-term lack of marketability.

Attention must also be drawn to the fact that numerous occasions arise when an investment company, having sold a major equity holding and while awaiting an opportunity to reinvest the proceeds in another equity, must temporarily

place these funds to earn interest income. The timing of such sales and reinvestments, if they are to be undertaken prudently, often results in the buildup of substantial interest earnings which significantly distort the income proportions.

Furthermore, we believe that this limitation could penalize some investment companies whose policies might be aimed at developing, by way of loan investments, new innovative enterprises from which dividend income would not be expected for a number of years.

Proposed
That the limitation be increased from 25% to 35% and that the averaging of income proportions over a period of years be permitted.

(c) Actual
"at no time in the year did more than 10% of its property consist of shares, bonds, or securities of any one corporation or debtor other than Her Majesty in the right of Canada or of a province or a Canadian municipality."

Comment
This limitation prevents a number of the largest and most effective closed-end companies from qualifying under the Act. It is felt that these companies, if provided with adequate incentives, could come closest of all vehicles in the private sector to fulfilling some of the major objectives of the Watkins Task Force.

Proposed
That the allowable percentage be increased from 10% to 25%.

(d) Actual
"at no time in the year was the number of shareholders of the corporation less than 50, none of whom at any time in the year held more than 25% of the shares of the capital stock of the corporation."

Comment
There are no apparent advantages or disadvantages to this clause.

(e) Actual
"an amount not less than 85% of its taxable income plus exempt income for the year (other than dividends or interest received in the form of shares, bonds or other securities that have not been sold before the end of the taxation year) minus
(i) 21% of its taxable income for the year, and
(ii) taxes paid in the year to other governments,
was distributed to the shareholders before the end of the year."

Comment
Although the provisions of this paragraph are not in themselves objectionable, a problem arises because of the already mentioned impossibility of forecasting income accurately, in any year, before declaring and actually paying out the required dividends.

Proposed
That the averaging of such dividend payments over a period of years be permitted, as well as a reasonable extension beyond each year end to make a final distribution.

It has been the experience of some investment companies that, as the result of inadvertent oversights, or for reasons beyond their control, there have been occasions when they have found themselves in default with respect to one or more of the restrictive provisions of Section 69. The penalty of disqualification has usually been punitively disproportionate to the infraction. It is recommended, therefore, that in such cases an investment company be allowed a reasonable period of time to rectify the default.

OTHER RECOMMENDATIONS

The general purpose of investment is to obtain as large a return on invested capital as possible, consistent with a reasonable degree of prudence; this return includes a combination of growth of income and growth of capital. Investments are not made by a closed-end company with a view to realization of quick capital gains, but if the investment policy is properly oriented towards long-term growth, the current income received is not likely to be large.

One of the problems faced by closed-end companies is that for the most part, the only tangible benefit received by their shareholders is in the form of dividends, which depend primarily on current income. Growth of capital, as reflected in growth of net asset value per share, over the short-term, confers no benefit on the continuing shareholder of the closed-end company. As a consequence, such a shareholder must be content with what is likely to be a very gradual increase in the dividends he receives. That being so, it is small wonder that the shares of closed-end companies habitually sell at considerable discounts from net asset value. It is this discount which makes the raising of new equity capital by such companies extremely difficult, if not impossible.

This special role of closed-end companies and their resulting handicaps under present legislation, as well as some suggestions for remedial action, are outlined on pages 269, 270 and 271 of the Watkins Report.

In our submission to the Minister of Finance, dated June 23, 1967, we recommended the legislative enactment of a number of incentives to encourage equity investment in Canada, while enhancing the role of closed-end companies in the financing of new developments and the rationalization of existing enterprises. These suggestions are repeated and discussed hereunder and we are convinced that their enactment, in conjunction with the implementation of our above recommendations with respect to Section 69 of the Income Tax Act, would resolve many of the problems of closed-end companies as set forth in this present submission.

1) Legislation enabling qualifying investment companies to distribute net realized gains on sale of investments as tax-free dividends, thereby increasing

the flow of free funds for further equity investment on the part of individuals and permitting shareholders to obtain tangible benefits from the results of successful investment performance. In contrast with ordinary industrial companies, closed-end companies pay out such large percentages of earnings each year that their surplus accounts reflect comparatively small proportions of retained earnings.

2) Legislation enabling qualifying investment companies to purchase their own shares on the market out of surplus and, in some special instances, out of capital. Such a privilege would tend to increase the market stability of closed-end companies' shares. Moreover, the shares so purchased could be used eventually in payment for acquisitions, as a reserve against conversion of convertible securities, or for other corporate purposes. Reference is made to the recommendations of the Lawrence Committee and to Section 39 of the Ontario Business Corporations Act, 1968, which as Bill 125 was given first reading in May of this year. Nevertheless, we do not believe that this provision alone would completely eliminate the market discount from net asset value.

3) Legislation enabling qualifying investment companies to pay tax-free stock dividends. This is one of the best methods for expanding the number of shares available for Canadian equity investment, or for the retention of cash where required for expansion. A further suggestion is that such investment companies be permitted to give shareholders as extra dividends, without attracting tax, share purchase warrants entitling them to purchase common shares over a period in the future at, say, the break-up value on the date of issue of the warrants. It is believed that such a practice would tend to close the gap between the net asset value and the market value of these companies' shares.

4) Legislation enabling qualifying investment companies to spin off to their shareholders shares of holdings and subsidiaries, some of which are not publicly traded, as tax-free dividends. This would be an incentive to divest, thereby broadening ownership of Canadian equities and diminishing the prospects of large monopolies. The recently released study by Professor G.R. Conway, prepared for the Toronto Stock Exchange, highlights the need for increasing the "available" supply of Canadian equities for individual investors.

5) Legislation increasing the dividend tax credit from its present 20%, as a further incentive for Canadian investors to increase their Canadian equity investments and a further alleviation of the double taxation of equity earnings.

6) Legislation moderating the impact of succession duties and estate taxes. These reduce the availability of investment capital for productive employment in support of the nation's economic growth and often result in forced sales to

foreign ownership. Reference is made to the recent report of the Ontario Economic Commission on this matter.

We must express our serious concern over the fact that the apparent advantages of tax-free gifts and successions between husbands and wives, as provided in the October, 1968 Budget, will be far more than offset by the sharply higher Estate Taxes eventually payable by surviving spouses, combined with the provincial succession duties against which no credits may be allowed. It is our conviction that the end results of these added burdens can only be a reduction of available investment capital and a further discouragement of Canadian entrepreneurship.

We believe that most of the above recommendations are consistent with those of the Watkins Task Force, particularly Section V iv. 3(c) on page 405 of the Report, which states:

"Take steps to improve the position of the closed-end funds so that they will become more effective vehicles for the exercise of Canadian entrepreneurship. Such steps could include permitting the funds to buy their own stocks under certain controlled conditions, and the right, if they so elect, to declare and distribute their capital gains without special penalty."

CANADA DEVELOPMENT CORPORATION

It has been reported that the government will soon announce legislation establishing this organization. According to the Watkins Task Force:

"The Canada Development Corporation should be a catalyst to encourage private consortia."

Nevertheless, we must stress the following quotation from our submission to the Minister of Finance, dated June 23, 1967:

"If, despite all the possible pitfalls, a Government sponsored investment company were approved by Parliament, it would, in effect, be competing for the available supply of public savings with a great many Canadian investment companies of both the closed-end and open-end types. This being the case, in order to ensure that such competition is on a fair and equitable basis, we respectfully suggest that it should be subject to all the requirements which other investment companies in Canada must meet. We furthermore strongly urge that its functions and machinery should be complementary to, rather than in conflict with existing financial institutions."

It can be expected that excellent management and direction will be provided for the Canada Development Corporation. Yet, some of Canada's most able administrators and financiers have directed the affairs of numerous closed-end companies, under present legislation, without succeeding in eliminating or even significantly reducing the market discount from break-up value of their shares.

THE CARTER REPORT

Many of the questions raised in the Report of the Royal Commission on Taxation are fundamentally relevant to the matters discussed by the Watkins Task Force. It had been our intention to highlight in this present submission some of the more significant points raised in the Association's brief of October, 1967, regarding the Carter Report, addressed to Mr. Sharp. However, after seriously reviewing that document, we decided to re-submit it in its entirety herewith, as Exhibit "C."

In our said submission of last year, we explained the objections of this Association to a capital gains tax in Canada, particularly with reference to its impact on closed-end companies. On page 15 of Exhibit "C", we stressed the distinction between investment dollars and consumption dollars, which contrasts directly with the basic Carter philosophy that all dollars are the same. We also appended (pages 36 to 38 of Exhibit "C") a number of suggestions for consideration in the event that the Government should decide to implement a capital gains tax. Our final suggestion was as follows:

> "Special consideration should be given to the difficult position in which the closed-end companies (including the proposed Canada Development Corporation) would find themselves if a capital gains tax is imposed. Two alternatives are proposed:
>
> a) Capital gains which are re-invested within a reasonable period of time would be tax-free; and
>
> b) The closed-end companies themselves would be free of capital gains tax, but the shareholder of such a company would be subject to a possible capital gains tax if and when he sold his shares at a profit."

CONCLUDING REMARKS

We respectfully submit that the best and perhaps only way to attain in these matters the objectives of the Government, as well as those set forth in the Watkins Report and by our own organization, is through a realistically co-ordinated approach. In this, we suggest the Government should provide the lead in formulating practical ground rules and soundly conceived legislation.

A fair balance between permitted flexibility in management decisions, adequate controls to discourage abuses and the necessary incentives to attract new capital will help closed-end investment companies to play their part even more actively in increasing Canadian ownership and control of economic activity in this country.

Respectfully submitted,

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

Henry R. Jackman
President

J.V. Emory
Vice-President

EXHIBIT "A"

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

QUARTERLY REPORT ON ASSET AND SHARE VALUES OF MEMBER COMPANIES

As at September 30, 1968

	Net Assets (000)	Break-Up Value Per Share	Approx. Market Value	Discount
	$	$	$	%
All-Canadian-American Investments Ltd.	779	.80	.55	31.25
Canadian & Foreign Securities Co., Ltd.	17,243	31.65	15.00	52.61
Canadian International Invest. Trust Ltd.	7,343	53.43	33.00	38.24
Central Fund of Canada Limited - "A"	1,366	14.92	9.50	36.33
Consolidated Diversified Std. Secs. Ltd. -Pfd.	1,256	104.69	40.00	61.79
Dominion & Anglo Investment Corp. Ltd.	22,293	37.80	18.00	52.38
Dominion-Scottish Investments Limited	19,650	20.33	13.375	34.19
Economic Investment Trust Limited	25,574	19.86	13.625	31.37
The Fulcrum Investment Company Ltd.	8,505	6.20	5.50	11.29
Great Britain & Canada Investment Corp.	27,418	23.51	19.00	19.18
Life Investors Limited	2,651	8.84	10.75	21.60 (Prem)
Magnum Fund Limited*	21,107	53.76	36.00	33.04
MP G Investment Corporation Ltd.**	7,334	6.60	5.25	20.45
Pacific Atlantic Canadian Invest. Corp. Ltd.	5,001	5.633	4.00	29.95
Power Corporation of Canada, Limited	230,000	17.00	12.00	29.41
Toronto and London Investment Co. Ltd.	17,203	5.12	3.625	29.10
United Corporations Limited - "B"	81,474	21.03	16.00	23.92
TOTAL	491,189			

* As at June 30, 1968
** As at July 31, 1968

EXHIBIT "B"

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

PERCENTAGE DISTRIBUTIONS OF COMPOSITE PORTFOLIO

December 31, 1967

Geographical Distribution

Invested in Canada	82.9 %
Invested in the U. S.	13.8
Invested Overseas	3.3
	100.0 %

Distribution by Class of Security

Bonds, debentures, mortgages, etc.	4.7 %
Non-voting preferred shares	9.3
Common and convertible or voting preferred shares	86.0
	100.0 %

Distribution of Voting Equity Portfolio by Class of Industry

Public utilities	14.1 %
General manufacturing	14.1
Banks and finance	12.7
Petroleum and pipelines	11.1
Paper and forest products	9.1
Transportation	8.1
Metals and mining	7.5
Chemical, drug and textile	4.3
Food, beverage and tobacco	3.3
Heavy industry	2.9
Merchandizing	2.4
Building materials and construction	1.3
Miscellaneous	9.1
	100.0 %

EXHIBIT "C"

SUBMISSION

of the

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

to

THE HONOURABLE MITCHELL M. SHARP, P.C., M.P.,

THE MINISTER OF FINANCE

regarding

THE REPORT

of

THE ROYAL COMMISSION ON TAXATION

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES MEMBERS

NAME	APPROXIMATE NET ASSETS JUNE 30, 1967 (000)
All Canadian-American Investment Limited	$ 633
Anglo-Scandinavian Investment Corp. of Canada	17,626
Betrust Investment Corporation Ltd.	2,725
Canadian & Foreign Securities Co., Ltd.	14,892
Canadian International Investment Trust Ltd.	6,717
Canadian Power and Paper Securities Limited	16,244
Central Fund of Canada Limited	1,020
Consolidated Diversified Standard Securities Ltd.	1,085
Dominion & Anglo Investment Corporation Limited	17,456
Dominion-Scottish Investments Limited	17,925
Economic Investment Trust Limited	23,085
The Fulcrum Investment Company, Limited	7,629
Great Britain & Canada Investment Corporation	24,727
Life Investors Limited	2,081
Magnum Fund Limited	15,663
M P G Investment Corporation Limited	7,157
Pacific Atlantic Canadian Investment Company, Ltd.	4,712
Power Corporation of Canada, Limited	164,700
Toronto and London Investment Company, Limited	14,722
United Corporations Limited	72,254
TOTAL	$433,062

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

DIRECTORS

Mr. W. A. Arbuckle	-	Director
Mr. J. V. Emory	-	Vice-President
Mr. F. M. Fell	-	Director
Mr. J. R. Jackman	-	President
Mr. L. W. Skey	-	Director
Mr. M. L. Smith	-	Director
Mr. W. I. M. Turner, Jr.	-	Director

INDEX

		Page
1.	Introduction	- 1-
2.	The Investment Business; The Function of Supplying Capital	- 3-
3.	The Adverse Effects of Increased Costs of Borrowing on Bond Markets, Small Businesses, Governmental Borrowing, Housing, Financial Institutions and Importing Capital.	- 4-
4.	Application of a Capital Gains Tax to Equity Investments.	- 6-
5.	Adverse Effects of the Application of the Reports proposals including a Capital Gains Tax on Closed-End Investment Companies and other Pools of Canadian Investment Capital.	-11-
6.	Dollars Differ - A Buck Is Not A Buck	-15-
7.	Special Circumstances Surrounding Closed-End Investment Companies.	-16-
8.	Concluding Remarks.	-17-

APPENDIX "A"
Contradictory Effects on the Investment Returns of Forty Specific Major Canadian Corporations. -19-

APPENDIX "B"
Schedules and Notes to Section Five Showing The Adverse Effects On a Specific Canadian Investment Company Had the Recommendations of the Royal Commission on Taxation been in Effect since 1933. -31-

APPENDIX "C"

Vital Suggestions Should the Government Decide to Implement A Capital Gains Tax to which We are Opposed. -36-

The Honourable Mitchell M. Sharp, P.C., M.P.,
Minister of Finance,
Government of Canada,
Ottawa, Ontario.

Association of Canadian Investment Companies

Submission re:

The Report of the Royal Commission on Taxation

Dear Mr. Minister,

This submission of the Association of Canadian Investment Companies, representing a group of closed-end investment companies with total assets approaching $450 million, is written in response to your request for submissions from Canadian taxpayers on the Report of the Royal Commission on Taxation. In addition to this brief submitted on its own behalf and prepared with the assistance of Peat, Marwick, Mitchell & Co., and certain economists, this Association also provided financial support for a brief to be submitted by The Toronto Society of Financial Analysts. Our support for the Society was entirely financial and from the financial community viewpoint. No attempt was made to influence the Society in any way in the preparation of their brief.

Introduction

This submission is not a broad endorsement or criticism of the Report of the Royal Commission on Taxation, but is directed toward subjects about which we have knowledge; principally, the subject of

SUBMISSION

of the

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

to

THE HONOURABLE MITCHELL M. SHARP, P.C., M.P.,

THE MINISTER OF FINANCE

regarding

THE REPORT

of

THE ROYAL COMMISSION ON TAXATION

Association of Canadian Investment
Companies,
Suite 1510, Terminal Towers,
105 Main St. East,
Hamilton, Ontario, Canada.

October, 1967

capital costs and returns. We offer comments on matters which affect our member corporations, the investment process and individual Canadians.

We take it as evident from the Government's actions, since publication of the Report, that it accepts the burden of proof of demonstrating that it has been properly satisfied before taking any action to implement any part of the Report, that:

1. the ultimate effects of the proposals would benefit the country as a whole:

2. the margin of benefit of the proposals over the present system of taxation would be sufficient to make the major disruptions inherent in their adoption worthwhile;

3. the consequences of these recommendations be forseen and evaluated;

4. this revolutionary experiment in taxation can be reversed if it proves harmful to the Canadian people and economy.

The Carter Report does not, within itself, provide the Government with the means of discharging that burden of proof to the point where the Report's proposals can be accepted. We realize the problems which the Government faces by postponing a decision on Carter, in that the greater the lapse of time before action (if any is to be taken) the greater the loss of momentum generated by the Report at the outset. Also, the country meanwhile must remain in a degree of suspense. Nevertheless, in a decision as important as this, we urge you to concur in our view that it would be a far more serious mistake to act hastily in the attempt to "strike while the iron is hot", than to risk

the loss of some enthusiasm and momentum in favour of a balanced judgment after appropriate efforts to project the consequences.

We are greatly concerned with the creation and preservation of investment capital, and thus define some of its characteristics which are important to bear in mind when considering the Report. Investment capital is international; it is, when not restricted, extremely fluid; it always weighs the potential opportunities against the potential risks involved; it frightens easily; it abhors uncertainty outside of commercial risk; and, finally, investment capital is absolutely essential to the development of Canada. The uncertainties which the Carter proposals will engender will, we believe, drive investment capital away from and out of Canada.

The Investment Business: The Function of Supplying Capital

The investment process, in theory, and usually in practice, consists of a continuous search for the highest possible rate of return on capital, within the limits of acceptable risk. The greater element of risk involved, the greater the potential return must be, if capital is to be attracted.

To this definition of the investment process must be added one practical complicating factor - taxation. Adding this factor, then, the definition of the investment process becomes "a continous search for the highest possible rate of after-tax return on capital within the limits of acceptable risk".

A Government which alters either the after-tax rate of return on capital or the risks involved in the investment of that capital, will, whether deliberately or not, alter the flow of that capital. In our judgment, the Carter proposals certainly alter the after-tax rate of return on capital and probably alter the risk factor, if only because of the uncertainties they engender. This would result in a financial tragedy for Canada at this stage of our development by causing not only a discouragement of capital inflow, but, even worse, a flight of capital.

The Adverse Effects of Increased Costs of Borrowing on Bond Markets, Small Businesses, Governmental Borrowing, Housing, Financial Institutions and Importing Capital.

Bond Markets:

As investment companies we are concerned about the cost of all capital. Bond markets throughout the world, are, at the time of writing, in trouble, and that market in Canada is certainly no exception. The erosion of the purchasing power of money over the years has made not only the professional investor, but also the man on the street increasingly reluctant to invest his money in long term bonds. As a consequence, we are rapidly approaching the point where the only real buyers of long term bonds who are left are those whose obligations can be measured strictly in terms of the monetary unit. The fact is that the relative attractiveness of long-term bonds as compared with other investment vehicles has deteriorated materially in recent years to the point where interest rates are now at their highest point in over 40 years.

The Carter proposals can only result in a further deterioration in the market for bonds and other interest bearing obligations, and hence in even higher interest rates.

Small Businesses:

There are individuals and enterprises, such as most small new businesses, which cannot generate their capital by any other way than borrowing. At a certain level of interest rates such borrowing becomes economically prohibitive.

Government Borrowing:

The adverse effect of higher interest rates on government borrowing at all levels will create obvious difficulties, and particularly onerous problems at the provincial and municipal levels, where a great deal of the money borrowed is used to provide essential public services.

Housing & Mortgages:

An even more serious effect, at least from the point of view of the individual Canadian resident, would be the effect of the Carter proposals on both the supply and cost of mortgage money. The result would almost certainly to be accentuate further what is, even under present conditions, an almost critical housing shortage.

Financial Institutions:

One final result of the implementation of the Report might not be so obvious, but is worth mentioning. The rapid rise of interest rates in recent years has already put a severe strain on some of our

financial institutions - particularly on those that receive deposits of relatively short-term from the public in one form or another and re-lend the money at comparatively long-term in the form of mortgages and consumer credit. We are strongly of the opinion that anything that would suddenly increase the interest rates paid on these deposits from their present level would prove disastrous to these institutions and result in a sizeable number of bankruptcies, with loss to the public at large and the likelihood of a spiralling series of financial crises.

Importing Capital:

Finally, we believe that it is naive to expect that a high level of interest rates in Canada would attract a greatly increased flow of foreign capital into our bond market. Apart from any consideration of our obligation to keep our exchange reserves within agreed limits, foreign governments, including that of the United States, are unlikely to permit with indifference a higher rate of capital outflow from their own countries than now exists.

Application of a Capital Gains Tax to Equity Investments.

One of the stated objectives of the Carter proposals is to make Canadian equities more attractive to Canadian residents. We question if the Report is on target.

In the case of equities, the after-tax return on capital consists of two elements which are like two pockets of the same suit. The first of these is current income received in the form of dividends. The second,

if the investment is a successful one, is capital appreciation. Under our present tax laws, dividends and capital gains as returns on invested capital are treated differently. Dividends are taxable and capital appreciation is not. The net return on capital therefore consists of the net income after taxes plus the capital appreciation free of tax and it is this total prospective net return on capital, balanced against the degree of risk involved, which determines the attractiveness of an investment.

Anything which increases the net return on capital tends to induce the prospective investor to accept a higher degree of risk and vice versa. It follows that, if for any reason one group of investors receives a higher net rate of return from the same investment (involving the same amount of risk) than does a second group, the investment will tend to move from the second group to the first.

This, in simple terms, is the danger of a capital gains tax in Canada, whether such a tax is imposed independently or within the Carter recommendations. We are, comparatively, a capital-poor country in relation to our resources, potentialities and development needs. It is an investment truism that it is easier for a wealthy investor to risk a given amount of money in a speculative enterprise than for an investor of modest means. This same principle applies to nations such as the United States and Canada. If, through imposition of a capital gains tax in Canada, the present investment balance should

be tilted in favour of the American investor, the high-growth, high-risk investment opportunities in Canada, on which a large part of our future development depends, assuredly would flow into American hands.

Much has been heard in recent years about the necessity of repatriating Canadian equities if "Canada is to maintain control of its own economic destiny". In the judgment of this Association, it is beyond our national economic power to repatriate, even during a very long period of time, the ownership of the large, well-established American subsidiaries operating in this country. Our limited capital resources would be much better employed in starting and supporting new industries (with all the risks involved) and carefully nurturing them with all possible incentives. Any taxation policy that reduced the incentives for some Canadian residents to start and for others to support new Canadian ventures, automatically reduces the amount of risk that Canadian investors are likely to be prepared to accept in these ventures. This country was built by taking risks and can only reach its full potential if the risk-takers are encouraged by the expectation of the fullest possible return on their capital.

This Association is firmly opposed to a capital gains tax in Canada. We are convinced that it would slow down the rate of development of the country and, by doing so, inhibit the growth in the standard of living of the Canadian people. It hardly seems necessary to add that all levels of government in Canada would be faced with a lower tax base

from which to meet their obligations.

Implementation of any form of capital gains tax in this country that proved to be more onerous to the Canadian investor than the American capital gains tax is to a resident of that country would, in our opinion, be little short of a national disaster. It could only ensure that the best investment opportunities in Canada, carrying as they do a high degree of risk, would flow into American hands and that the repatriation of such investments would take place (if at all) at a considerably higher price when they had become stable and relatively free of risk. This, is the unpalatable filling inside the tax-coating of the Carter pill.

We disagree with the thesis of the Report that its proposals would make Canadian equities more attractive to Canadian residents. It is our contention that it would make only certain equities more attractive, and that for Canada they would be the wrong kind of equities.

Shifting the tax impact away from income alone and on to both income and capital appreciation, would change the whole investment equation. The new factors that would be introduced would be so complicated as to be likely to freeze Canadian investors, amateur or professional, into a state of indecision and ineffectiveness for a considerable period of time until they could make some kind of sense out of the resulting chaos.

An important study prepared by Peat, Marwick, Mitchell & Co., on the effects of the Carter proposals on the net investment

return on the equities of forty major Canadian public companies is included as Appendix "A" of this submission. The probable effects of the Commission's proposals, which on the surface appear to be simple, in practice turn out to be so complex that we, a group of professional investors, have found it necessary to retain tax experts to assist us in our analysis. We are concerned by these investment complexities and the average investor will certainly be quite bewildered.

Our first general observation is that the practical effect of the Report's proposals on the relatively simple investment equation is frighteningly complex. The part in the equation played by the taxation factor under the present system of taxation would become the dominant factor under the Carter system.

The taxation factor becomes quite unpredictable under the Carter system in that the taxes to be paid by the individual investor depend on the tax policies adopted by the companies in which his money is invested and hence are beyond his direct control.

Our second general observation is that, in a good many instances, the 'wrong' investment opportunities - 'wrong' in the sense that they are likely to contribute least to the future development of Canada - become more attractive to the Canadian investor compared with his American counterpart and the 'right' investments - in the same sense - become less attractive to the Canadian investor compared with his American counterpart. The present investment balance would be

therefore completely altered and the result would be that the shares of young, vigourous, growth companies would tend to flow into American hands while the shares of older, better-established companies would tend to flow into Canadian hands. In essence then, the American investor is likely to be in a position to buy into our most promising investment situations at an early stage when modest investment is involved; hold these situations through their period of greatest growth; and sell them back to Canadians without capital gains tax to Canada when they have matured and a substantial investment is involved. This would not only fail to solve the problem of "Canada for Canadians" but would actually make it worse and bring about serious consequences for our balance of payments.

Adverse Effects of the Application of The Report's Proposals including a Capital Gains Tax on closed-end Investment Companies and Other Pools of Canadian Investment Capital.

The function of an investment company is to provide for the small and large investor a diversification of holdings that otherwise might be impossible to achieve and to provide trained and specialized supervision that the average layman is usually not competent to supply on his own. In short, investment companies provide a means of indirect investment in Canadian industry.

These companies generally undertake what is judged to be a reasonable proportion of risk-potential growth investment and one responsive to calls for new equity capital. The investment company

concept of distributing risk and providing continuous surveillance is basically sound but the test is in the application of the theory. Performance depends in the last analysis on management and that is essentially what the purchaser of investment company securities is buying. The managements of the Canadian Investment Companies are resident and established in Canada and truly Canadian.

In addition to serving the individual, investment companies serve society generally by providing another conduit for the flow of savings from the saver into industry. Total net assets of open-end funds increased from $1,056.3 million in 1962 to $2,688.9 million in 1966. Closed-end funds increased from $485 million in 1962 to $760.7 million in 1966. (Source: The Financial Post 1967 Survey of Investment Funds, page 30).

Closed-end investment companies much like industrial and other business corporations have a relatively fixed amount of capital stock outstanding. The management may offer an additional block of shares but this has happened infrequently and to only a small extent, in recent years. The market price of the shares depends not only upon the market value of the underlying securities but also upon the demand and supply of the investment company shares themselves in the open market. For this reason, shares of closed-end companies may often be purchased at substantial discounts below their asset or liquidating value. The discount tends to be greater in weak markets

and to diminish in strong markets.

The closed-end investment company chosen for the test by Peat, Marwick, Mitchell & Co., had at the end of 1966 total net assets at book value of $48 million (at market value the net assets were in excess of $63 million). The Company has qualified continuously under Section 69 of the Income Tax Act. Its effective management and control is situated in Canada and is Canadian. Approximately 30% of its shares are held by non-residents.

The test was made to determine the extent to which the company's capital investments would have been reduced had the Commission's tax system been introduced immediately after the organization of the company in 1933.

The results reveal that the capital in the private sector at December 31, 1966, provided by this one investment company alone of $48 million, would have been reduced by somewhere between $17 to $25 million. The capital provided to the private sector through this one company would have been approximately 50% less than it actually was under the tax system and facts that prevailed. Only 12% of the test investment company's investments at December 31, 1966 were other than Canadian equities or bonds.

There are a substantial number of non-residents who have invested in Canadian investment companies. Under the Commission's system of taxation, it would be unattractive for non-residents to invest through a Canadian investment company which is subject to a 50% tax

on capital gains realized. The non-resident would be far more likely to place his capital in an investment company resident in his own country.

Whether the company could have altered its investment practices to prevent such a disastrous infringement on its growth is subject to question. It is also questionable whether any investment company would have remained resident in Canada if it had been free to move its assets elsewhere. Investment companies usually hold a fairly diversified and balanced investment portfolio. A shift in the portfolio towards dynamic growth stocks in order to maintain the rate of growth could upset the balance dictated by good investment practices. A shift in the portfolio towards bonds or investments in static companies in order to reduce the impact of the tax on economic gain would be a move in the reverse direction and would in itself cause an impairment in growth.

The revenue presently generated is the product of a specific investment base. If that investment base is substantially reduced it would appear reasonable to assume a substantial reduction in the product thereof and ultimately a reduction in future tax revenues.

Appendix "B" demonstrates statistically what would have happened to one Canadian pool of capital over a thirty-three year period had the Carter proposals been in effect. Aside from our deep concern about the effect on a typical member company of our

Association, it is also typical of what would happen to any pool of Canadian capital, whether owned by a large number of small investors through the medium of an investment company or privately.

Dollars Differ - A Buck Is Not A Buck

We take strong issue with the basic assumption of the Carter Report that all dollars are the same. A dollar in the hands of an investor is NOT the same as a dollar in the hands of a consumer, nor is it the same as a dollar in the hands of government. We believe that there is no inequity in treating capital gains differently from income gains. A dollar invested as capital is a working, building dollar; a dollar spent on consumption is a rapidly circulating dollar representing value which is consumed or burnt up. Too small a pool of invested capital dollars results in a poor country, generating few dollars for re-investment or consumption. Too large a supply of dollars for consumption results in inflation and the erosion in value of all dollars. A system of taxation which transfers, through the government medium, large numbers of dollars out of the vital investment pool and into the consumer area will accordingly impoverish the country of its real wealth and create further unmanageable inflation.

Any form of capital gains tax can have no other effect than to reduce the size of the collective pool of capital available in Canada and hence reduce the potential production capacity of this country.

Special Circumstances Surrounding Closed-End Investment Companies.

Firstly, a closed-end fund is a pool of investment capital in the true sense of the word, in that any proceeds received from the sale of one security, whether at a profit or a loss, are immediately re-invested in another security. The process of disinvesting is not carried out in order to achieve a liquid capital gain as such, but in order to re-invest in another and, hopefully, more productive situation. In carrying out this process, we feel that we are fulfilling a very real economic function.

Secondly, closed-end funds have no continuous inflow of new capital such as is the case in mutual funds and in recent years have been largely precluded from raising new equity capital through the issue of common shares because of the sizeable discount from net asset value at which their common shares normally trade on the market. If they were taxed on any disinvestment made at a profit, the amount of the tax paid would be a permanent loss of capital to the company, unavailable for re-investment. Under present conditions, there is no way in which the loss of that capital can be recaptured by issuing new shares, except at a considerable discount from their net asset value.

Thirdly, the closed-end fund would not only lose capital by the amount of a capital gains tax, but would also lose the income on that capital. The final result is that it would be forced, through tax considerations, not investment considerations, to avoid the process of

disinvestment and reinvestment as much as possible. Should this occur, the closed-end investment holding company would cease to perform its economic function and stagnate, and its lack of activity would result in a deterioration in the liquidity of Canadian markets which, in that respect, already leave something to be desired.

Concluding Remarks

We are deeply concerned about the future of our country and its economic growth, should the Carter recommendations be adopted, and we are firmly against any form of capital gains tax in Canada at this stage of our national development. In taking this position, we are doing so with the best interests of the country as a whole at heart and not simply from the point of view of narrow self-interest.

Despite our strong fundamental objections, should the Canadian Government decide the impose a capital gains tax, we have outlined several suggestions in Appendix "C" hereto.

We have one further practical objection to the revolutionary proposals of the Royal Commission on Taxation. Among the many accounting complications necessitated by the Report, those involved in keeping track of an investment portfolio would be appalling. While it would be difficult enough for the members of this Association, we, at least, have trained accounting staffs and the professional advice of our auditors. The difficulties for the individual Canadian citizen, however, in managing his own affairs including an investment portfolio

would, in our judgment, be insurmountable. The accounting problems involved, when added to the investment complexities more fully discussed above, would seriously jeopardize the investment climate of Canada. In our opinion, we would experience a steady and continuous flight of capital that would be disastrous for our country.

Respectfully submitted,

On behalf of the Board of Directors,

Henry R. Jackman,
President.

James V. Emory,
Vice-President.

APPENDIX "A"

CONTRADICTORY EFFECTS ON THE INVESTMENT RETURNS OF 40 SPECIFIC MAJOR CANADIAN CORPORATIONS

It is the opinion of the Association that the Commission is gravely in error in looking upon capital gains as being the same as income. This opinion is in no way modified by our reference under this sub-heading to the aggregates of the types of gains in economic power. The use of the aggregation and of the related terms adopted by the Commission are applied herein. The Tables referred to in this appendix have been prepared by applying the Commission's recommendations to the reported historical facts of 40 major public companies which represent more than one-third of the Canadian companies included in the January 15, 1966 Financial Post listing of "The 100: Ranked by Assets" and approximately 60% of the total weight assigned by the Toronto Stock Exchange to all companies used in developing its index.

The Commission assumed that an individual's gain in economic power to command goods and services, for personal use, derived through the corporate sector, would arise in equal proportions each from: (1) dividends, (2) allocated retained earnings and (3) goodwill gains. This was believed to be a conservative assumption. The assumption is that on the average two-thirds of the increase in the shareholder's economic power will have been taxed against the corporation and will be the subject of refund of tax to the individual

shareholder where his effective rate of tax was lower than the contemplated peak rate. The other one-third would be taxed at the individual's full rate.

The portion which heretofore has not been subject to tax but would be brought into tax at full personal rates without any credit actually might be as high as 96%, i.e. the portion being subjected to no tax or to a tax credit being less than 4%. This is revealed in Table 1.

A study of Table 1 on page 25 reveals that there is no pattern in the ratios between the various elements of the aggregate gain in economic power of the shareholder derived through the corporate sector. There would be remarkably few cases where the accumulation within the corporations of fully taxed retained earnings would equal or exceed the dividends actually paid out.

Further observations from Table 1 are as follows:

(a) Where the market gain is nominal but allocated fully taxed retained earnings are significant an investor who disposes of his shares may receive a benefit of up to 50% thereof. (e. g. Canada Cement).

(b) A capital intensive company during its developing period is not apt to generate fully taxed income for some years and consequently market gains plus accumulated dividends become taxable without the benefit of tax credits when the shares are sold (e. g. Trans-Canada Pipe Lines).

(c) A significant change in the relative position of an investment is likely to occur when one of the key elements introduced by the proposals is substantially higher or lower than the other two elements (i.e. dividends, fully taxed retained earnings and "goodwill") a factor which occurs in approximately 75% of the companies studied.

(d) Estimated fully taxed retained earnings for "Carter" tax purposes represent less than one-half of the actual retained earnings. In the Report significantly greater portions of fully taxed retained earnings have been employed erroneously in providing examples and estimates.

(e) Of the companies selected, 75% fall outside the mid range of between 30 and 70% market gains. The greater the number of companies in positions somewhat removed from the mean, the greater likelihood of a major dislocation in the market place.

(f) An investment in a static company will be in a stronger position relative to one in a dynamic growth company or to its own position at present. The reverse applies to an investment in a dynamic growth company.

Table 2 on page 28 indicates how widely the change would vary in the tax burden upon the shareholder between the present and

proposed tax systems. This depends on the particular corporation in which the investment had been made and the circumstances at time of investment and realization or deemed realization. Table 2 also indicates the tax burden against a shareholder in the same company under the identical circumstances except for residence in the United States rather than in Canada. Table 2 gives examples of Canadian companies whose U.S. shareholders would be subject to a lesser tax burden then that applicable under the Commission's recommendations against shareholders resident in Canada.

Table 2 also provides an illustration of the nature of the changing relationships under isolated comparisons as follows:

(a) The two companies selected from the grouping which experienced market price increases of less than 30% over the seven year period (static performance in the market place) are from the pulp and paper industry. The shares of both companies experienced comparable increase in price. The return on an investment in Abitibi would be up to 20% greater compared to an investment in Domtar under the proposed system.

(b) A return on an investment in Union Gas is more than three times the return for an investment in Abitibi under the present system. Under the proposed system that differential was cut in half.

(Is there any reason why an investment in Abitibi should be made relatively twice as favourable as one in Union Gas?)

(c) The relative position of the investments in the two companies selected from the grouping with share gains of between 30 and 70% is just about completely reversed in relationship to each other.

(d) An investment in Canadian Tire would be made relatively more attractive than one in Union Gas.

(e) The proposed system would have changed a loss under the present system into a small gain with respect to an investment in Dominion Steel & Coal.

(f) The relative position of an investment in Oshawa Wholesalers is substantially changed. And not for the better.

Investors in equities do not invest in averages. They invest in the shares of specific corporations. The foregoing reveals that under the Commission's recommendations the change in the tax burden from the present system would vary to widely different degrees depending upon the anticipated outcome in each contemplated specific investment. The tax factors that would have to be weighed by the prospective investor considering any particular investment would be very much more complex than it is under the present system or under the system in the U.S.A. or the United Kingdom.

We deduce from the foregoing that many investment decisions would have been substantially different had the Commission's system of taxation prevailed over the past seven years.

TABLE 1

Study for The Association of Canadian Investment Companies

Analysis of Certain Per Share Historical Results After the Hypothetical Application of the "Carter" Recommendations for Major Public Companies

Accumulated for Seven Financial Periods 1960 - 1966

	Ranked by market price increase ratio	Actual accumulated dividends for the period	Hypothetical increase in fully taxed retained earnings for "Carter" tax purposes for the period	Hypothetical accumulated "goodwill" gains for "Carter" tax purposes for the period	Actual market gains for the period	Actual increase in retained earnings for the period
Investments which experienced a market price increase of less than 30%	%	$	$	$	$	$
Dominion Steel & Coal	(42.5)	2.80	1.13	(7.51)	(6.38)	.80
Fraser Cos.	(16.8)	9.40	(1.13)	(3.50)	(4.63)	5.48
Price Bros.	(14.9)	4.77	.01	(2.22)	(2.21)	2.40
Consolidated Paper	(7.3)	14.40	(.34)	(2.77)	(3.11)	4.97
Anglo Canada Pulp & Paper	(2.2)	3.67	3.16	(3.38)	(.22)	3.36
Canada Cement	NIL	8.50	11.57	(11.57)	NIL	13.68
Alcan Aluminium	1.6	4.91	3.60	(3.10)	.50	5.50
Steel Co. of Canada	3.8	5.14	(.09)	.87	.78	5.74
Canadian Industries	5.7	4.05	1.45	(.52)	.93	1.28
Trans-Canada Pipe Lines	7.3	3.00	(3.00)	4.80	1.80	3.93
Abitibi Paper	11.4	3.56	1.44	(.33)	1.11	2.60
Domtar	11.4	5.70	(.45)	2.20	1.75	5.11
Bell Telephone	11.8	15.63	3.56	1.51	5.07	3.11
Maclaren Pulp & Paper	21.0	7.46	3.43	.69	4.12	5.38
Algoma Steel Corp.	27.8	5.35	1.09	4.22	5.31	8.68
		98.34	25.43	(20.61)	4.82	72.02
Investments which experienced a market price increase of between 30 and 70%						
Hudson Bay M. & S.	31.8	23.55	(2.84)	18.96	16.12	9.99
Can. & Dominion Sugar	34.9	6.75	.48	4.89	5.37	7.73
Dominion Stores	43.7	3.04	4.45	2.85	7.30	3.97
MacMillan Bloedel	46.0	6.25	3.09	4.80	7.89	4.91
Columbia Cellulose	46.0	.60	NIL	1.77	1.77	1.34
Du Pont of Canada	46.6	5.80	3.99	7.76	11.75	5.27
Interprovincial Pipe	52.3	22.20	4.97	25.41	30.38	3.20
Canada Packers	53.4	13.15	24.08	4.73	28.81	23.27
Southam Press	60.1	7.15	3.87	8.70	12.57	4.67
Dominion Foundry & Steel	66.7	3.18	1.97	6.17	8.14	5.72
		91.67	44.06	86.04	130.10	70.07
Investments which experienced a market price increase of more than 70%						
Cominco	70.5	9.60	NIL	13.69	13.69	6.00
B.C. Forest Products	72.0	4.98	(.48)	9.48	9.00	5.28
Great Lakes Paper	72.8	5.56	(.19)	10.09	9.90	3.03
Simpsons	77.9	3.22	3.41	9.15	12.56	3.58
International Nickel	84.1	15.87	.49	42.08	42.57	10.17
George Weston	84.3	2.91	2.60	6.72	9.32	3.58
Union Gas Co. of Can.	99.3	3.78	.96	15.36	16.32	2.85
Canadian Tire Corp.	105.9	.98	4.28	3.85	8.13	4.11
Moore Corp. Note 4	119.0	7.67	NIL	49.38	49.38	10.37
St. Lawrence Cement	122.6	3.20	3.25	12.31	15.56	8.32
Noranda	132.0	9.47	NIL	30.72	30.72	9.76
Dominion Textiles	237.7	6.75	7.13	18.56	25.69	7.17
Anthes Imperial	386.8	2.23	5.05	12.28	17.33	4.91
Velcro Limited	519.3	.06	.63	18.85	19.48	.85
Oshawa Wholesalers	1510.8	.80	3.43	23.01	26.44	3.33
		77.08	30.56	275.53	306.09	83.31
		267.09	100.05	340.96	441.01	225.40

Study for The Association of Canadian Investment Companies

Notes to Study of Analysis of Certain Per Share Historical Results after the Hypothetical Application of the "Carter" Recommendations for Major Public Companies

Table 1

1. All amounts expressed in Table 1 are per share aggregate amounts for the seven financial periods covered in the study.
2. The Hypothetical increase in retained earnings for "Carter" tax purposes for the period represents the excess of estimated "Carter" fully taxed earnings over dividends actually paid. The bracketed figures reveal the amount by which fully taxed earnings would have been deficient in covering the dividend payouts.
3. Fully taxed earnings as they would have been under Carter have been estimated from an analysis of published financial reports and represent the aggregate of:
   (a) that portion of the reported income subject to corporate income taxes that would have been fully covered (at a 50% rate) by the taxes reported in the official statements as currently exigible less the latter;
   (b) where applicable that portion of estimated exempt "incentive" income upon which additional corporate tax would have been required to be paid under Carter in order to cover historical dividend payouts less the tax;

(c) estimated dividend income from other Canadian corporations.

4. With respect to Moore Corporation Limited, it was not found possible to distinguish between domestic and foreign operations. It is estimated that part of the historic dividend payout would have been from earnings generated from foreign operations. As additional tax would have been paid by the company on the latter under Carter, it is estimated that fully taxed earnings would equal dividends (i. e. no retained taxed earnings).

5. "Goodwill" gains as they would have been under Carter reflect the complete allocation of fully taxed retained earnings and a return of capital in those instances where fully taxed earnings were deficient in covering dividend payouts (i. e. the actual market gains for the period were decreased by the former and increased by the latter).

6. Actual market gains for the period represent the increase or (decrease) as the case may be between the average of the high and low market price during the first month subsequent to the beginning and end of the seven financial periods 1960 - 1966.

Study for The Association of Canadian Investment Companies

Common Size Analysis of Return on Investments in Selected Companies Before and After Personal Income Tax Under the Present System of Taxation and After a Hypothetical Application of "Carter" Recommendations

Accumulated for seven financial periods, 1960 - 1966

Investments which experienced a market price increase of -	Lowest	Less than 30%		From 30% to 70%		Over 70%		Highest
Company -	Dominion Steel and Coal	Domtar	Abitibi	Inter-provincial Pipe Lines	Canada Packers	Union Gas	Canadian Tire	Oshawa Wholesalers
Market price at beginning of period	$15.00	$15.31	$9.76	$58.12	$53.94	$16.43	$7.68	$1.75
Common Size								
Market price at beginning of period	100%	100%	100%	100%	100%	100%	100%	100%
Optimum cash realization to a tax-exempt recipient:								
Present System	(24)	49	48	90	78	122	119	1556
Proposed System Note 4	2	83	98	137	147	151	187	1798
After tax return to a tax-paying recipient:								
Present System (marginal individual rate 55%*)	(30)	36	35	77	69	114	114	1540
Proposed System (marginal individual rate 50%*)	1	42	50	69	74	76	94	899
Supplementary								
After tax return under either system to an investor resident in the United States (marginal rate of U.S. tax 45%*)	(23)	29	29	62	55	90	89	1240

* comparable marginal rates under respective systems (see Note 5)

Table 2

Study for The Association of Canadian Investment Companies

Notes to Common Size Analysis of Return on Investments in Selected Companies (Table 2)

1. The companies used in Table 2 have been selected from Table 1, in which certain per share comparisons have been made for forty companies. The information in Table 1 has been used in developing the figures expressed in Table 2. In addition to the companies in Table 1 whose shares ranked lowest and highest in their performance in the market place two companies were selected from each of the three groupings shown. An attempt was made to select from each grouping two companies whose shares had experienced somewhat similar treatment in the market place.

2. The figures are presented in common size (i.e. as a per cent to the market price at the beginning of the period) to provide a means of more readily comparing the results of one company with another.

3. The figures reflect cumulative effects on an investment over a seven year period assuming purchase at the beginning and sale at the end of the period and an accumulation of all other factors for seven years.

4. The optimum cash realization to a tax exempt recipient under the proposed system includes the cash refunds of tax deemed to have been withheld at the corporate level in addition to the accumulated dividends and market gains realized.

5. The marginal rates at the individual's level of:

   Present Canadian System 55%

Proposed "Carter" System 50%

United States System 45%

were used in developing the information in Table 2 and are comparable marginal rates under the respective systems for an individual whose taxable income under the present system slightly exceeds $40,000. (Reference: Carter Report - vol. 6, page 274 and vol. 3, pages 624-625). It is expected that the investors from that level up exercise a significant influence in the market place.

APPENDIX "B"

THE ADVERSE EFFECT OF THE REPORTS PROPOSALS ON A MAJOR CLOSED-END CANADIAN INVESTMENT COMPANY - A RETROACTIVE STUDY SINCE INCORPORATION.

Tables 3 and 4 that follow reveal that the capital in the private sector at December 31, 1966, provided by United Corporations Limited alone of $48 million, would have been reduced by somewhere between $17 and $25 million. The capital provided to the private sector by this one company would have been approximately 50% less than it actually was under the tax system and facts that prevailed.

Table 3.

Study for The Association of Canadian Investment Companies

Effect on Shareholders' Equity of the Hypothetical Application of "Carter" Recommendations to a Major Closed End Investment Fund

For the period from its inception in 1933 to the end of 1966

		Adjusted shareholders' equity end of period after hypothetical application of "Carter" recommendations under two alternatives			
	Actual shareholders' equity end of period	Allocation available as estimated in Report	% of actual	No allocation available	% of actual
Accumulated for the period:					
1933 -- 1936	$ 3,372,000	$ 2,411,000	71.7	$ 1,749,000	51.9
1933 -- 1941	4,900,000	3,357,000	68.5	2,358,000	48.1
1933 -- 1946	7,412,000	4,850,000	65.4	3,268,000	44.1
1933 -- 1951	10,485,000	6,404,000	61.1	4,087,000	39.0
1933 -- 1956	18,120,000	10,009,000	55.2	5,933,000	32.7
1933 -- 1961	33,310,000	21,434,000	64.3	15,815,000	47.5
1933 -- 1966	48,281,000	30,875,000	63.9	22,767,000	47.2

See accompanying Notes

Table 4

Study for The Association of Canadian Investment Companies

Effect on Shareholders' Equity of the Hypothetical Application of "Carter" Recommendations to a Major Closed End Investment Fund

For the period from its inception in 1933 to the end of 1966

	Actual shareholders' equity end of period	Accumulated hypothetical additional tax to end of period	Accumulated hypothetical decrease in gains resulting from hypothetical decrease in investment base	Adjusted shareholders' equity end of period after hypothetical application of "Carter" recommendation
Allocations available as estimated in Report				
1933 -- 1936	3,372,000	832,000	129,000	2,411,000
1933 -- 1941	4,900,000	1,185,000	358,000	3,357,000
1933 -- 1946	7,412,000	1,715,000	847,000	4,850,000
1933 -- 1951	10,485,000	2,353,000	1,728,000	6,404,000
1933 -- 1956	18,120,000	3,789,000	4,322,000	10,009,000
1933 -- 1961	33,310,000	5,046,000	6,830,000	21,434,000
1933 -- 1966	48,281,000	7,070,000	10,336,000	30,875,000
No allocation available				
1933 -- 1936	3,372,000	1,401,000	222,000	1,749,000
1933 -- 1941	4,900,000	1,937,000	605,000	2,358,000
1933 -- 1946	7,412,000	2,734,000	1,410,000	3,268,000
1933 -- 1951	10,485,000	3,582,000	2,816,000	4,087,000
1933 -- 1956	18,120,000	5,379,000	6,808,000	5,933,000
1933 -- 1961	33,310,000	6,952,000	10,543,000	15,815,000
1933 -- 1966	48,281,000	9,789,000	15,725,000	22,767,000

See accompanying Notes

Study for The Association of Canadian Investment Companies

Notes to Study on Effect on Shareholders' Equity of the Hypothetical Application of "Carter" Recommendations to a Major Closed End Investment Fund

NOTES:

1. United Corporations Limited, the company selected for this study ranks among the larger Funds and controls approximately 9% of the total net assets of those companies which have been classified as Closed-End Funds in the Financial Post's 1967 Survey of Investment Funds.

2. The "Carter" recommendations were applied to gains realized from investment transactions over the period from its inception in 1933 to the end of 1966.

3. No attempt was made to measure the additional impairment to the growth of the company from the application of the "Carter" recommendations to income transactions or miscellaneous items included by the company in surplus arising from realized gains. Neither element would materially distort the results expressed in this study. The former because a substantial portion of all income is paid out annually to shareholders. The accumulated balance of surplus arising on revenue account at December 31, 1966 amounted to approximately $1 million representing less than 5% of the revenue income to that date. The miscellaneous items, because the aggregate net thereof at $149,000, are also relatively immaterial.

4. The company estimates that approximately 15% of all gains realized would have resulted from foreign investments. That percentage was used where a distinction was necessary.

5. The alternatives:

   (a) assuming allocations available as estimated in Report -- Report, vol. 4, page 40: "....It is reasonable to assume that dividends accounted for

about one third of this return, share gains resulting from retained earnings accounted for another one third, that is, that dividends averaged one half of net profits, and the remaining one third arose from what might be called a "goodwill" capital gain 18/. The period covered by the study included the depression of the 1930's and the post-World War II experience; if the postwar period alone were considered, the return would be substantially higher and the proportion of the total gain arising from goodwill gains would be substantially greater...." (it is to be noted that the foregoing assumption is not borne out by Table 1 to this Submission) and

(b) assuming no allocations available

were computed on the same basis except that under the former one-half of the gains realized from Canadian investments were assumed to have been offset by adjustments to the cost of the investments as a result of allocations and therefore not subject to tax while under the latter all gains were assumed to be subject to tax.

6. As suggested in the Report a 50% tax rate was used.

7. The decrease in the gains realized was computed by applying the ratio of the actual gains realized each year to the average of the beginning and end of that year's balance sheet amounts of the cost of investments to the amount by which the investment base would have been reduced (i. e. the aggregate of the accumulated hypothetical tax and the accumulated decrease in the gains realized for all prior years). The hypothetical tax was computed by applying the "Carter" recommendations to the reduced amount of the decreased gains which would have been realized.

APPENDIX "C"

Vital Suggestions Should The Government Decide to Implement A Capital Gains Tax - To Which We are Opposed

1. Under no circumstances should any form of capital gains tax imposed in Canada be more onerous than that in effect in the United States. We feel strongly that any Canadian tax should be considerably less onerous.

2. Full cognizance should be taken of the fact that investment dollars and consumption dollars are NOT the same thing and that, as a consequence, the point of taxation should be at the moment that the investment dollar is diverted into the consumption stream. Should the proceeds of a disinvestment which has resulted in a realized capital gain be reinvested within a reasonable period of time, the capital gain involved should be free of tax. If, however, capital gain resulting from a disinvestment is used for purposes of consumption, it might be taxed at that time.

3. While we cannot estimate the administrative problems involved, it might be possible to work out something along the following lines:

   a) Capital gains which are reinvested within a reasonable period of time are tax-free. Proof of reinvestment of some kind would obviously be required as would a definition of 'reinvestment' (to apply it simply to investment

in securities would be too narrow a definition - a house is an investment, capital equipment is an investment, etc).

b) Capital gains which are diverted to consumption (again as defined) are tabled at a special capital gains rate (less than that in the U.S.A.) in the taxation year in which the diversion takes place.

c) The rate of capital gains tax should be lower for long-term capital appreciation than for short term trading profits (less than six months?).

d) An inflation factor should be taken into account in the case of long-term capital appreciation.

e) Perhaps the administrative problems involved in the above suggestions could be solved by making each taxpayer fill out in each year a simple form of source and application of capital funds statement in addition to his normal statement of income. If this source and application of capital funds statement showed a net outflow of capital funds in any given year, the outflow would be taxed at the appropriate capital gains tax rate.

4. Special consideration should be given to the difficult position in which the closed-end funds (including the proposed Canada Development Corporation) would find themselves. There are two alternatives:

a) The suggestion made in para. 3-a) would automatically solve the problem;

b) The closed-end fund (which would have to be defined in some way) would itself be free of capital gains tax but the shareholder of such a fund would subject himself to possible capital gains tax if and when he sold his shares at a profit.

APPENDIX "D"

Submission by
Massey-Ferguson Limited
to the
Canadian Senate Banking and Commerce Committee
on
Bill S-17 - Investment Companies Act

Introduction

We have studied the provisions of The Investment Companies Act - Bill S-17 - and we have read the Hansard report on the Senate Debates of November 21 and November 26, 1968. We strongly support the arguments put forward by the Honourable Senator Phillips on November 26 and we particularly feel that this Bill should be revised in a manner that will exclude industrial holding companies such as Massey-Ferguson Limited.

Massey-Ferguson Limited

Massey-Ferguson Limited is a company incorporated under the laws of Canada. It is a holding company having a major equity interest in 41 active subsidiary companies and a minority equity interest in 5 associate companies. These are located in 19 countries including Argentina, Australia, Brazil, Canada, Eire, France, Germany, India, Italy, Mexico, Morocco, the Netherland Antilles, Panama, South Africa, Spain, Switzerland, Rhodesia, United Kingdom and the United States.

The primary function of these companies is the manufacture, sale or distribution of one or more of the following - farm machinery, industrial and construction machinery, diesel and gasoline engines, lawn and garden equipment, trucks and office furniture. The shares of Massey-Ferguson Limited are listed on the Toronto, Montreal, Vancouver, New York and London Stock Exchanges.

For your further information, the Annual Report of Massey-Ferguson Limited and its consolidated subsidiaries for fiscal 1967 is attached hereto. The 1968 Annual Report will be available after it is mailed to shareholders on January 30, 1969.

In Canada, Massey-Ferguson Limited's principal Canadian subsidiary is Massey-Ferguson Industries Limited, an Ontario corporation. Massey-Ferguson Industries Limited and its subsidiaries are actively engaged in Canada in the manufacture and/or sale of farm machinery, industrial and construction machinery, garden tractors, snowmobiles and office furniture. One of Massey-Ferguson Industries Limited's subsidiaries is Massey-Ferguson Finance Company of Canada Limited, an Ontario corporation, which presently is engaged in the acceptance and assignment of retail instalment sales contracts from franchised Massey-Ferguson machinery dealers or retailers in all provinces of Canada.

Apparent Objectives of Bill S-17

The immediate objective of Bill S-17 as pronounced by The Honourable Senator Paul Desruisseaux and reported in the Senate Debates of November 21, 1968 was that there appeared a necessity for legislation primarily to control and regulate finance and acceptance companies, prompted by recent financial collapses of this type of company. Indeed legislation in some form to regulate this type of company may be warranted to "... secure the establishment and maintenance of a sound financial structure ...." (Section 22). However section 2 of the Bill then proceeds to include in ambit of the proposed legislation not only finance and acceptance companies which are primarily engaged in the purchase, discount and sale of chattel paper or bills of exchange where the dominant asset is receivables, but any federally incorporated company that -

(1) borrows money, whether publicly or privately; whether in large amounts or small in relation to its equity; whether for a short or long term, and

(2) uses at least 25% of the assets of the company for the purchase of bonds, debentures, notes or other evidences of indebtedness or shares of corporations.

The Bill in subsequent sections then proceeds to vest sweeping discretionary powers with the Minister and the federal department designated to administer the Act in areas of granting and revoking exemptions, reporting, filing and information requirements, inspections and examinations of company books, records and documents, loan prohibitions, certificates of registry, assessments and other matters. These provisions appear to assume the character of both securities type legislation enacted by some provinces and company law statutes.

Herein perhaps is the crux of the problem. Apart from the constitutionality aspect of this Bill, -

Is the basic purpose of the Bill the requirement upon the company to properly disclose its affairs to prospective investors who are considering public offerings of the company?

Is the Bill intended to cover parent companies who publish consolidated or unconsolidated annual reports?

Is the Bill to protect the company's public lenders or private lenders (banks and other lending institutions)?

Is the Bill to protect the company's shareholders and other general creditors?

Is the Bill intended to substantially replace the present Companies Act?

Is the Bill intended to be an intrusive instrument whereby government will dictate the company's frequent operational decisions?

Is the Bill intended to include industrial corporations, notwithstanding that the traditional requirements and customs of the financial community demand a substantially higher equity to debt ratio for finance or acceptance companies?

Is the Bill intended to include all these items?

A reading of the Bill could support an affirmative answer to all of these questions. But this raises the issue whether the precise objectives, purposes and justifications were clearly defined before drafting Bill S-17. Certainly the only definitively stated objective of the Bill is the regulation of finance and acceptance companies.

Objections

Massey-Ferguson Limited believes Bill S-17 as introduced would regulate by discretionary order and fiat with possible severity, not only finance or acceptance companies, but also industrial holding companies likes Massey-Ferguson Limited.

There may have been a showing of abuse which demands further regulation of the finance or acceptance companies in addition to existing statutory laws in view of the collapse of two such companies. However, where is the showing of abuse or demonstrated necessity which demands regulation in the broad form of Bill S-17 to industrial holding companies whose operations fall within an "Investment Company" as defined in the Bill? In effect Bill S-17 in its present form is using a cannon where a rifle shot will suffice.

It is recognized that Section 3 of the Bill provides for the granting of exemptions by the Minister responsible under the Act in his discretion, particularly where the business of investment is incidental to the principal business carried on by the company. An argument could be made by companies like Massey-Ferguson Limited that the liberal interpretation of what is incidental could result in the granting of an exemption to that company by the Minister. Thus holding companies like Massey-Ferguson which publish annual reports on a consolidated basis leave no doubt from an accounting and an investors standpoint that the principal business of the Massey-Ferguson organization is that of a manufacturer and marketer of machinery and engines, notwithstanding that the legal form of Massey-Ferguson Limited is that of a holding company whose principal assets are the share capital of its wholly-owned, associate or affiliated companies who perform the manufacturing, marketing and distributing functions within their applicable national markets. The real question however is whether industrial holding companies like Massey-Ferguson should be subjected to the discretionary

exemption procedure provided by the Bill. Certainly it would be more proper to limit, in the first place, the definition of "investment company" or "business of investment" in order not to encompass industrial holding companies' operations like Massey-Ferguson Limited.

One prerequisite of carrying on the "business of investment" under the Bill is that the company borrows money. The following is a specific example which illustrates the clear irrationality of concept as manifested by the Bill's definition section. The attached unconsolidated balance sheet of Massey-Ferguson Limited (Attachment II) shows the shareholders equity was in excess of $437,000,000 at October 31, 1967. However, Massey Ferguson Limited also had a short-term bank loan of $8,592,000 covered by demand note and had the bulk of its assets invested in subsidiary companies and therefore is an investment company under the provisions of Bill S-17 as currently drafted.

Massey-Ferguson Limited believes the basic approach of the Bill which is to include many companies and then emarbk on a system of granting exemptions is costly and unnecessary. To establish or increase a governmental department to administer an Investment Companies Act on such a broad basis increases the manpower and administrative costs of the government at a time when the government has announced its program of reducing governmental expenses. The inflationary effect cannot be justified particularly where many of the companies presently included do not fall within the category of finance and acceptance companies which are the target of the Bill.

The demands of government on the financial business community as well as the public could be served in a far more advantageous and effective manner by limiting the provisions of the Bill to the basic abuses involving finance or acceptance companies which have been stated to be the objectives of the new legislation.

Recommendations

To achieve the desired objective of excluding industrial holding companies like Massey-Ferguson Limited from the provisions of Bill S-17 it is recommended that section 2 be amended to specifically exempt industrial holding companies from the definitions of the "business of investment" or "Investment Company". An industrial holding company could be characterized as a company of which the majority of its consolidated assets are represented by assets of directly or indirectly controlled subsidiary corporations, which are primarily engaged in the business of manufacture, extraction, production, processing, sale and service of, or trading in products and commodities and the financing thereof.

All of which is respectfully submitted by Massey-Ferguson Limited.

January 27, 1969.

APPENDIX "E"

THE CANADIAN CHAMBER OF COMMERCE
1080 Beaver Hall Hill, Montreal 128, Quebec

OFFICE OF THE VICE-CHAIRMAN
OF THE EXECUTIVE

February 25, 1969

The Honourable Senator Salter A. Hayden, LL.D., Q.C.,
Chairman,
Banking and Commerce Committee,
The Senate,
Ottawa, Canada.

Dear Sir:

The Executive Council of The Canadian Chamber of Commerce is most appreciative of this opportunity to address your Committee regarding Bill S-17, an Act respecting Investment Companies and wishes to bring to the attention of your Committee two important points on general principles which are in the overall interest of business.

While the Council is of the view that Bill S-17 has been drafted in an attempt to develop legislation for the ultimate protection of Canadian investors, we are convinced, nevertheless, that the definitions adopted of "investment companies" and "business of investment" are far too broad in scope and will have the effect of bringing within the scope of the Act basically operating companies and others for whom the lending and borrowing of money is incidental, although vital, to their normal operation. We urge your Committee to carefully review the Bill in this regard since obviously such legislation would have a deleterious effect upon companies making future investments in Canada.

A second principle of concern to the Executive Council arises out of those provisions of the Bill which give the Minister broad discretionary powers in defining an Investment Company as well as in the making of regulations to control the corporate practices of Investment Companies. The Canadian Chamber has since 1963 reiterated policy opposing the ministerial discretion given to the Minister of National Revenue concerning the imposition of tax related to transactions involving corporations and opposes generally ministerial discretion which affect the substantive rights of citizens. The Council is of the view that a considerable amount

...../2

THE CANADIAN CHAMBER OF COMMERCE

of ministerial discretion is creeping into legislation and particularly into Bill S-17. It is felt that wherever possible matters of definition and regulations should be covered by the Act itself. In other words, the Act should be written to stand on its own with the minimum of ministerial discretion permitted.

We would urge that the foregoing principles be given full consideration by your Committee and would request that these views be made part of the printed Proceedings of the Committee.

Yours sincerely,

Donald N. Byers

Donald N. Byers, Q.C.,
Vice-Chairman of the
Executive Council.

DNB:11

THE CANADIAN CHAMBER OF COMMERCE

The Honourable Senator Walter A. Norris, M.D., O.C.,
February 25, 1969.
Page 2.

of ministerial discretion is creeping into legislation and particularly into Bill S-17. It is felt that wherever possible matters of definition and regulation should be covered by the Act itself. In other words, the Act should be written to stand on its own with the minimum of ministerial discretion permitted.

We would urge that the foregoing principles be given full consideration in your committee and would request that these views be made part of the printed proceedings of the Committee.

Yours sincerely,

Donald W. Byers

Donald W. Byers, Q.C.,
Vice-Chairman of the
Executive Council.

DWB:jl

First Session—Twenty-eighth Parliament

1969-70

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

WEDNESDAY, MARCH 4th, 1970

Fifth Proceedings on Bill S-3,

intituled:

"An Act respecting Loan Companies"

ORGANIZATIONS HEARD:

Molson Industries Limited; The Board of Trade of Metropolitan Toronto; The Federated Council of Sales Finance Companies.

APPENDICES:

"F"—Brief submitted by Molson Industries Limited.
"G"—Brief submitted by The Board of Trade of Metropolitan Toronto.
"H"—Brief submitted by The Federated Council of Sales Finance Companies.
"I"—Letter from Guaranty Warranty Limited.
"J"—Letter from Imperial Trading Company of Canada Limited.

The Queen's Printer, Ottawa, 1970

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS OF THE SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 22

WEDNESDAY, MARCH 5th, 1969

Fifth Proceedings on Bill S-17,
intituled:
"An Act respecting Investment Companies"

ORGANIZATIONS REPRESENTED:

Molson Industries Limited; The Board of Trade of Metropolitan Toronto; The Federated Council of Sales Finance Companies.

APPENDICES:

"F"— Brief submitted by Molson Industries Limited.
"G"— Brief submitted by The Board of Trade of Metropolitan Toronto.
"H"— Brief submitted by The Federated Council of Sales Finance Companies.
"I" — Letter from George Weston Limited.
"J" — Letter from Imperial Tobacco Company of Canada Limited.

The Queen's Printer, Ottawa, 1969

29819—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and–

The question being put on the motion, it was–

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was–

Resolved in the affirmative".

ROBERT FORTIER,
Clerk of the Senate.

29819–1½

MINUTES OF PROCEEDINGS

Wednesday, March 5th, 1969.
(23)

At 9.30 a.m. this day the Senate Committee on Banking, Trade and Commerce *resumed* consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (Chairman), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguere, Haig, Hollett, Inman, Isnor, Kinley and Savoie. (20)

Present, but not of the Committee: The Honourable Senators McLean, Phillips (*Rigaud*), Prowse and Smith.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

MOLSON INDUSTRIES LIMITED:

Morgan McCammon Q.C., Senior Vice-President, Corporate Services.

THE BOARD OF TRADE OF METROPOLITAN TORONTO:

W. S. Walton, Q.C., Chairman, Corporation Legislation Committee.

THE FEDERATED COUNCIL OF SALES FINANCE COMPANIES:

K. H. MacDonald, President.

J. D. Johnstone, member of Legislative Committee.

It was agreed that the briefs submitted by the above organizations be printed as Appendices "F", "G" and "H", to these proceedings.

It was further agreed that letters received from George Weston Limited and Imperial Tobacco Company of Canada Limited be printed as Appendices "I" and "J" respectively.

At 11.10 a.m. the Committee adjourned consideration of the said Bill until Wednesday, March 12th, 1969, and proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 5, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: This morning we continue with Bill S-17 in our hearing of submissions. Today we have three different groups before us: Molson Industries Limited, the Board of Trade of Metropolitan Toronto, and the Federated Council of Sales Finance Companies. When we have heard these submissions we will take up Bill S-29, on which there is one group here to make representations. We may then have to adjourn our consideration of Bill S-29 because the deputy minister is away for this week. We can make that decision after we have heard the representations.

For Molson Industries Limited I believe Mr. McCammon, Senior Vice-President, Corporate Services, will make the presentation.

Mr. Morgan McCammon, Q.C., Senior Vice-President, Corporate Services, Molson Industries Limited: Mr. Chairman, I have with me Mr. A. G. McCaughey, our Senior Vice-President, Finance, and Mr. Kenneth A. F. Gates, our Vice-President, Law.

The Chairman: Are you making an oral presentation?

Mr. McCammon: Yes, I propose to make a presentation to the committee, if I may. We have filed a formal and somewhat lengthy brief. It is our intention now to present a summary of what we consider to be the salient points in that brief.

Molson Industries Limited, or "Molson" as I shall hereafter call it, is the company which was formerly named Molson Breweries Limited, and it is incorporated under the Canada Corporations Act. Since 1954, when the company consisted of virtually only one plant in Montreal, it has grown to a multinational, multi-product organization producing and marketing its products in Canada, the United States, Mexico and Europe through approximately 200 plant, warehouse and sales office locations. It has approximately 7,500 employees and is owned by over 12,000 shareholders. Molson is actively engaged, either directly or indirectly, through a total of 56 controlled subsidiaries and affiliates, in the management of these diversified operations, and its shares are listed on the Montreal, Toronto and Vancouver Stock Exchanges.

As we think is generally well-know, Molson has accelerated its diversification and expansionary activities, the most prominent example of which is Molson's recent acquisition of Anthes Imperial Limited, itself a highly diversified company. It is perhaps worth noting at this stage that Molson has no debt. Molson's corporate objectives, simply stated, are to continue as a broadly diversified but fully integrated manufacturing and commercial organization and, through the expansion of present operations and the planned entry into other industries, to achieve higher than normal rates of growth.

In making this submission and our statement today, we wish to emphasize that we do not question the broad laudatory intent of the bill, for we are, as a matter of corporate policy, in favour of legislation which has for its purpose the overall protection of the investing public. However, having said this, and having regard to the principles laid down in the Watkins Report concerning the economic and financial development of Canadian companies, and the principles enunciated by the Porter Commission concerning undue control and supervision of Canadian financial institutions, we must say that we share the concern publicly expressed in many quarters concerning the extremely broad scope of this legislation, coupled with the virtually unlimited discretionary powers which it confers.

We are also concerned with the approach taken in writing the bill, namely the adoption of the principle that government policy may be proclaimed by regulation rather than by legislation, contrary to, in our opinion, the sound principles set out in the McRuer Report. We feel that the former approach can only produce uncertainty and, hence, a climate which hinders proper business expansion and investment development. It is generally agreed both are needed in the Canadian economy.

Our impression, which apparently is widely shared, is that the provocation for this bill was the collapse of certain provincially incorporated finance and acceptance companies, and that this bill was designed to avoid such an occurrence by any finance or acceptance company incorporated and operating under a federal charter. If this impression correctly reflects the true aims of the bill, then we respectfully submit that, because of the extremely broad definitions of "business of investment" on the one hand and "investment company" on the other, particularly when read in conjunction with the prohibitions in section 8 of the bill regarding certain loans and investments, the bill fails to recognize and sufficiently demark the essential distinction between finance companies, and their chiefly commercial paper assets, and industrial and commercial companies, whose chief assets are the realities of plants and products which may or may not be represented by the shares of subsidiaries engaged in manufacturing, producing, operating and service activities, depending upon the kind of corporate structure which is best suited to the needs of the company.

That is, we feel that because of the breadth of the scope of these two definitions, coupled with the categories of loans and investments prohibited under section 8 of the bill, the legislation will be very likely to have an unwarranted and damaging restraint upon ordinary industrial and commercial companies which are in the investment business only because of their chosen structure of doing business. That is, a structure consisting of wholly or of substantially wholly-owned subsidiaries whose primary business is manufacturing goods, or providing services, for which the parent company assumes responsibility and in which it actively participates in the management of such operations.

We might say in passing that this lack of precision, or of demarkation, between the types of companies which would be covered by this legislation, is emphasized by the provision in the bill of the discretionary exempting power to be vested absolutely in the Minister of Finance, combined with a similar discretionary revoking power in the minister. Rather, in our opinion, these definitions should clearly indicate those types of companies which would, and which would not, come within the ambit of the bill.

Without wishing to be unduly critical of this bill, we must say that we are in principle opposed to any legislation of this type, where the provisions are so broad as, in effect, to allow unlimited inquiries into the affairs of a company, both in time and in scope, and using as the justification of such inquiries the protection of the investing public. We believe that it is incumbent upon the Government to demonstrate the need for the enactment of legislative and administrative powers, particularly those which are as broad as are contained in this bill. We respectfully submit that this has not been adequately demonstrated.

We would have thought, as indeed is remarked in the Watkins Report, that under existing legislation there is a sufficient and regular flow of financial data and other corporate information to various departments of the Government. We share the view of the Watkins Report, that there may not be, primarily because of the limitations in the existing legislation, a sufficient degree of co-operation by way of exchange of information between the respective governmental departments.

By existing legislation, we refer firstly to the Canada Corporations Act, which requires the filing in the Department of the Registrar General of a company's annual financial statements prepared in accordance with the detailed provisions of the relevant sections.

It also requires the filing with the Secretary of State of prospectuses and offers to the public involving the issuance of any shares or other evidence of indebtedness. And further it requires the delivery to the Secretary of State of a certified or notarial copy of any instrument creating any mortgage or charge securing any issue of debentures, and any mortgage or charge on uncalled share capital, the undertaking or property and other assets of a company.

Secondly, we would refer to the Corporations and Labour Unions Returns Act, which requires the annual filing by each company with the Dominion Statistician a return comprising elaborate particulars as to the capitalization and other financial aspects of the company, and thirdly, to Department of Consumer and Corporate Affairs Act, where the minister is given powers over various matters, including corporations and corporate securities, and bankruptcy and insolvency, and is empowered to undertake research into such matters and to co-operate "with any Department or Agency of the Government of Canada," all as he deems appropriate in the public interest.

It is considered necessary for governmental authorities to obtain on a regular basis, more or different financial information than is presently being furnished under the existing legislation, then we suggest it would be better in principle, and practically more effective, rather than enacting a new bill, to enact appropriate amendments to the existing legislation. In particular, amendments could be made to the Canada Corporations Act, specifying both the type of information to be furnished and the class or classes of company which would be bound to furnish such information. Alternatively, the existing legislation could be amended, so as to allow the governmental departments concerned to co-operate and exchange the relevant information, which is already being massively and regularly produced by all segments of industry.

Finally, we think such an approach would justify the elimination, at this stage, of the whole of Part II of the bill, rather than its deferral for a minimum two-year period. This, in turn, would solve the very real problem raised and recognized at the first proceedings before this committee on January 29, 1969, as to the possibility of the Government being embarrassed because of its being powerless during the deferral period to take any remedial action in respect of any adverse situation of which it had become aware.

In short, we would respectfully suggest that it may well be both unnecessary and unwise for the Government to proceed with the enactment of this bill, or similar legislation, until the problem which it seeks to cure has been fully determined. In other words, we suggest that sufficient facts be first obtained so that the solution to the problem can be closely, but adequately, defined and fully implemented with the least possible interference with normal business activity and with the minimum of discretionary administrative and executive powers.

We did not in our formal submission think it necessary to undertake an extremely detailed clause-by-clause review of the provisions of this bill, but we have certain suggestions to make which I will try to summarize.

Firstly, we believe the definition of "business of investment" should be drawn in such language as will clearly render the provisions of the bill inapllicable to ordinary commercial and industrial companies, regardless of the nature or extent of their investments made in the ordinary course of their principal corporate activities. In the alternative, such definition should provide that it shall be an objective question of fact, or of mixed law and fact, rather than discretionary or arbitrary subjective determination, as to whether the "business of investment" is the principal or predominant activity of any given company.

Or alternatively, we suggest the definition of "business of investment" should be based specifically on a direct relationship between the borrowing of funds from the public and the use of such funds in purely financial transactions, as distinct from the employment of such funds for the ordinary corporate activity of an industrial or commercial company; and secondly, we suggest the proportion of 25 per cent specified in section 2(f)(ii) of the bill should be changed to a proportion of at least 40 per cent, and in lieu of being expressed as a percentage simply of assets, should be expressed as a percentage of the company's total assets, on an unconsolidated basis.

Further, in applying the percentage test we believe there should be excluded (a) cash items, (b) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality, and of or by any majority-owned subsidiaries of the company, (c) the shares of any controlled subsidiaries or affiliates of the company, and (d) any loans made by the company under section 15 of the Canada Corporations Act.

Thirdly, we believe the bill should be structured so as to reflect the principal rationale and initial thrust of the proposed legislation, namely, the reporting and gathering of certain financial data and other related corporate information. To that end, we strongly recommend that the provisions of Part II of the bill, sections 9 - 20 inclusively, be deleted in their entirely, in lieu of merely deferring their effectiveness.

And fourth, we suggest that the certain other sections be amended and altered. These are referred to in detail in our submission, and I do not propose to take any more time to deal with them here.

We sincerely hope that these remarks and our brief will have provided some objective and useful constructive criticism in respect of the principles and techniques which we believe are desirable to adopt in producing legislation of this kind.

That is the end of our submission, sir.

The Chairmman: Thank you. Are there any questions?

Senator Connolly (Ottawa West): Mr. Chairman, I would move that the full brief as filed by Molson Industries Limited appear as an appendix to these proceedings.

Hon. Senators: Agreed.

(For text of brief, see Appendix "F")

Senator Connolly (Ottawa West): I noticed that at the end of your brief you quoted a very famous person. In the course of your brief you talk about a security subsidiary. I take it that in all of its subsidiary affiliates your organization has not a security subsidiary?

Mr. McCammon: No, sir, in our company we do not have such a company or subsidiary.

Senator Connolly (Ottawa West): Because there is no debt?

Mr. McCammon: Because there is no debt in the parent and virtually none in the subsidiary.

Senator Connolly (Ottawa West): So you have no comment to make about upstream, downstream and lateral loans made by the security subsidiaries?

Mr. McCammon: Not as such, but certainly the provisions of clause 8 of this bill go to preventing downstream loans from parents to subsidiaries and also go to preventing lateral loans as between subsidiaries.

Senator Connolly (Ottawa West): I think the department disagrees with the first point, or at least they did not intend to cover downstream loans; but lateral loans I think they do prohibit?

Mr. McCammon: This of course can interfere considerably with the operation of a company. One subsidiary may happen to be short of cash at a given season of the year, because the business is seasonal or cyclical; and another subsidiary may have more cash; and it seems simpler to go across and borrow.

The Chairman: Senator, you are talking about downstream loans, where the parent borrows the money and runs it down the steam to subsidiaries?

Senator Connolly (Ottawa West): Yes.

The Chairman: That would be covered by the bill.

Senator Connolly (Ottawa West): The department says no.

The Chairman: On clear reading of what it says in the bill, it would cover it.

Senator Connolly (Ottawa West): I have no doubt in my mind that they did not make that point. The only other thing–which I do not press you to answer, Mr. McCammon–is this. Would it be helpful to us if we had a statement, as an appendix to the brief, showing what your subsidiaries are? Would that be of any value?

Mr. McCammon: We would be more than happy to furnish it to you.

Senator Connolly (Ottawa West): Do you furnish it publicly in any event?

Mr. McCammon: I think it is fair to say that in printed form by name we have given it in one place or another–not all in one place at one time.

Senator Connolly (Ottawa West): I do not think we want to get confidential information of the company but if you could devise such a format that would show us that information, it might be helpful.

Mr. McCammon: Certainly, the major operation subsidiary would be no trouble at all.

The Chairman: They are going to be listed in your annual statement?

Mr. McCammon: The bulk of them are, and we would be happy to do that.

Senator Connolly (Ottawa West): I would ask you one other question. In connection with disclosure, when disclosure is called for under this bill, there is no discretion about whether or not that disclosure should be confidential to the department or should be available to the public. Would you have any views on that?

Mr. McCammon: I have very strong views, senator, that any information garnered under the provisions of this bill as now drafted should and must be kept confidential. This bill, for example, gives direct access to the auditor and his worksheets.

Senator Connolly (Ottawa West): In other words, would you assimilate the confidential character of disclosure to the confidential character of the disclosure you are required to make under tax acts?

Mr. McCammon: Very much so. In fact, perhaps even more so, because there is greater opportunity to gather information under this bill than under the Income Tax Act.

Senator Connolly (Ottawa West): Is this mainly because of the fact that disclosure which is made confidentially and which is made public would inhibit people, or at least would make it difficult for your company or any other company to be in competition in the way they want to be? Is there a competitive element feature in your answer?

Mr. McCammon: It certainly would be a factor, because if information in respect of our company were disclosed publicly and we were in competition with a multitude of other corporations, many of which would not by their nature qualify as investment companies under this bill, perhaps because of their corporate structure, such information would not be available in respect of them. This we would consider a serious handicap.

Senator Connolly (Ottawa West): Thank you very much.

The Chairman: Are there any other questions?

Thank you very much, Mr. McCammon. You know that we have had quite a number of sittings and we really have been through this bill before. So much of what you say we understand so perfectly that there are no questions.

Mc. McCammon: I appreciate that.

The Chairman: We now have representatives of The Board of Trade of Metropolitan Toronto. We have Mr.

Walton, Chairman of the Corporation Legislation Committee; and also Mr. O'Connor, the Legal Secretary.

Mr. W. S. Walton, Q. C., Chairman, Corporation Legislation Committee, The Board of Trade of Metropolitan Toronto: Mr. Chairman and honourable senators, Mr. T. G. O'Connor is the Legal Secretary of the Board of Trade of Metropolitan Toronto. I am a lawyer practising in Toronto and I happen to be chairman of this committee of the Board of Trade. It is in this character that we are here to give you the benefit, such as it is, of our views.

The Board asked us to make a submission and, if it is all right, I think I will just run over it quickly in order to refresh your minds.

The Board has an interest in corporation legislation generally and particularly in corporation legislation which may affect numerous corporations.

I am afraid that we did not quite take in the meaning of this Bill S-17 when it was first presented; and I believe that there are many people who are quite ignorant of its provisions and who would be somewhat alarmed if they knew all of them.

In the Board of Trade we feel that the definitions of "investment company" and "business of investment" bring within their orbit companies whose business operations do not fall within the ordinary concept of a company whose principle stock trade is commercial paper.

There have been several descriptions by speakers in the Senate concerning the bill and its ambit–and it occurred, and not only to me, that this seemed to be somewhat of a shotgun approach to this problem of controlling those companies which borrow money from the public and make investments which may not be of the best character, or who try to carry on business too rapidly.

As the bill stands now, it seems to cover manufacturers and companies in the service business and other companies many of whom operate through subsidiaries, as has been spoken of by other people. We also commented in our brief on the term in clause 22 of the bill, "a sound financial structure".

The Chairman: That is the clause dealing with regulations.

Mr. Walton: Yes. There is no attempt to say what is meant by that, and I would respectfully submit that there might be some differences of opinion as to what constitutes a sound financial structure. Also, on the matter of operation under the act, the bill authorizes regulations which seem to us to divest directors of their main function in managing the affairs of the company. We do suggest that there should be appropriate guidelines in legislation of this kind which would enable one to come to a conclusion as to whether there was a proper structure, financially.

Also under clause 10 (2) (b), the minister may impose restrictions, any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate, and it could be that conditions or limitations might be imposed that were designed to further some particular Government policy of that day. With all due respect, we oppose provisions which confer on the minister such unfettered discretion.

There is provision in the bill for exemption of companies which carry on the business of investment merely incidental to their principal business. We suggest that that is really consistent with the view that the bill is not meant to cover companies where the business of investment is merely an incident. But we think that the intent of the legislation should be accomplished within the act itself, without using ministerial discretion.

We were concerned, too, about clause 5 (6), which empowers the Superintendent of Insurance to require the auditor as well as an officer to provide information concerning the financial condition of the company and its ability to meet its financial obligations. And, under clause 27 (4), there is provision that any auditor who fails to comply with clause 5 (6) is subject to a fine not exceeding $5,000.

The board feels that the requirement is wrong in principle. The auditor of a public company is not an officer or employee of that company, but is an independent professional accountant and is answerable only to its shareholders. The responsibility for supplying such information, we submit, should rest only on the company and its officers and employees. There would seem to be ample power in the bill as drawn to obtain information from them, and, if the certificate of the auditor is required, well, that could be obtained or could be required from the company.

We had certain specific submissions which I would like to read to you. First, the definitions of investment company and business of investment are entirely too broad. I do not think I need to dwell on that to any extent. I have read the comments in the Senate and I heard the brief which was presented this morning and I have seen other literature on the subject, and I think everyone I know of has taken some exception to those definitions.

The second point is that the aforesaid definitions should be amended so that they include only those companies which fall within the category of finance and acceptance companies, and whose principal stock-in-trade is commercial paper. If borrowing is to be a criterion, it should only be with respect to borrowing from the public. Consideration might be given to the definition of "finance company" con-

tained in regulations under the Securities Act, 1966 (Ontario), and there is a copy of that definition attached to the brief. That is purely an example which might be useful.

The third point is that the ministerial discretion given by clause 10 (2) (b) of Bill S-17 should not be conferred. The fourth point is that the minimum standards of what constitute a sound financial structure should be set forth in the bill rather than be provided by regulation. The fifth aspect is that the Superintendent should not be empowered to require the officer of an investment company to provide information concerning the financial affairs of that company, and the sixth and last point is that the Board supports the principle of Bill S-17 as it applies to finance and acceptance companies.

I would like to make two or three further comments, one of which is along the same lines as one of the recommendations, namely, that there should be more specific exclusions in the definition. I refer to manufacturing companies, industrial companies, service companies, mining companies, oil and gas companies and non-profit companies.

This is a point I am somewhat concerned with. I happen to be the treasurer of the Presbyterian Church in Canada. The legal body for holding the property of the Presbyterian Church in Canada is known as the Trustee Board of the Presbyterian Church in Canada. Of course, it has considerable investments and, possibly, it could be considered as included in this bill. But there is no reference to bodies of that kind in the bill, that is, corporations which have been formed by religious bodies.

Senator Connolly (Ottawa West): Has anybody got 10 per cent of a corner in the church?

Mr. Walton: We have another corporation recently formed for the purpose of borrowing from the public and lending to church congregations. I would think that was definitely within the bill, and I suggest it should not be included.

There is one other point I would like to mention. It does seem to me that in legislation of this kind, if there is to be what you might call ministerial discretion, there should perhaps be some provision for appeal to the courts from what one might consider an arbitrary decision not justified by the facts. There are instances of that, as I recall, under the Securities Act in Ontario.

In Ontario there is the possibility of an appeal to the court, and the Province of Ontario is now considering a new corporation act, and it will, I believe, have provisions for appeals to the court from decisions made by the minister of the department.

Thank you, sir, and gentlemen. That is all I have to say.

The Chairman: Any questions?

Senator Carter: Mr. Walton, I think you suggested that there should be a more precise definition of "a sound financial structure" and that it should be written into the act. I wonder if you have any suggestion as to how to go about defining it?

Mr. Walton: No, certainly not off hand. I would think that would be a matter for the people concerned. We just represent a general interest on the part of Board of Trade.

Senator Connolly (Ottawa West): Would it be fair to say that what you really object to is that the judgment of the board of directors should be substituted for that of the officials of the department?

Mr. Walton: Well, that perhaps would not entirely answer the problem either.

Senator Connolly (Ottawa West): It does not give a positive answer, but this is the basis of your objections?

Mr. Walton: There could be something in the act which would take care of that situation, I would think. But I am not prepared to make any suggestions about how the legislation should be written.

The Chairman: What you are saying is that whatever is going to be said as to what constitutes sound financial procedure etc. should be in the statute and not left to be enacted by legislation?

Mr. Walton: Yes, that is the object of our recommendation, that it should be set forth in some manner, either by guidelines or otherwise so that the companies may know what is expected of them.

Senator Carter: But that would vary for different companies, would it not? If you define a sound financial structure for one company, it does not follow that it would suit another company.

The Chairman: Well, the complaint has been made here that to be able to do that by regulation you make different sets of regulations or guidelines for a particular company. If there are going to be guidelines the feeling expressed was that they should be general and included in the legislation.

Senator Phillips: Would you consider that the best definition would be a company that does not get into trouble in the future?

Mr. Walton: I suppose it would be the best one.

The Chairman: Senator Phillips, would you care to draft that for our consideration?

Senator Connolly (Ottawa West): Mr. Walton, you seem to indicate that finance companies should be segregated from other classes of companies. I take it you have no objection to representations made here last week to the effect that finance and acceptance companies should at least be dealt with in a separate part of the bill so that in effect they could be segregated?

Mr. Walton: It seems to me that it is the viewpoint of most people who have an interest in these things, that the possibility of trouble arising is through those companies which borrow from the public and then lend out their money.

Senator Connolly (Ottawa West): We should agree, I think, for the purpose of the record that there were no federally incorporated companies that had bancruptcies of the type you mentioned.

The Chairman: Mr. Walton, I was getting worried about your reference to the church corporation and the feeling that it might come under the provisions of this bill. Is that a federally incorporated company?

Mr. Walton: Yes, it was incorporated by a special act.

The Chairman: You might then get an exemption.

Mr. Walton: Yes, but it would be a nuisance, and it might cost something.

Senator Connolly (Ottawa West): You must remember, Mr. Chairman, that Presbyterians do not want to spend any more money than they should.

Mr. Walton: I was talking to Mr. Hamilton Cassells, Counsel for the Presbyterian Church, and he called me yesterday about this bill and asked me to bring it to the attention of the committee.

Senator Connolly (Ottawa West): At any rate there is no infallability in that church.

The Chairman: Thank you, Mr. Walton. Honourable senators, I should have a motion to print the brief which was filed by the Board of Trade of Metropolitan Toronto.

Senator Connolly (Ottawa West): I so move.

Hon. Senators: Agreed.

(For text of brief, see Appendix "G")

The Chairman: Now we will have a presentation by the Federated Council of Sales Finance Companies. Are you going to make the presentation, Mr. MacDonald?

Keith H. MacDonald, President, Federated Council of Sales Finance Companies: Yes. Mr. Chairman, honourable senators, as your chairman has indicated I am here with a delegation of representatives of the Sales Finance industry in Canada. The gentlemen here with me as witnesses are Mr. Jim Johnstone, Secretary, Canadian Acceptance Corporation; Mr. N. M. Peters, General Solicitor, Industrial Acceptance Corporation Limited; Mr. E. A. A. Wighton, Treasurer, Traders Group Limited, and also in attendance is Mr. R. J. Heron, Executive Vice-President, Associates Acceptance Company Limited, Mr. J. C. Aldred, Treasurer, Transamerica Finance Corporation; Mr. W. R. Bradley, Vice-President, Chrysler Credit Canada Limited; Mr. F. N. Comper, Vice-President, Commercial Credit Corporation Limited; Mr. D. O. McCormack, Vice-President and General Manager, Carling Acceptance Limited; and Mr. C. H. Bray, Executive Vice-President, Federated Council of Sales Finance Companies.

As indicated in our brief, the Council welcomes this opportunity to make a submission to your committee and hopes their comments and recommendations will contribute usefully to your deliberations.

We will not attempt to subject you to a reading of our brief. I am sure you would prefer that I do not.

The Chairman: As I told the other witnesses, you can assume that we have read it over. You can take that as a correct statement, as I am sure everybody has.

Mr. MacDonald: Thank you, Mr. Chairman.

Honourable senators, at the outset I would like to stress that we are by no means averse to the appropriate control and supervision of our industry by Government authority. Our submission is intended to reflect upon the "appropriate" aspect and it is toward this end we hope we can make a contribution.

By comparison with many other financial intermediaries, the sales finance industry is a relatively new innovation, having its beginning some 50 years ago and being the product of the mass production, mass consumption equation. As such it has rapidly undergone tremendous changes in scope, shape and size. In Canada today its assets, represented by receivables, are about $3 billion. Included are consumer and business accounts in almost equal dollar proportions.

A few years ago a Canadian spokesman, the president of an automobile manufacturing concern and president of the Motor Vehicle Manufacturers Association at that time, had this to say about our industry:

> The fact that the automotive industry is enjoying fantastically successful times is largely due to

the ability, flexibility, initiative, financial soundness and resourcefulness of the sales finance companies which operate to such a great extent in the automotive financing fields.

While the sales finance industry is best known for its purchase credit plans for merchant and dealer customers, it provides other important support through manufacturers for dealers. Last year the industry volume of wholesale financing, mostly motor vehicle, exceeded $2 ½ billion. Loans to establish, enlarge and equip automobile dealerships made by the sales finance industry are of the utmost importance to the success of the motor vehicle retail sale and service business.

In 1968 more than $300 million was provided by the industry for the financing of capital equipment, chiefly farm, construction, plant machinery, refrigerator and air-conditioning, lumber and sawmill, restaurants, hotel and motel, office and electronic data processing equipment. Also a further $200 million was provided for the financing of trucks, trailers, containers, buses and other commercial vehicles for use on highways and off highways. In addition, sales finance companies supplied important sums for the purchase of industrial and commercial equipment of various types to be leased to Canadian business.

The industry makes its credit plans available to more than 25,000 merchants and dealers in consumer goods and each year serves more than a million Canadian retail customers. Of the vendor consumer credit made available in Canada, sales finance companies supply over 45 per cent.

Since its traditional sources of funds have been banks, life insurance companies, trust and pension funds, the industry has been an excellent medium for investment at profitable yields. Until 1965 in North America the sales finance industry had not experienced a major failure nor had an institutional investor of any kind suffered a loss on its securities. It is a fact that before 1965 experience in investments with sales finance companies in North America had been considerably better than investments in manufacturing, distribution, mining, real estate or other corporations. Even when subsequent losses are included, the total experience with the sales finance industry is still superior.

Honourable senators, I think for the record I should say that Canadian sales finance companies have been held in high regard by professional investors throughout the world: as a matter of fact, no default on the part of any large industry member had occurred until the Atlantic event.

The Chairman: That is a very careful choice of word, is it not—"event"? I would have described the Atlantic as a disaster or fiasco or, certainly, something not entitled to that very nice word "event".

Mr. MacDonald: We did not like to pre-judge this.

The Chairman: It has been pre-judged.

Mr. MacDonald: Perhaps this excellent record lulled investors into a false sense of security which may have contributed to the problems which have been witnessed in the last few years.

Substantial investors in sales finance securities have admitted that before 1965, in a period of high liquidity, with an accent on yields, a tendency toward relaxing of investigation and appraisal allowed investments to be made with companies about which they knew too little in securities which had not been thoroughly appraised.

While the Canadian sales finance industry has historically closely paralleled its U.S. counterpart in most respects, its experience in the commercial paper field only began in 1951. Even today many Canadian companies offer secured notes, while on the other side of the border notes can be sold by large companies on an unsecured basis.

In both Canada and the United States extensive research is available to investors through investment dealers who are specialists in the money market and who engage analysts capable of rating finance company paper. Moreover, many of the large lenders supplying funds to the industry have professional staffs engaged in credit investigation and appraisal.

Since the events of 1965 many changes have taken place. It became evident to sales finance companies that financial and other information, customarily provided to investors and lenders, was not uniform and often depended upon the degree of interest or inquisitiveness on the part of investors. After considerable research, the industry, working with the Investment Dealers Association of Canada and the Canadian Institute of Chartered Accountants, sought to develop better forms of reporting as a pattern for the future. In fact, the Federated Council of Sales Finance Companies has been broadly commended by institutional lenders and investors and the financial press in Canada and abroad for the leadership it has shown in this regard.

It is public knowledge that finance company reports became the subject of a great deal more scrutiny in the years following 1965. In the interim, a number of companies have liquidated, merged, been sold or taken over. Thus the trend is towards larger and fewer companies, and it is expected this will continue.

Perhaps the most notable characteristic of the sales finance industry has been its ability to innovate and to satisfy newly discovered credit needs of consumers and business as soon as they become evident. It would be difficult to over-estimate the beneficial effect upon the Canadian economy and upon our

standard of living over the years by reason of the existence of an industry able and willing to pioneer in the provision of credit in areas not, I submit, serviced by other institutions. The continued growth of such an industry is a matter of importance to all Canadians.

When legislation of the type proposed in Bill S-17 is contemplated, our chief concern is that its provisions be of a type which will not unduly interfere with the ability of our industry to expand, to innovate and to extend new credit services when required. It is probably advisable for some degree of regulation to exist for all financial industries, but I respectfully submit over-regulation can be as harmful as no regulation at all.

In our written submission we present the view that Bill S-17 in its present form provides for an excess of regulatory power. To the extent that it does, we are critical of the bill. We favour legislation which will require sales finance companies to fully disclose all matters of importance to the investing public, but we see no advantage either to investors or to the industry, in legislation which will permit Government authorities to direct how companies can conduct their business affairs.

The Chairman: You do not mean "how companies can conduct their business affairs", but "how companies are to conduct their business affairs"?

Mr. MacDonald: Yes, how they are to conduct their business affairs.

It is probably unnecessary to state that no-one is more keenly interested in the financial health of each company in our industry than we are ourselves. Upon our ability to demonstrate financial soundness depends our ability to attract investment in the market place and thus to carry out our business function.

We point out as well that investors in our industry are neither speculators nor ill-informed. That is covered on the last appendix to the brief. They are of a class which is able to digest financial information and to draw sound conclusions in assessing risk. They will want to know that information made available to them is complete and accurate, and that our industry is properly supervised, but they will not require, nor would they endorse the principle, that our industry operate within a rigid framework of government regulation.

Honourable senators, we are here today to answer any questions you may have arising out of our written submission, and, indeed, any questions you may have relating to the business of sales finance companies. The size of our delegation, I think, reflects to some extent the fact that each company in our industry is somewhat unique, having different borrowing patterns and in some cases specializing in certain areas of the business known as sales finance. If we are unable to give you today adequate answers to any questions you may pose, we will be happy to obtain and submit to you such information as you may consider helpful in your deliberations on this bill.

We assure you also of our willingness to confer with and advise, to the best of our ability, all government authorities who will be charged with the development and administration of legislation in this area.

The Chairman: Are there any questions?

Senator Connolly (Ottawa West): I should like to move that we incorporate the brief that has been supplied us in the record of today's proceedings.

The Chairman: Does the committee approve?

Hon. Senators: Agreed.

(For text of brief, see Appendix "H")

Senator Connolly (Ottawa West): Mr. MacDonald, I gather from having read your brief and listening to your presentation this morning, that you substantially agree with the representations we received about a week ago from one of the acceptance companies?

Mr. MacDonald: From one of our members, as a matter of fact.

Senator Connolly (Ottawa West): Yes.

Mr. MacDonald: Senator, in speaking today I am representing the sales finance industry as a whole, particularly the 30 members which are members of the council, 19 of which conduct all of their business in Canada, and 11 of which are international companies. These companies are regional in nature, provincial in nature, national in nature, and international in nature. They focus their attention on all areas of business, or particular areas of business, there being a considerable difference between companies. I think in broad general principle I can assure you that the Federated Council of Sales Finance Companies supports the contentions submitted here by Industrial Acceptance Corporation a week ago. Some of our members are somewhat apprehensive about the degree of supervision. Having had considerable experience on an international basis in this area, they feel that supervision can be valuable, but excess supervision can be onerous, time-consuming and costly. We have accepted, I think, the broad general principle enunciated here a week ago.

Senator Connolly (Ottawa West): On page 6 of the brief you suggest that there be established lines of

last resort credit for registered companies, and you indicate that the lender of last resort should be a governmental agency, and you mention the Bank of Canada. I take it that this is the view of all the companies in your industry?

Mr. MacDonald: Senator, the sales finance industry feels that it should be dealt with under an extension of the Bank Act. It was then assumed that the supervision and regulatory power would be under the Bank of Canada. This does not infer any lack of confidence in supervision which might be provided by the Department of Insurance. Companies are already fully cognizant of the work of the Department of Insurance in the area of consumer loans, and are very pleased with the supervision that takes place there. Companies do feel that this line of credit of last resort would be most valuable to companies, particularly in fostering and sustaining the reputation of our companies in the international money markets. Extensive lines of credit are obtained by some sales finance companies from chartered banks in Canada, and by other companies from chartered banks in Canada and elsewhere. However, these are more costly, and since the sales finance industry finds itself in a position of obtaining lines of credit from one of its principal competitors, this does not seem to be the best possible position for the future.

Senator Connolly (Ottawa West): I am interested in what you say about its being more costly. I think it would be less costly if the last resort credit were supplied by a government agency rather than a chartered bank.

The Chairman: It might enlarge the field of lenders, and there might be more security.

Mr. MacDonald: I think it would help to inspire a new feeling of confidence in the industry in Canada—considering the events that have taken place. If our industry were to be treated under an extension of the Bank Act, I think in the eyes of international investors it would do a great deal for the industry. It would make funds more readily available, and perhaps at lower rates. Of course, it must be borne in mind that lines of credit with banks are not entirely dependable.

Senator Phillips (Rigaud): Are you suggesting that the money supply of finance companies should be increased or decreased by application of the policy of the Bank of Canada?

Mr. MacDonald: Not at all, senator.

Senator Phillips (Rigaud): How will you be getting your money then other than through the medium of the money supply by the . . .

The Chairman: He is talking about last resort credit.

Mr. MacDonald: We would propose to obtain our funds in the same way. We would propose to continue lines of credit at the banks, which are largely stand-by lines of credit. They are useful in paying for a run-down in our commercial paper, if such an event occurs. Generally, companies find the short-term money market quite dependable for continuous roll-over. It is only in a period of crisis, such as that which occurred in 1965, and in the unfortunate position in which a particular company might then find itself, that a company would use this last resort credit as a substitute for its present method of obtaining funds. It would be a line of credit of last resort.

Senator Phillips (Rigaud): A line of credit from the Government through the Bank of Canada?

Mr. MacDonald: A line of credit of last resort through the Bank of Canada.

Senator Phillips (Rigaud): There would be others who would like to join with you and enjoy that privilege.

The Chairman: Why limit it to companies, senator? There might be a number of individuals as well.

Senator Phillips (Rigaud): Yes.

Senator Connolly (Ottawa West): As I understand the witness, I think what he is actually saying is that the recommendations of the Porter Commission in this respect are the ones that he would like to see apply to this scheme of near-banking institutions.

Mr. MacDonald: That is right, senator.

Senator Phillips (Rigaud): Except, senator, I do not think the Porter Commission went so far as to say there should be made to the finance companies or the so-called near banks a money supply similar to that now provided for the banking institutions of this country, which latter institutions come under the Bank Act.

Senator Connolly (Ottawa West): No, I do not think they went so far as to say these companies should go as far as the Industrial Development Bank was able to go, or the Bank of Canada; I think there is a line to be drawn between the two.

The Chairman: Where would you draw it?

Senator Phillips (Rigaud): On the assumption that the definition of "investment companies" was contracted to cover institutions of your type, do you

see any objection in Part I of the bill to giving the broadest rights of inquiry to the Superintendent of Insurance in the Department of Finance on a current basis to investigate the operations of the types of company in which you are interested, with appropriate right to the Department of Finance to submit such information to any department of government it thinks appropriate in the circumstances?

Mr. MacDonald: The industry itself has no apprehension about the supplying of information to whatever government authority it is.

Senator Phillips (Rigaud): No, the right of inquiry as distinct from the supplying of information, as contemplated by Part I. There is a contemplation of initiative under Part I of the Department of Finance walking in and getting information, as distinct from supplying it. Do you see any objection, by way of basic interference with the operation of your business, to allowing the Department of Finance to have a current look-see from time to time, on the theory of Chinese medicine, to avoid an illness such as Atlantic, and giving the Department of Finance a right after acquiring that information to channel it through appropriate sources, say to those who administer the Canada Corporations Act, the Bank of Canada and that sort of thing? Would it bother you if that right were given to the Department of Finance?

Mr. MacDonald: In general principle, no. The industry has no aversion to providing information, nor would it have aversion to the right of inquiry to look into the affairs of the company if it serves a useful purpose. It has some apprehension about the weight and extent of inquiry and supervision to the extent that it becomes costly and time consuming.

Senator Phillips (Rigaud): I am not dealing with supervision by way of order in council and regulation. I am confining myself to the issue of inquiry.

Mr. MacDonald: I see no objection basically on the part of our companies. However, I would like to make this suggestion. It is true that some of our companies, being of an international nature, do not otherwise disclose their Canadian affairs separately. They would prefer that such information as is submitted be treated in confidence and not otherwise available, for competitive and other reasons.

Senator Connolly (Ottawa West): You make that point in your brief on page 11.

Mr. MacDonald: That is the intention of that reference.

The Chairman: In view of this discussion I am wondering what you had in mind when you made use of the expression on page 6 of your submission today that "over regulation" can be as harmful as no regulation at all. What did you mean in the context of this bill as constituting over regulation?

Mr. MacDonald: If by an extension of the bill an endeavour were made to establish certain criteria, particularly ratios by which it would be assumed that companies conforming would be thought sound companies and those that did not conform thought to be less than sound companies, I think that would be a very harmful type of legislative regulation; it could put the stamp of approval on that which may not be sound and withhold the stamp of approval from something which is perfectly sound.

The Chairman: In summary form, what you say is that you know your business, you know ratios and every other item of it in relation to borrowing and lending money, and all that sort of thing, and you should be left to apply your own judgment, the function of any government department being to keep in touch with what you are doing to see whether when the public invest in your companies, by way of lending or otherwise, which money you then put out, it is being wisely handled.

Mr. MacDonald: Our investment receivables by and large aggregate $3 billion; the investments we make in receivables must be sound. We are, however, subject to a continual discipline which we think is the strongest of all, and that is the discipline of the market place. If we are not operating our companies soundly, if our performance statistics do not indicate we are operating soundly, we will not be able to obtain further funds. This is a very strong discipline carried out by knowledgeable people, by professional people. As a matter of fact, in the United States there is a central agency that passes on companies from a credit standpoint for commercial paper purposes. This same thing is done somewhat informally by the Investment Dealers' Association of Canada and by investing institutions. These disciplines are very strong and very effective, and are carried out from the standpoint of the supplier, the investor.

The Chairman: But somehow or other the discipline of the market place seemed to fail, or to have been on holiday, when such a thing as, for instance, the Atlantic Acceptance fiasco occurred.

Mr. MacDonald: That point has been well covered in the financial press in both Canada and the United States. I believe the conclusions drawn are that there was a substantial relaxation of normal criteria, of normal appraisal and investigation by institutional investors, because of the high liquidity situation then existing and because of a search for higher yields. This caused investments to be made in companies which, upon later reflection, should have been

looked at more carefully, and of course caused the fiasco–as I should call it at this time–that occurred.

The Chairman: Do you think this could not happen again even with the discipline of the market place?

Mr. MacDonald: We think it is extremely unlikely. A great deal has happened in the interim. Companies, Canadian and international, are supplying much more in the way of information, the reporting is much more uniform, the investigation is much more intensive. I think the fact that companies have been sold, that companies have been liquidated, that there have been so many mergers taking place, indicates that the availability of funds has tightened up considerably for those companies that may have been marginal. We think this type of discipline will continue into the future. It is dealt with in a submission we made to the Royal Commission on Atlantic Acceptance, commonly known as the Hughes Commission, in Ontario. We can submit a copy of our brief in that connection, which contains quotes indicating that institutional investors now admit that they had become far too lax in their standards.

Senator Connolly (Ottawa West): Would you file a copy of that for the use of the committee?

Mr. MacDonald: I would be happy to do so.

Senator Connolly (Ottawa West): I do not suggest that it be printed. I do not know how voluminous it is, but perhaps the committee would like to have a copy. I see, now that you produce it, it is too big to print.

The Chairman: We will keep this for reference, but it still gets back to the question by Senator Phillips, which I think you answered. The discipline of the market place is good. Do you think it is working well now, and whether or not you have an outside source, like a Government department looking in on your operations, would it give that extra measure of assurance to the public and might catch some of these occurrences before they move too far.

Mr. MacDonald: Mr. Chairman, I think its particular value would be in the requirements with respect to disclosure. I believe perhaps one of the most important things to consider here is the information that is required of companies and the information that is made available. Substantially more information is now available than was the case before 1965, and, for two reasons. Companies have always been prepared to provide it, but investors generally had not required it nor did they seem interested. Today that situation has changed entirely and I believe that the provisions of the bill will be most important in the area of disclosure, and in the meaningful reports required of companies.

The Chairman: Would you say when disaster strikes and it appears that things have not been run properly in a particular company or industry and that there might even be elements of a bad practice or even dishonesty contributing to this disaster the reaction of the public right away is, "What has the Government been doing, are they not interested in how their money is being used by the people to whom it is loaned? "

Now, this is the duty that the Government feels it should take on and you do not disapprove of it, I take it, so far as the furnishing of information and as inquiry is concerned?

Mr. MacDonald: Mr. Chairman, we heartily endorse that aspect. I should perhaps make this point. Some of the companies about whom we have all been reading were not essentially finance companies, though they bore the name of finance companies.

I think of particular interest in this bill is the definition of a finance company. If a material percentage of a company's business is the business of sales financing, then that company is entitled to be called a sales finance company, but we have had cases of companies which were hardly known by our members in the business of sales financing, yet bore the name and perhaps became entitled to credit because it was assumed they were in the finance business.

Mr. Chairman, one of our delegates has a point he would like to make.

The Chairman: Yes.

Senator Hollett: Before he does, I would like to ask a question on page 2 of your brief. You say you were by no means adverse to the appropriate control of our industry by Government authority. In your opinion would you define what you mean by control by a Government authority.

Mr. MacDonald: Mr. Senator, control may have been an ill-chosen word there.

Senator Hollett: I think so.

Mr. MacDonald: I think we were trying to put ourselves in the position of the Government in this case. Would the Government feel it had control of the situation? We were thinking largely however of the supervision and the reports being submitted, and that the Government would then be knowledgeable in this area of business and know what companies are doing.

Senator Hollett: Then you do not think that the word control should be there at all?

The Chairman: I think the only basis for having it there might be that the Government would have some right or some authority if its supervision disclosed a situation that required action to protect those who had money invested. He may have it in the wrong order when he says appropriate control and supervision. I think what he means is appropriate supervision and authority if action is needed.

Senator Hollett: Is there any act in existence whereby the Government has control over such an industry?

Mr. MacDonald: Under the Ontario act, Mr. Senator?

Senator Hollett: No, I am thinking of federally then.

Mr. MacDonald: We fully endorse the disclosure aspect, and inspection by government to verify disclosure. It was in that sense that the word control was intended. By putting ourselves in the place of Government we thought that this was the best way in which the Government can insure that the industry operates as the Government would like it to do, by requiring companies to submit information which is meaningful and which fully discloses the kind of business the company is in, the kind of receivables it has, the condition of those receivables, and the content of its profit and loss account. We think if a Government department is receiving this type of information it has the information it requires to insure that events which have happened will not recur.

Senator Connolly (Ottawa West): Before Mr. MacDonald leaves, Mr. Chairman, looking back first of all to what Senator Phillips asked—and I thought it was a particularly appropriate question—and to the answers given by Mr. MacDonald to you on the question of disclosure and investigation, could I ask Mr. MacDonald this question: you have suggested roughly that generally companies such as are represented here by you today should be assimilated to near-banks as the Porter Commission suggests. I would assume from that, when you further press for the consideration of having the credit of last resorts applied by a governmental agency, that any onus cast upon that creditor of last resort is alleviated very greatly by the amount of supervision and inspection that would be imposed upon these companies if they were in fact assimilated to near-banks.

Mr. MacDonald: Mr. Senator, I think it has an additional advantage too. It provides another form of discipline. If a line of credit of last resort were extended by the Bank of Canada, it would be used in only extreme circumstances and for only brief periods, and companies would impose upon themselves the additional discipline of endeavouring to avoid the use of this line of credit of last resort.

Senator Connolly (Ottawa West): In other words, what you really are getting at is to give the public confidence in these companies which are so important in the economy today. You want them to be operating under the best possible auspices. I gather that is the whole thrust of your argument.

Mr. MacDonald: Mr. Senator, we are most concerned that there be confidence in our industry and that it be able to obtain funds to carry on and extend, as well as expand, its business. We know that confidence is something that is easily lost and difficult to re-establish. I am a director of the American Industrial Bankers Association of the United States, and I attend their meetings and have found that they have less difficulty because the industrial banks in the United States are brought under state authority. Having the name industrial bank, tends to lend confidence to the industry. We have no ulterior motive in these suggestions. Our intention is to make suggestions to you based on our knowledge of the industry, which will contribute to making it sounder, and will develop and sustain the kind of confidence that people should and can have in our industry.

We think that if we were dealt with under an extension of the Bank Act this in itself would give recognition. We would continue to carry the substantial reserves that we do now. We would continue to borrow from the same sources, we would be subject to the same market disciplines as we have now; but we would have this additional line of credit which would tend to generate new confidence in the industry. That line of credit, we know, could not be used for purposes of operation the business: it would be the last resort, to be used on a temporary basis, for a very short period only. I think the discipline would deter companies from using it.

Senator Connolly (Ottawa West): You are not too different from the position of governments who find themselves in trouble and have to resort to the International Monetary Fund.

Senator Burchill: This idea of the company extends to the United States, too, I presume, in their attitude towards Canadian investment?

Mr. MacDonald: It extends there, and they were most disappointed when the events happened in Canada. They were quite surprised that such an event could have occurred. They realized, upon reflection, that they had known all too little about some of the companies concerned. Their investigation had been too scanty.

The Chairman: They have had that experience in their own country, Mr. MacDonald.

Mr. MacDonald: Mr. Chairman, that is correct. They have subsequently had similar experiences with companies in the United States; and there has been some accommodation extended to other companies, to prevent similar occurrences.

However, considerably more care is taken in the United States today to ensure that companies are operating on a better basis than they were in times of high productivity and high yields.

Mr. J. D. Johnstone, Secretary, Canadian Acceptance Corporation Limited, Member of Legal & Legislative Committee of the Federated Council of Sales Finance Companies: Mr. Chairman, I would like to make some comment in regard to Senator Connolly's mention of the line of credit of last resort. I think you asked whether all companies would require such accommodation, and I suggest that such might very well not be the case. A number of the companies are financially in such a position that we would not look for credit lines of last resort, with the costs incidental to having such lines of credit available, and it would not be necessary for or requested by such companies.

Senator Connolly (Ottawa West): Is it because they do not need it?

Mr. Johnstone: Because such companies do not need it to generate funds. That is correct, sir.

Senator Connolly (Ottawa West): What do you say about the question Mr. MacDonald raises, about the provision of it to inspire confidence in the industry?

Mr. Johnstone: The difficulty, Senator Connolly, is that there are a number of different types of corporations represented by council. There are Canadian finance companies, there are American subsidiaries of gigantic American finance companies, and there are captive finance companies of large manufacturing concerns.

Senator Connolly (Ottawa West): They are all incorporated in Canada?

Mr. Johnstone: They are all incorporated in Canada, but they do not require lines of last resort credit to increase confidence, simply because of their parental background or their own financial state. Their positions are quite different and distinct.

Senator Connolly (Ottawa West): If it is going to be helpful for Canadian incorporated companies and Canadian owned companies to have this kind of credit of last resort, do you think that these foreign owned companies would object?

Mr. Johnstone: Not at all, sir. I simply suggested that some might not seek it. The question is whether it would be permissive or mandatory. They might not seek it but certainly they would not object.

Senator Connolly (Ottawa West): Thank you.

The Chairman: It might be made permissive. I would think that if any such plan were to be evolved there would be discretion as to whether it would be made available in such cases.

Mr. Johnstone: That is right. I think that the 12½ per cent reserve that has been suggested for short-term borrowings is one that might deter certain companies from seeking the line of last resort credit, if they do not require it.

Mr. MacDonald: A question came up in regard to companies under the United States Investment Companies Act. Mr. Johnstone has information on that, if you would like him to table it.

The Chairman: Yes, if you would table it. We have our own statute and our reading of it, but if you have something on that we would appreciate having it.

Mr. Johnstone: The only information I have in regard to that act in the United States is that it is not applicable to finance companies. It is administered by the Securities Exchange Commission, as is the Trust Investment Act, but it related specifically to investment companies which deal in and trade in securities, not to companies which advance money against receivables.

The Chairman: We had discussions here earlier as to the definition of "investment company" in the United States statute and as to whether it should be applicable and be the definition to be used in this bill. They seem to follow a general definition of really buying and selling and trading in securities, and then they proceed with a tremendous series of exceptions.

Mr. Johnstone: That is quite right, sir. To my knowledge there is no legislation in the United States which imposes a control on the borrowing ratios of finance companies related to capital. Disciplines imposed by the money and capital markets, industry activity and good money management judgment are the factors which create stability. The only applicable ratios which I know of related to life insurance company lenders to protect the policy holders against improvident lending.

The Chairman: Thank you. I take it you have concluded your presentation?

Mr. MacDonald: Yes, Mr. Chairman, thank you very much.

The Chairman: We have concluded the submissions for today.

Senator Connolly (Ottawa West): Mr. Chairman, are you closing on this bill?

The Chairman: No. There are some things I wish to say. We have a letter from George Weston Limited, addressed to the Chairman, expressing their views in relation to this bill.

We also have a letter, which has also been distributed, from the Imperial Tobacco Company of Canada, addressed to one of our senators, and a copy was forwarded to me. It expresses their views.

I think these letters, indicating their views, should be attached and printed as an appendix today.

Senator Connolly (Ottawa West): Mr. Chairman, as I am not the addressee of these letters, I move that that be done.

Hon. Senators: Agreed.

(For text of letters, see Appendixes "I" and "J")

Senator Connolly (Ottawa West): Mr. Chairman, could I ask if you have, as I have had, a letter dated February 27 from the Investment Dealers' Association? Are they going to present evidence? Perhaps we would like them to come to the next meeting?

The Chairman: I do not think I can answer that question, because I could not answer it myself, so I decided we should let that letter stand.

Senator Connolly (Ottawa West): Very well. A letter has just reached my desk this morning from a very distinguished Canadian, with reference to United Dominion Corporations (Canada) Limited. The distinguished Canadian is the Honourable George Drew. There are some views expressed in an accompanying memorandum, which frankly I have not had a chance to look at. Perhaps you had that letter, too?

The Chairman: I may have it. It may be in the mail, but I have not seen it yet.

Whereupon the committee proceeded to the next order of business.

APPENDIX F

SUBMISSION BY

MOLSON INDUSTRIES LIMITED

TO THE

SENATE OF CANADA STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

REGARDING BILL S-17 : "INVESTMENT COMPANIES ACT"

MARCH 1969

---

1. Molson Industries Limited ("Molson"), formerly named Molson Breweries Limited, is federally incorporated and is a large, multi-national, multi-product organization producing and marketing its products in Canada, the United States, Mexico and Europe through approximately 200 plant, warehouse and sales office locations. It has approximately 7,500 employees and is owned by over 12,000 shareholders.

   Molson produces and markets ale and beer all across Canada, where it is the second largest in the industry. Molson also markets its ales and beer in the north-eastern United States and has a 42% interest in a brewery in Seattle, Washington and through it, an interest in the California wine industry.

   Molson also manufactures an important range of other products which are produced and marketed in Canada, the United States, Mexico and Europe. The markets for these products include construction, petroleum marketing equipment, industrial, consumer, agricultural and office equipment and supplies. While these operations are primarily engaged in secondary manufacturing of durable products, other products and services, such as business forms and services, equipment rentals and warehouse facilities are marketed as well. In addition, Molson controls a company which is a principal distributor of school supplies and one of the largest manufacturers of household furniture in Canada.

   Molson is actively engaged, either directly, or indirectly through a total of 56 controlled subsidiaries and affiliates, in the management of these operations and its shares are listed on the Montreal, Toronto and Vancouver Stock Exchanges.

   Molson wishes to register its general concern in respect of this Bill and, in doing so, question the present necessity, or even the desirability, of its enactment in the light of existing federal legislation, the nature and scope of the Bill's provisions, and the present lack of definitive knowledge as to whether and, if so, to what extent there is a problem and of what sort of legislation would be the most effective to cure it.

2. In making this submission, we wish to emphasize that we do not seek to impugn the inherently laudatory purposes of the Bill, as we are, as a matter of corporate policy, in favour of legislation which has for its design and purpose the overall protection of the investing public, provided that in effecting such protection, companies which are directly or indirectly actively conducting industrial or commercial businesses are not effectively prevented or unduly hampered in the free and intelligent use of capital and surplus funds generated by their business operations through unduly restrictive laws and regulations, or where such right is virtually rendered incapable of exercise because of a climate of uncertainty created by extremely broad discretionary powers vested in public officials without any guidelines and on an absolute basis.

3. Our study of this Bill, coupled with what are, we believe, reasonable inferences drawn from both the debate on its second reading and the proceedings heretofore held before this Committee, has lead us, with respect, to the conclusion that the implications of the Bill and the possible ramifications of its implementation, even in its initial stage, will, or are likely to, produce the unfavourable climate we mentioned above and, hence, that the passage of the Bill into law would simply defeat the justifiable and good purpose it was apparently designed to accomplish.

4. We feel that the defects of the Bill result essentially from confusion between the ordinary commercial concepts, respectively, of finance, investment, and industrial companies. While it is true that nothing in the Bill, nor in the debate on its second reading, nor in the proceedings heretofore held before the Committee, makes express reference to the particular financial institutions which may be covered by the Bill, we feel it is equally true to say that the public impression is that the Bill was inspired by the collapse of certain provincially incorporated finance and acceptance companies. In this regard, the following quotations are relevant:

> Hansard, November 21, 1968, page 601: Senator Paul Desruisseaux, in moving the second reading of the Bill, remarked:
>
> "A large number of federally incorporated companies act in the capacity of financial intermediaries. Many of these, such as banks, insurance, trust and mortgage loan companies, are presently supervised and regulated in the interests of their creditors under existing legislation. However, there are many of diversified types, but including primarily finance and acceptance-type companies, for which there is no comparable supervision or regulation. Recent collapses of several of this type, although essentially involving companies under provincial jurisdiction, have pointed out the danger of such a vacuum. Many investors have suffered losses and, on occasion, confidence in the stability of our financial institutions has been shaken."

First Proceedings, January 29, 1969, Pages 165 - 166:
Mr. R. Humphrys, Superintendent of Insurance, stated to the Committee:

"...the purpose of this Bill is to establish a system of reporting and inspection for companies that are engaged in any aspect of the business of a financial intermediary, and in due course to establish a system of control for those companies that are in a weak or dangerous financial condition. As you all know, we already have quite an extensive system of supervision, reporting, inspection, and control for major classes of companies that are acting in some respects as financial intermediaries. These are banks, insurance companies, trust companies, and mortgage loan companies. There is, however, another group of companies that are engaged in borrowing money on debt instruments and using a significant portion of their funds for investment purposes as distinct from purposes relating directly to commercial and industrial activities. This group of companies is not now subject to any regular system of reporting, supervision, or control."

5. At this juncture, it might be useful to set out for examination the characteristics normally attributed to investment and finance companies, and other financial intermediaries, in their ordinary concepts, as opposed to general industrial and commercial companies. In the 1964 report of the Royal Commission on Banking and Finance ("Porter Commission") at pages 89 - 90, the following comments appear:

"The financial institutions and markets, on the other hand, are merely intermediaries whose function it is to ease, and sometimes to encourage, the flow of credit from surplus to deficit units."

"The financial intermediaries and markets deal almost entirely in financial assets and liabilities as opposed to physical goods and non-financial services, and this is what distinguishes them from other enterprises."

"Their assets are the debt instruments and equity shares of final borrowers or users of funds and, to a lesser extent, of other intermediaries. These are financed by issuing their own liabilities principally in the form of promises to pay of various kinds, but also in the form of shares, which are held as assets by final lenders or suppliers of funds and, in minor amounts, by other financial institutions."

Paraphrasing Section 8(1)(d) of the Regulations under the Ontario Securities Act, a "finance company" may be described as a company for which a material activity involves:

"a. purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services,

b. factoring, or purchasing and leasing, personal property as part of a hire-purchase, or similar business, or

c. making secured and unsecured loans....".

We would also refer to a research study prepared by Mr. St. Elmo V. Smith, F.C.A., and published by The Canadian Institute of Chartered Accountants, entitled "Finance Companies - Their Accounting, Financial Statement Presentation, and Auditing" which contains a review and description of the finance company industry in Canada, and the following extracts are taken therefrom:

Page 2: "The finance company industry comprises companies engaged primarily in providing credit to individuals and to commercial organizations. These companies include some which operate independently and engage in various forms of financing, and others which have been formed by manufacturers or large retail stores to provide financing for their customers only. It is more usual, however, to find finance companies associated in groups which carry on their operations through a parent company and a number of specialized subsidiaries, each of which operates primarily in a different sphere of financing."

Pages 3 - 4: "Finance company groups frequently extend their operations, through subsidiaries, into other related and non-related activities...."

"Normal accounting practice calls for the preparation of consolidated financial statements by parent companies, whereby the assets and liabilities, and the income and expenses of its subsidiary company or companies would be consolidated with those of the parent...."

"When a finance company group has diversified and includes non-finance subsidiaries, such as subsidiaries engaged in insurance, merchandising, or commercial operations, there would probably be some merit in such subsidiaries not being included in the consolidated financial statements...."

"In the finance company industry, shareholders' funds represent only a minor part of the total funds in use, the major part being obtained from secured and unsecured borrowings...."

Page 59: "In a typical finance company, capital requirements may be derived from any of the following sources:

1. Demand bank loans.
2. Short term notes payable.
3. Medium and long term notes payable.
4. Debentures.
5. Shareholders' funds.

Further subsidivision of these headings will be found in practice, ...in addition finance companies which are subsidiaries of other companies may make use of advances from their parent company, either on a semi-permanent basis or simply for limited periods.

None of these sources or funds are itself peculiar to finance companies, and companies in other industries may, and frequently do, derive their capital requirements from the same sources. What is peculiar to finance companies is the fact that a typical finance company will frequently draw upon all these sources at the same time ..... shareholders' funds generally represent only a minor part of the total funds in use by finance companies, the major part being provided by borrowings from these other sources.

This fundamental characteristic of the finance company industry arises from the fact that it would generally not be feasible to sustain effective operations and a sufficiently attractive earning power simply on the basis of funds provided by shareholders. It is essential for a successful finance company to have borrowed funds and to earn income on the spread between interest received (either as such or in finance charges) and interest paid on the borrowings."

So far as concerns investment companies, some idea as to the special status of these companies, as opposed to ordinary commercial and industrial companies, and even as opposed to financial holding companies which are recognized, at least implicitly, in Section 12(6) of the Income Tax Act, may be derived from the provisions of Section 69 of the Income Tax Act, which deals expressly with investment companies and sets forth the very special characteristics which any such company must have before it can claim the tax status of an investment company. Then, there is the definition of "investment company" in the Investment Company Act of 1940 of the United States, which definition is admirable in its simplicity and covers any company which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, re-investing, or trading in securities". The definition also covers any company which "is engaged or proposes to engage in the business of investing, re-investing, owning, holding, or trading in securities, and owns or proposes to acquire

investment securities having a value exceeding 40% of the value of such company's total assets (exclusive of government securities and cash items) on an unconsolidated basis". 'Investment securities" are described as including all securities except government securities, and securities issued by majority-owned subsidiaries of the owner-company which are not investment companies. The Act then provides for certain exemptions, including any company which is 'primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, re-investing, owning, holding, or trading in securities". It should be noted that this exemption is granted by the Securities and Exchange Commission not on a purely discretionary basis, but on the basis of the facts submitted by the applicant company, which may obtain a review of the order by the Commission, refusing exemption, in the appropriate Court of Appeals in the United States. This Court may affirm, modify, or set aside, in whole or in part, any such order of the Commission, and the Court's judgment or decree in this regard is, in certain circumstances, subject to final review by the Supreme Court of the United States.

6. Against this background, and given the normal structural ramifications of current corporate operational and financial practices, we do not understand what prompted the draftsman of the Bill to provide the extremely broad definition of 'business of investment" contained in Section 2(b) of the Bill, inasmuch as it is difficult to imagine what reasonably active company, regardless of the precise or primary purpose for which it was incorporated, or of its principal activities, would not come within the purview of the definition simply and immediately upon its issuing any form of debt instrument whatsoever, including even instruments issued to evidence routine and operational bank borrowings. It is true that Section 3(2) of the Bill provides for the discretionary granting by the Minister of exemption from the application of the Bill under certain conditions, including the situation where borrowings are restricted to bank borrowings and/or from any shareholders owning individually more than 10% of the outstanding voting shares. The question is, why should companies which are carrying on ordinary commercial and industrial activities have to be put to the trouble and expense of seeking such an exemption, and be in doubt as to whether the Minister will see fit to grant an exemption, and with the knowledge that any exemption which is granted may, again essentially on a discretionary basis, be revoked at any time by the Minister under Section 3(3). It is difficult to see how so broad a definition would in the net result truly serve to protect or be in the public interest, as the virtually unlimited scope of the definition, combined with such discretionary exempting and revoking powers, would in our view render the administration of the Bill unworkable and at the same time impose an undue burden of expense and confusion in the routine operations of normal commercial and industrial companies.

7. The unfortunate and, we submit, unnecessary broadness of the definition of 'business of investment" both results from, and is emphasized by, the prescription in Section 2(b) of the Bill of the two factual preconditions of the borrowing of money and of certain prescribed uses of assets without regard either to the precise purpose of the borrowings or to the precise use of the funds borrowed. That is, there is no distinction made between funds borrowed

expressly for the purpose of, and used for, financial transactions, as opposed to funds borrowed in the normal course of a company's industrial or commercial activities simply for the purpose of and used for such matters as plant acquisition or expansion, or inventory financing. A normal business concern might well co-incidentally borrow funds for capital expenditure needed in connection with its normal activities and use the whole or a portion of its surplus earnings for a purely financial transaction, in which event, assuming that it met one of the tests set out in Section 2(f) of the Bill, it would thereby and thereupon be deemed to be carrying on the "business of investment" and, hence, subject to the overall regulatory provisions of the Bill, unless such company was able to obtain and retain an exemption under Section 3(3) of the Bill. We respectfully submit that the problem raised by the Superintendent of Insurance, Mr. Humphrys, at the First Proceedings on January 29, 1969, "of tracing the dollars. You can never be sure which dollar is used for what", does not justify the lack of precision in the definition of "business of investment", nor the resultant inclusion therein of an unrelated and incidental activity of an ordinary industrial commercial company effecting a financial transaction with funds out of its surplus earnings, as opposed to monies borrowed and used expressly for that purpose. We are against any legislation of this type, where the provisions are so broad as in effect to allow and encourage public officials to engage in "fishing expeditions" unlimited both in time and in scope, and using as the basis of justification therefor the protection of the investing public. We believe that it is incumbent upon the government and the public officials to demonstrate the need for the enactment of legislative and administrative powers, particularly those which are as broad, or more precisely, as undefined, as are provided in this Bill, and we respectfully submit that nothing in the proceedings heretofore held before this Committee has accomplished this demonstration. On the contrary, such proceedings establish that the powers are required in order to enable the government to determine whether or not and, if so, to what extent, there is a present need for legislation of the type contemplated in the Bill.

8. The unduly broad scope of the definition of "business of investment", and the matters related thereto as discussed above, were duly noted and raised by each of the Senators who spoke on the Bill during the course of the debate on its second reading. During the First Proceedings held before this Committee on January 29, 1969, the Superintendent of Insurance, Mr. Humphrys, in discussing this aspect of the Bill, stated in part (at pages 167 and 168):

> "The principal reason for the broad definition, that I am sure strikes everyone forcibly when they first pick up this piece of legislation, is to enable us to get a regular flow of information, so that we can answer the very question that you posed, and we can be in a position to make worthwhile and sound recommendations to the government as to regulatory provisions that may be appropriate for different types of companies. We recognize that in this definition, the very broadness of it, it covers a great variety of companies, not only companies that people normally think of as investment companies, but it goes far beyond that. That was recognized and it was intended for the purpose of gathering the information."

"The main emphasis has been on gathering information; but the emphasis on gathering information and supervision is aimed at companies that borrow on debt instruments as distinct from companies that raise the money only on the sale of shares. If a company raises its money only on the sale of shares, it would not be subject to this Act."

Also at the First Proceedings held on January 29, 1969, Mr. A.B. Hockin, Assistant Deputy Minister of the Department of Finance, stated at page 182:

"I think there is no suggestion that the intent of the Bill is to catch companies whose business, on a regular basis, in their normal operations, is not with investing, but the investment really comes about incident to their flow of cash which they may have at times for the purpose of their regular business, be it industrial or commercial. The intent of the exclusions which Mr. Humphrys has described, and as he has said, is to take that company out of the ambit of the Act."

The problem is, of course, as pointed out by Senator Hayden immediately following Mr. Hockin's above quoted remarks, that the Bill in its present form expressly denies that intent, and it is the language of the Bill which governs, rather than the intent which purportedly lies behind the language used.

9. In the course of the First Proceedings held on January 29, 1969, before this Committee, and referring to the supervisory provisions contained in Section 5 of the Bill, Mr. Humphrys contended that, while under existing legislation financial information of various sorts was required, it apparently was not in detail sufficient to enable governmental officials at this stage to draft legislation containing precise definitions and guidelines both as to companies which should be covered, and to uses of borrowed funds. In conformity with the "fishing expedition" approach adopted in the drafting of this Bill, it should be noted that the "annual statement" required under Section 5 is not necessarily the customary audited financial statement of the company, but rather some sort of non-defined but, presumably, financially oriented yearend statement regarding the condition and affairs of the company which "shall be in such form and shall contain such information as is prescribed by the Superintendent". In addition to this very broad discretionary power to extract financial data and other related corporate information, Section 5(6) allows the Superintendent direct access to (amongst others) the auditor of any company, without the prior knowledge, much less the prior consent, of the directors or senior officers of the company, to demand and obtain from the auditor such additional information as the Superintendent may require "and as he considers necessary to enable him to ascertain the financial condition of the company and its ability to meet its financial obligations". Still further, Section 6 of the Bill authorizes an "Inspector" to "enter any office of an investment company" or any subsidiary thereof, to inspect and obtain copies and extracts from, "any books, records or documents relating to the business, finances or other affairs of the investment company" or of any of its federally incorporated subsidiaries.

10. In this connection, a summary review of existing federal legislation relating to corporate financial returns and similar information may be useful:

(a) Canada Corporations Act:

(i) Section 121F requires the filing in the Department of the Registrar General of a company's annual financial statements prepared in accordance with the detailed provisions of Sections 116 - 121A, inclusively;

(ii) Sections 73 - 82 require the filing with the Secretary of State of prospectuses and offers to the public involving the issuance of any shares, debentures or obligations of a company, and contain (Section 77) specific and detailed requirements as to the particulars which must be contained in any such prospectus;

(iii) Section 66 requires the delivery to the Secretary of State of a certified or notarial copy of any instrument creating or evidencing any mortgage or charge securing any issue of debentures, and any mortgage or charge on uncalled share capital, the undertaking or property and other assets of a company.

(b) Corporations and Labour Unions Returns Act:

Part 1 of which requires the annual filing by each company with the Dominion Statistician a Return comprising elaborate particulars as to the capitalization and other financial aspects of the company, including: -

(1) the amount and description of the authorized capital, and the attributes of each class of shares thereof;

(2) the number of issued shares of each class, and in relation to each thereof: -

(i) the total number of shares held by residents and non-residents of Canada, respectively, and

(ii) the number of residents and non-residents, of Canada, respectively, who hold more than 5% of the issued shares, and the number of shares held by each such person, and

(iii) general particulars of each corporation holding more than 10% of the issued shares, and the number of shares held by each such corporation;

(3) general particulars in respect of each federally or provincially incorporated company, more than 50% of whose issued shares of any class are held by the reporting corporation;

(4) the total amount of debentures issued and outstanding, by each class thereof;

(5) the total number of shares, by class, and the total amount of debentures, by class, offered in Canada for public subscription during the last preceding 5 years;

(6) the name, address and nationality or citizenship of each director, and of each officer resident in Canada;

(7) the total amounts paid or credited, during the year under review, to persons not resident in Canada for various items, such as dividends, and interest, rental and royalty payments, and management, professional and consulting fees and charges, and salaries, fees and other remuneration to officers and directors, all to be shown separately.

Also, under Section 5 of the Department of Consumer and Corporate Affairs Act, the Minister of that Department is given duties, powers and functions over various matters, including corporations and corporate securities and bankruptcy and insolvency, and under Section 6(2) is empowered to undertake research into such matters and to co-operate "with any department or agency of the Government of Canada", all as he sees fit and deems appropriate in the public interest.

11. In regard to the powers of supervision and inspection vested in the Superintendent of Insurance under Sections 5 and 6 of the Bill, we feel that there should be placed on record before this Committee certain of the principles postulated in respect of statutory powers by the Ontario Royal Commission on "Inquiry Into Civil Rights" (McRuer Report), and we submit the following extracts taken from volume 3 thereof: -

Pages 1277 and 1278:

(i) "Arbitrary powers of investigation ought not to be conferred in any statute."

(ii) "Where powers of investigation are conferred, they should be subject to conditions precedent which must be satisfied before an investigation can be validly commenced."

(iii) "Conditions precedent should be expressed with precision."

(iv) "Wherever possible, conditions precedent should be drawn in objective form."

(v) "Each provision conferring a power of investigation should contain language prescribing the purpose and permissible scope of the investigation."

(vi) "The prescribed scope for any given power of investigation should be no broader than is necessary to accomplish the purposes of the Act in question."

(vii) "The provision defining the scope of an investigation should be stated in precise language."

(viii) "Where possible, the scope of an investigation should be stated in the objective rather than the subjective form."

(ix) "Where the scope of an investigation is expressed in the subjective form, it should be defined by the person who initiates the investigation", and "the person who decides the scope should be in a politically responsible position."

Pages 1257 and 1258:

(i) "Where a statute confers a power of decision, rules or standards to govern the exercise of the power capable of judicial application should be stated in the statute."

(ii) "Where rules or standards for judicial application cannot be stated and an administrative power to decide on grounds of policy is necessary and unavoidable for carrying out the policy of the statute, the administrative power should be no wider in scope than is in fact necessary."

(iii) "Where an administrative power is conferred, wherever possible, objective factors or purposes to be taken into account in reaching the decision should be expressed in the statute."

(iv) "No power to take immediate action should be conferred in such terms that its existence is dependent solely on subjective conditions precedent. There should always be at least an objective requirement that reasonable and probable grounds exist to justify the action."

As previously mentioned in this submission, it has been emphasized during the debate on the second reading of this Bill and in the proceedings heretofore held before this Committee, that the admittedly broad definitions and extensive powers of supervision, inspection and regulation contained in the Bill are required only to enable the administering officials to collate financial data and other corporate information, on the basis of which closely defined and prescribed legislative and regulatory provisions may be formulated, enacted and promulgated, as required. Even assuming the need for a specific and additional statute, which we seriously question, simply to increase the quantitative and qualitative nature of the type of information desired, which is already being massively and regularly produced to various departments of the government, then we suggest that it would be better in principle, and practically more effective, merely to enact appropriate amendments to the existing legislation, and in particular the Canada Corporations Act, which would be applicable to all Part 1 federally incorporated companies or,

preferably, only to such of those companies which are, in the ordinary concept, investment, or finance or acceptance companies. We sincerely believe that, so far as concerns ordinary industrial and commercial companies, the information required to be filed on a regular basis under current laws should be sufficient to enable governmental authorities to determine whether this kind of legislation is required and, if so, to what extent and to what class or classes of companies it should apply. By adopting this approach, some of the more repugnant aspects of the Bill could be obviated, at least until such time as the governmental authorities, after receiving and studying the additional information, could provide and prescribe legislation, (if it was then required), the scope of which could be clearly defined and in which any supervisory, investigatory or regulatory powers could be delineated and circumscribed through the use of appropriate guidelines. It will also have the effect of eliminating the particularly repugnant provisions of Section 22 of the Bill, which gives the Minister [of Finance] virtually unlimited discretionary powers, and the excessive administrative powers of the Superintendent of Insurance in Sections 5, 6 and 23 of the Bill, and would obviate what we consider to be the very confusing and highly undesirable legislative concepts inherent in Sections 3(4) and (5), 4 and 26 of the Bill. Finally, it would mean that the whole of Part II of the Bill could be entirely dropped, in lieu of merely deferred in its effectiveness, which in turn would solve the problem raised and recognized at the First Proceedings before this Committee on January 29, 1969, as to the possibility of the government being embarrassed because of its being powerless during the prescribed two-year deferral period for Part II, to take any remedial action in respect of any adverse situation of which it had become aware, expressly by virtue of information which it had received under the applicable provisions of the Bill. In short, it is our position that it is both unnecessary and unwise for the Government to enact this Bill, or similar legislation, until the problem which it seeks to cure has been fully determined, so that the solution therefor can be fully and adequately defined and implemented with the least possible interference with normal business activity and with the minimum of arbitrary discretionary administrative and executive powers which, to the extent that they are completely unavoidable, should in any event be strictly delimited by well-defined guidelines and definitions.

12. We submit that our contentions in the foregoing paragraph are substantiated, in part, by the remarks made by Mr. Humphrys during the First Proceedings before this Committee on January 29, 1969, in direct response to Senator Hayden's query as to when regulations might be made under Section 22 of the Bill. The point of the question was whether the making of any such regulations would be postponed during the minimum two-year deferral period for Part II of the Bill, and Mr. Humphrys' reply was as follows (at pages 171 and 172):

> "Not necessarily for two years, but there will be no regulations until we are in a position to recommend the regulations that seem to be appropriate. The kind of procedure we have in mind in that regard is to consult with the industry and the various classes of companies. The kind of rules and regulations, if any, that are

adopted under that Section would be those that are really modelled on the practices of the better run companies. We will seek the advice and co-operation of the industry with a view to establishing rules and regulations that protect not only the public but the better run portion of the industry from the activities of those companies that carry on in such a way that is damaging."

Our point simply is, why make provision now for the making of regulations in the future in a manner which are or may be totally unnecessary, when the express intention is not to do anything until or unless after consultation with industry it is determined that there is a problem and what sort of remedial action is then required in the circumstances.

In this connection, we refer to the established practice of Ministers of various governmental departments from time to time writing directly to the chief executive officers of a multitude of corporations, soliciting their co-operation in providing the given department with certain information. Where these requests have been made, we believe that there has been a large measure of co-operation on the part of those corporations in furnishing the desired information. We further believe that it may reasonably be assumed that this historic degree of co-operation between industry and governmental authorities will be maintained, undiminished, in the future, to the extent that industry is provided the opportunity to do so.

Finally, both in the interest of expediency and, frankly, for the reason that we would have difficulty in expressing them more precisely, we refer to, and record our agreement with, the comments and criticisms on the Bill made by Senator Phillips in his speech thereon during the course of the debate on its second reading, which is reported at pages 623 - 629 in the November 26, 1968 issue of Hansard.

13. It is neither our intention, nor do we think it is necessary or desirable, to undertake in this submission an extremely detailed or clause-by-clause review of the provisions of the Bill. The Association of Canadian Investment Companies (A.C.I.C.) extended to us the courtesy of furnishing us with a copy of their submission in respect of this Bill, which we have studied. We are generally in agreement with, and concur in, the definitions, comments and recommendations contained in the submission of A.C.I.C., so far as they go. We wish, however, to submit hereunder supplementary remarks, on the assumption that the Government ultimately will decide to proceed to enact this Bill as a separate statute rather than, as suggested above, obtaining the required information more informally, or amending existing legislation, and especially the appropriate provisions of the Canada Corporations Act, so as to provide the Government with such reasonable additional powers of obtaining financial information as may be deemed requisite.

SUPPLEMENTARY REMARKS:

(A) The definition of "business of investment" should be drawn in such language as will clearly render the provisions of the Bill inapplicable to ordinary commercial and industrial companies, regardless of the nature or extent of their investments made in the ordinary course and as an incidence of conducting their actual principal corporate activities. In the alternative, such definition should provide that it shall be an objective question of fact, or of mixed law and fact, rather than of discretionary or arbitrary subjective determination, as to whether the "business of investment" is the principal or predominant activity of any given company, and that any such determination shall be subject to review by the Courts.

(B) Alternatively,

(i) the definition of "business of investment" should be based specifically on a direct and factual relationship between the borrowing of funds from the public and the use of such funds in purely financial transactions which, in their ordinary concept, are investments, as distinct from the employment of such funds in or in respect of the prime corporate activity of an industrial or commercial company; and

(ii) the proportion of 25% specified in Section 2(f)(ii) of the Bill should be changed to a proportion of at least 40%, and in lieu of being expressed as a percentage simply of assets, should be expressed as a percentage of the company's total assets, on an unconsolidated basis, and exclusive (a) of cash items, and (b) of bonds, debentures, notes, or other evidences of indebtedness of or guaranteed by a government or a municipality, and of or by any majority-owned subsidiaries of the company, and (c) the shares of any controlled subsidiaries or affiliates of the company, and (d) any loans made by the company under and pursuant to the provisions of Section 15 of the Canada Corporations Act.

(C) We contend that there would be great merit in structuring the Bill so as to reflect the principal rationale and initial thrust of the proposed legislation, namely, the reporting and gathering of certain financial data and other related corporate information. To that end, we strongly recommend that the provisions of Part II of the Bill (Sections 9 - 20, inclusively) be deleted in their entirety, in lieu of merely deferring their effectiveness as presently provided in Section 30 of the Bill, and that the following Sections also be deleted, or at least substantially revised, so as to eliminate the virtually unlimited discretionary powers which we feel are unwarranted, and the unnecessary confusion and uncertainty which we are convinced would result from their enactment, namely:

(i) Sections 6 and 7, which relate to inspection;

(ii) Sections 21 - 26, inclusively, which relate, respectively, to assessments, regulations and notices;

(iii) Sections 27 - 29, inclusively, which relate to offences and penalties.

By way of dealing more specifically with the above recommendations,

(1) we feel that Section 21, concerning assessments, should be deleted as we see no reason why the companies to which this legislation may apply, should have to bear any cost in relation to the information reporting and gathering process over and above the significant costs which industry now bears to comply with existing legislation in that respect;

(2) by way of emphasizing and being consistent with the comments we have made before in this submission eschewing the undefined and unlimited discretionary, and potentially discriminatory, powers contained in this Bill, we strongly urge the deletion of Section 22, (and for that matter, of Section 23), and in that regard endorse the remarks of Senator Connolly (Hansard, January 22, 1969, page 874):

> "Section 22 could be intolerable to the various industries concerned. The discretion provided in the Section is unlimited, and inappropriate regulations could retard legitimate and desirable development. No doubt, the residual power of regulation must be vested in the Governor in Council, but too sweeping an authority would not be good. Until the categories of investment companies are clearly demarked, it is impossible to provide proper regulation.";

(3) we have recommended the deletion of Sections 27 - 29, dealing with offences and penalties, as we feel that, as presently drafted, these provisions would be inappropriately severe for a reporting statute, as opposed to a reporting and policing statute. We understand and agree that to ensure the desired mandatory compliance with whatever reporting requirements are enacted, some reasonable alternate sanctions would have to be provided, although we strongly feel that the ultimate legislation should emphasize voluntary rather than enforced compliance on the basis of continuing consultations between the administering governmental officials and the various segments of industry which the legislation primarily is designed to cover.

(D) In reference to Section 8 of the Bill, which deals with prohibited loans and investments, and having regard to the definitions of "significant interest", "substantial shareholder", "investment" and "officer" contained, respectively, in paragraphs (a), (b), (d), and (e) of Sub-Section (3) in Section 8, we recommend that these definitions be reconsidered in the light of the prohibitions contained in Section 8(1) and that such prohibitions be revised so that the Bill does not contain prohibitions respecting loans and investments more onerous than those currently imposed under the applicable provisions of Sections 15 and 16A of the Canada Corporations Act. Specifically, in respect of the loans and investments prohibited by Section 8(1)(b) and Section 8(1)(c)(iii), we refer with approval to, and concur in, the following remarks of Senator Connolly (Hansard, January 22, 1969, pages 874 - 875):

> "I would like to cite another example of a problem that arises as a result of the presentation of this bill in this form. There are many large enterprises in Canada, that are prosperous, efficient and competitive. They are run by competent Canadian entrepreneurs. These men and these companies see opportunities for Canadian development in various fields.
>
> Let us say that a parent company is a prosperous mining company, oil company or manufacturing company, if you will. It is well regarded, has access to the money markets and enjoys a high reputation. It is sufficiently endowed with assets to facilitate borrowing and to assure both large and small investors of the security of their investment. It sees opportunities, let us say, in the business of light industry, or in real estate development, or in merchandising. It could help develop an industrial park in an area of potential growth. It could erect a modern office building in a progressive city. It could install a shopping centre in an expanding urban area. There is no limit to the opportunities which it could use to accelerate economic growth in the country.
>
> Normally, how does it proceed? It might well incorporate a real estate company. It might incorporate a manufacturing organization. It could set up a company to service hotels, restaurants, ships, aircraft and the like. Any one of these companies might and probably would be wholly owned by the Canadian parent in my example."

"In the language of the act, the parent would have a "significant interest" in each of its individual subsidiaries. Any one of its subsidiaries would have assets and prospects which would give it thoroughly acceptable entré to the money markets. Any one of its subsidiaries could borrow on bonds, debentures or notes - the traditional ways to which the Governor of the Bank of Canada referred in his speech that I have already mentioned.

But there is a large pool of capital and assets and prospects behind all these subsidiaries that will not require capital at the same time. Some will require additional capital for expansion as circumstances, development and prospects warrant.

Rather than promote each individual subsidiary and have it seek its own capital requirements, the parent can adopt another device; it can incorporate a special subsidiary. The purpose of this subsidiary could be, and would be in this example, to provide the money needed by any of the subsidiaries. The security it offers is well known to the investing public. Usually the capital requirements in this type of case are larger than can be supplied by small individual investors. Institutions usually subscribe to such enterprises, and the amounts are usually beyond the reach of the small investor. Sometimes they reach the level of a half million or a million dollars, or more. Sometimes they are lower, but seldom lower than, say, $ 100,000.

I shall call this subsidiary the security subsidiary. It is, in fact, a financial intermediary between the operating subsidiary, on the one side, and the market, on the other. It thus becomes a most efficient device for borrowing money, for the marketing of money, for the industrial development to be conducted by any of the operating subsidiaries or, indeed, by the parent company. In fact, in current practice, as this idea has been used in Canada it has attracted and continues to attract more and more Canadian investment in Canadian enterprises.

Who can say this is not a worthy, effective, efficient and economic way of doing business? Is it not clear that time and effort and money are saved, not only for the parent and the subsidiaries, but also the end product of the subsidiary can and should be less costly to the general consuming public."

"Under this bill the security subsidiary, in my example, is prohibited from doing for the operating subsidiaries what the operating subsidiary could do for itself, but at greater cost. The section which prohibits this is section 8(1)(c)(iii). And if the parent had recourse to the services of the security subsidiary, as I describe it, the bill would exclude such recourse under section 8(1)(b) of the act."

* * * *

THE WHOLE RESPECTFULLY SUBMITTED.

Toronto, Ontario,
March 5, 1969.

MOLSON INDUSTRIES LIMITED

D.G. WILLMOT
President

M. McCAMMON
Senior Vice-President,
Corporate Services.

APPENDIX G

The Board of Trade of Metropolitan Toronto
Board of Trade Building, 11 Adelaide Street West, Toronto 1, Canada, Telephone 416 366-6811

February 28, 1969.

The Hon. S. A. Hayden, Q.C.,
Chairman,
and Members of the Senate Banking, Trade
and Commerce Committee,
Senate of Canada,
Ottawa, Ontario.

Mr. Chairman, Honourable Senators:

Re: Bill S-17 - An Act respecting Investment Companies

The Board of Trade of Metropolitan Toronto has a continuing interest in corporation legislation of a general nature at both the provincial and federal levels. On the other hand, the Board does not ordinarily concern itself with corporation legislation that one might term as special in that such legislation deals with a special class of companies and does not significantly affect the business community at large.

Our original understanding was that Bill S-17 was designed to regulate finance and acceptance companies. However, from a study of the Bill we are of the opinion that the definitions of "investment company" and "business of investment" sweep within their ambit companies whose business operations do not fall within the ordinary concept of a company whose principal stock-in-trade is commercial paper. For example, any company whose main business is manufacturing goods or providing services is by definition included if it borrows money and invests 25% or more of its assets by way of purchase of bonds or shares of other corporations. Many of our most stable companies are holding companies with operating subsidiaries and these will find themselves within the definition of investment company unless the Bill is appropriately amended.

Without going into detail we submit that the provisions of Bill S-17 are unreasonable as they relate to a manufacturer or provider of services. Most disturbing is section 22 of the Bill which provides for regulations in order to secure "a sound financial structure" for investment companies. Nowhere in the Bill is "sound financial structure" defined - perhaps because it is not susceptible to a meaningful definition.

We further note that these regulations will determine levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets and maximum permissible single investments or loans. This is legislation by regulation which we believe to be entirely wrong in principle. Regulations of this kind would effectively divest the directors of their main function to manage the affairs of a company. Without presuming to speak for finance and acceptance companies, we recommend that appropriate guide lines be spelt out in the legislation as they are in the Bank Act, the Canadian and British Insurance Companies Act, the Loan Companies Act, and the Trust Companies Act. In this connection, we refer also to section 10(2)(b) which would permit the Minister to "impose any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate". A company no matter how sound could be subjected to conditions or limitations designed to further a particular government policy of the day. With all due respect, we oppose provisions conferring on the Minister such unfettered discretion.

We note the exemption provided in section 3(2) of the Bill whereby the Minister may exempt an "investment company", as defined in the Bill, if the "business of investment" it carries on is merely incidental to its principal business. This subsection is consistent with the view that the Bill is not meant to cover companies whose business of investment is merely incidental to their main operations. The Board believes that the intent of legislation should be accomplished within the legislation itself; ministerial discretion should not be the means used.

Section 5(6) of the Bill empowers the Superintendent of Insurance to require the auditor, as well as an officer, of an "investment company" to provide information concerning the financial condition of the company and its ability to meet its financial obligations. Section 27(4) provides that an auditor, who fails to comply with section 5(6), is subject to a fine not exceeding five thousand dollars.

The Board believes the above requirement is wrong in principle. The auditor of a public company is never an officer or employee of that company but is an independent professional accountant answerable only to its shareholders. The responsibility for supplying such information, we submit, should rest only on the company and its officers and employees. There is ample power under this subsection and other provisions of the Bill to obtain such information from them.

In conclusion, Mr. Chairman and Honourable Senators, we make the following submissions:

1. That the definitions of "investment company" and "business of investment" are too broad;
2. That the aforesaid definitions be amended so that they include only those companies which fall within the category of finance and acceptance companies and whose principal stock-in-trade is commercial paper. If borrowing is to be a criterion, it should only be with respect to borrowing from the public. Consideration might be given to the definition of "finance company" contained in regulations under The Securities Act, 1966 (Ontario), a copy of which definition is attached;
3. That the ministerial discretion given by section 10(2)(b) of Bill S-17 not be conferred;
4. That the minimum standards of what constitute a "sound financial structure" be set forth in the Bill rather than be provided by regulation;
5. That the Superintendent not be empowered to require the auditor of an investment company to provide information concerning the financial affairs of that company.
6. The Board supports the principle of Bill S-17 as it applies to finance and acceptance companies.

Respectfully submitted,

Wilson E. McLean, Q.C.,
President.

J. W. Wakelin,
General Manager.

Regulation Made Under The Securities Act, 1966

Reg. 101/67 "8(1)(c) 'debt security' means any bond, debenture, note or other obligation of a company ..... whether secured or unsecured;

(d) 'finance company' means a company, its subsidiaries and affiliates whose preferred shares or debtsecurities are offered to the public ..... and is

(i) a company, its subsidiaries or affiliates for which a material activity involves,

a. purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services.

b. factoring, or purchasing and leasing personal property as part of a hire purchase or similar business....."

APPENDIX H

SUBMISSION

of the

FEDERATED COUNCIL OF SALES FINANCE COMPANIES

to the

SENATE COMMITTEE

on

BANKING, TRADE AND COMMERCE

regarding

BILL S-17

March 5, 1969

1. The Federated Council of Sales Finance Companies welcomes the opportunity to make a submission to your Committee and trusts that its contribution will further your deliberations on Bill S-17.

2. Federated Council is the national association of sales finance companies operating in Canada. Its members account for approximately 70% of the sales finance credit extended to consumers by the industry and 90% of the instalment credit provided by these companies to business for machinery and equipment purchases. In addition, the sales finance industry provides Canadian automobile dealers and retailers generally with specialized wholesale accommodation for inventory financing. A list of Federated Council's member-companies appears as Appendix 1 to this submission.

3. Federated Council understands and is in sympathy with the concern which has led to the introduction of Bill S-17. The members of our group can be counted upon to support any governmental action which will have the effect of creating greater confidence in the financial health and stability of companies which, by reason of the nature of their business operations, borrow money in large amounts from the public (Appendix 2). We share the concern already expressed during the hearings of this Committee that any proposed legislation in this area should be adopted only after legislators have been able to assure themselves that companies will not be unduly restricted nor will flexibility of operations be impaired.

4. Bill S-17 has as its object the control of investment companies for the protection of investors. This objective is laudable but if it is to be attained through legislation, we must first inquire as to the type of protection which investors want and need and whether the proposed control will provide it. We acknowledge that investors in our industry require access to detailed information and data. If the proposed legislation will make the provision of such information and data mandatory, the legislation will be beneficial. If the legislation provides an excess of government regulation which would hamper the growth and flexibility of the industry, it will be to that extent harmful.

5. In this connection, we refer to the Report of the Royal Commission on Banking and Finance, 1964, at page 357:

> "In our view, the goal of protecting the public against loss can best be achieved with three basic legislative safe-guards: adequate disclosure, competent supervision, and legal powers, giving the authorities the right to force the correction of unsound or careless practices and to prosecute those engaged in fraudulent or criminal activities. Complete and continuing disclosure of the affairs of institutions should enable the public without unreasonable cost and inconvenience to obtain the necessary information about the reputation and strength of any financial concern, while competent and frequent self-regulation under the ultimate supervision and inspection of government is the best safeguard against an institution becoming insolvent although, of course, not a guarantee that it will not do so."

6. With this in mind, we have come to the conclusion that Bill S-17 requires considerable amendment if it is to accomplish its purpose. In its present form the Bill provides for disclosure, licensing and regulation. The disclosure requirements meet with our approval but we feel that the regulatory power created by Section 22 is far too broad.

7. The Report of the Royal Commission on Banking and Finance, at page 358, points out the danger of over-regulation:

> "Even if the legislation is so carefully drawn that such consequences are avoided for the moment, it is certain that the community's needs will change. Although carefully drawn legislation could be modified from time to time, change and innovation will be impeded and institutions will be unable to become more efficient by adding to their services when they could otherwise do so at economic rates. In short, the financial system will not be able to do its job as well as it might. Moreover, if the terms on which some institutions are able to compete for funds are restricted by limits on their borrowing powers or on their assets and earnings, there is an added danger that changes in monetary policy will have a differential impact on their ability to attract funds and to meet the needs of borrowers who rely particularly on them."

8. We suggest that those who favour further regulation of companies in our industry do not have sufficient confidence in the salutary effects of market-place disciplines. In the past few years, there have occurred a number of collapses, as a result of which investors lost considerable amounts of money. Large corporate investors, as a result of such collapses,

immediately reacted. Indeed, an understandable over-reaction on the part of investors may have led to the difficulties which other companies subsequently experienced. In response, companies in our industry have in their own interests, done all in their power to provide maximum disclosure to investors so as to ensure the maintenance at all times of a satisfactory level of confidence in the health of our industry as a whole. It is our experience that considerably more care is now taken by investors in the selection of securities for investment of their funds. As the above shows, market place disciplines have been and are effective and do constitute a satisfactory corrective.

9. Again we refer to the Report of the Royal Commission on Banking and Finance, at page 214:

> "Whatever their own views about the form of their borrowing, the finance companies' freedom is restricted by the terms of trust deeds covering their notes, debentures and other debt. Although the companies are not subject to any legislative borrowing limits, apart from the implied or specific prohibition on taking deposits, the underwriters and the investors on whom they rely for funds in effect impose what they consider a sound capital structure ... The limits on capital structure, together with the lenders' scrutiny of the receivables put up as security for the notes and the normal examination of prospectuses by the securities commissions, provide the main protection to those lending to finance companies. So long as the companies draw their funds from well-informed investors able to judge their soundness, or even from the general public through the securities markets where a satisfactory prospectus is required,

there does not appear to be any reason to impose inspection and supervision comparable to that applying to banks, trust and loan companies, credit unions and other institutions which borrow generally from the public by means of deposits."

With reference to the above, it should be noted that the preponderance of securities created by companies in our industry is held by knowledgeable, experienced investors, capable of measuring risk (Appendix 3). These sophisticated investors impose capital structure and borrowing restrictions on borrowing companies and now keep such restrictions constantly under review to ensure the protection of their interests, thereby performing from their vantage-point the function of supervision and control envisioned under this Bill. These investors tailor-make their restrictions to individual companies whereas proposed control by government would of necessity be of general application, thus either imposing rigidity or unnecessary and undesirable restrictions on well-managed financial institutions in our industry, or be so loose as to be useless. Each company in our industry is unique, each has its own particular interest and expertise and it would be difficult for anyone other than the sophisticated investor to say what is sound practice for any particular company.

10. In its present form, Bill S-17 places upon governmental officials the heavy responsibility of deciding whether a given company should be allowed to continue its operations and under what conditions. We seriously question the advisability of reposing that responsibility with government except in cases where fraud, deceit or failure to provide required information are

suspected. When governmental officials are given such broad regulatory powers as are proposed in the present Bill, including powers to suspend the operation of a company, place it in bankruptcy, or to dissolve it, there may well be an implication that if a company should find itself in financial difficulties and unable to meet its obligations, government authorities will have been at fault either for failing to put the company out of business earlier or for doing so at an inappropriate time.

11. Mention has been made above of the efforts of our industry on its own initiative to provide full information to the investing public concerning securities offered by our industry. Recognized forms of disclosure are now in existence and insisted upon by the investor as well as by provincial securities commissions. We suggest that these recognized forms of disclosure provide investors with the information they require to determine whether any offered security presents an acceptable risk.

12. If government wishes to provide a measure of additional investor confidence beyond full disclosure, then we urge consideration of establishing lines of last resort credit for those registered companies that would benefit thereby. At the present time, the chartered banks perform a function not unlike a lender of last resort to companies in this industry. However, since the revision of the Bank Act, chartered banks have become, and understandably so, our major competitors in an intensified way. Investors should be concerned that, in the future, chartered banks may be less willing and able to perform the function of lender of last resort. In any event, as a

matter of principle, the change in competitive structure suggests a potential danger that needs to be corrected. The provision of credit lines of last resort should be provided through the Bank of Canada. The existence of such credit lines would not only alleviate the potential problem with respect to financing through competitors but would also increase the confidence of investors in the ability of our companies to meet their obligations as they mature.

13. Having indicated above our general view with respect to the proposed legislation, we should like to deal specifically with certain sections of the Bill in its present form.

PART I

14. Section 5(1) requires investment companies to file statements of their condition and affairs within two months after the end of the relevant fiscal year. In some cases this may be impossible to comply with due to delays in obtaining audited information and data. The Ontario Securities Act provides 170 days for filing of information and we suggest a similar period for the purposes set forth in Section 5(1). We would hope that companies would not be put to additional time-loss and expense by requiring the preparation and filing of forms other than those presently required to be filed with provincial authorities.

15. Section 5(2) requires that the annual statement be verified by oath of two persons being, respectively, a director and officer of the company. As the information would in most cases be based on reports, records and data prepared for and submitted to the verifying officer and director, their verification could only be given on the basis of knowledge, information, and belief. An appropriate amendment should be made so as to permit officers and directors to verify on this basis.

16. Section 5(4) permits the government authority to require the preparation and filing of consolidated statements covering one or more subsidiaries. Presently companies consolidate or refrain from consolidating on the recommendations of their financial advisors, and consolidation is usually avoided when the resulting statement would present an inaccurate picture of the true financial condition of the parent and subsidiary. We feel therefore that government authorities should not have the power to dictate whether or not consolidated statements are to be prepared, but should have the right to receive consolidated statements when consolidated statements are in fact prepared.

17. Paragraph 7(b) prohibits the making of false or misleading statements either orally or in writing to an inspector. We suggest the introduction of the word "knowingly" as in many cases information being conveyed to the inspector by the person involved will be based on information given to such person by others.

18. Section 8(1) presents considerable difficulty. Companies in our industry are in the business of making loans and accordingly it is difficult to accept a restriction which would oblige directors and officers of member-companies to borrow elsewhere when such borrowings from their own companies would be normal and reasonable in the circumstances. At the same time, we recognize the desirability of prohibiting loans which in amounts or relevant circumstances could create a hazard for the investing public. We therefore suggest that the prohibition in Section 8(1) be subject to a proviso which would permit loans to directors and officers if done in the normal course of business, if a similar lending plan is offered to all employees, and if the director or officer concerned owns or controls not more than 1% of the company's equity. It should be noted that the Bank Act permits loans to bank officers and directors within specified limits.

PART II

19. Section 12(1) provides for the mandatory dissolution of an investment company in the circumstances set forth in the sub-section. Such mandatory dissolution would result in the assets of the company becoming the property of the Crown under law relating to bona vacantia and escheat. It is our view that the assets should be made available to creditors before dissolution takes place.

20. In Sections 14(1) and 15(1) we suggest that the words "inadequately secured" be changed to read "inadequately provided for". The word "secured" is somewhat ambiguous in the context of the sub-sections and as the borrowings of many companies in the industry are on an unsecured basis, we feel that the ambiguity should be removed by using another word or expression.

PART III

21. Section 21 places the cost of administration of the Act upon the companies which will be registered thereunder. The benefits of the legislation have general application and the parties intended to be protected will be investors, large and small throughout Canada. We therefore suggest that the cost of administration should be borne out of general revenues on the theory that those who reap the benefit should pay the cost. As the number of companies falling under the Act may be relatively few while the regulatory function to be performed under the Act as presently framed is substantial, the cost may be considerable for those companies involved while of small significance if the cost is borne by the general public for whose benefit it will be enacted.

22. Section 22 provides for the making of regulations. The powers given in this Section are extremely broad, extending to such matters as levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets, maximum permissible single investments or

loans and prescribing rules for valuation of assets and liabilities. The regulatory power permits too great an interference with the sound of management of companies. In our industry, it is quite possible for companies of comparable size, engaging in similar business activity and having capable management, to require different ratios of outstanding debt to paid-up capital and different degrees of liquidity of assets. We consider that the best protection an investor can have is full information on all matters of importance and that the arbitrary imposition of further government regulation within these areas is unnecessary and undesirable. As previously stated, the tailor-made constraints developed and continuously reviewed by the knowledgeable and experienced investor himself, with his own interests at heart, provide the most effective kind of investor protection for all investors. Government regulation may not only be redundant, but ineffective and possibly harmful.

23. To the extent that regulatory powers will be given in the Act and exercised in due course, the effect of such regulations should be dependent upon reasonable notice, given to each registrant. The notice should include a copy of the relevant regulation.

24. Section 23(a) and (b) permits government authorities to prescribe forms for the purposes of the Act and Regulations, and the information to be contained in an annual statement. In our view these matters should be matters of regulation and should fall within Section 22 of the Act.

25. Section 27(3) prescribes penalties for directors, officers, servants or auditors who do certain acts enumerated therein. The penalty is imprisonment for a term not exceeding two years. There may be circumstances where such a penalty would be too harsh, particularly in the case of inadvertent error and we would accordingly recommend that provision be made for fines in lieu of imprisonment.

26. We would suggest the introduction of a further provision in the Act under which an appeal procedure would be provided with respect to decisions made by the Minister under Section 10 and Section 15. These sections relate to the issuing of certificates of registry and the withdrawal of such certificates. It seems appropriate to us that such decisions be appealable.

27. Individual company information should be treated as confidential. To the extent that information supplied to government authorities is compiled on an industry or class basis, such compiled information should be made available to all registered companies within the industry or class.

28. In conclusion, may we point out that this legislation varies from securities legislation now in force in various provinces by reason of the increased control which the Bill proposes to give to government authorities. We are in favour of legislation which will require the degree of disclosure which investors need and which will create sufficient regulatory powers to enforce the disclosure requirements. We do not however approve of regulatory powers which would unnecessarily interfere with management of companies in our industry.

29. We urge therefore that this Bill be given very patient and thorough consideration before it is enacted in any form.

30. We assure you of our continuing co-operation in your efforts to produce beneficial legislation with respect to investment companies. If Bill S-17 or any alternative legislation is enacted, we will look forward to consultations with government authorities when implementation of regulatory powers is being considered.

APPENDIX

TABLES

Appendix 1

MEMBERS OF
FEDERATED COUNCIL OF SALES FINANCE COMPANIES

Acadia Acceptance Company Limited - Vancouver
Ace Finance Corporation Limited - Montreal
Acme Acceptance (London) Limited - London
Associates Acceptance Company Limited - Toronto
Avco Delta Corporation Canada Limited - London
British Acceptance Corporation Ltd. - Vancouver
Canadian Acceptance Corporation Limited - Toronto
Carling Acceptance Limited - Ottawa
Chrysler Credit Canada Ltd. - Toronto
Citizens Finance Company Limited - Windsor
Commercial Credit Corporation Limited - Toronto
Danforth Discount Limited - Toronto
Empire Acceptance Corporation Limited - Vancouver
Finance Locale Inc. - Mont Joli, P.Q.
Ford Motor Credit Company of Canada, Limited - Oakville
Founders Acceptance Corporation Limited - Winnipeg
Frontier Acceptance Corporation Limited - Willowdale, Ontario
General Finance Corporation Ltd. - Calgary
Industrial Acceptance Corporation Limited - Montreal
Laurentide Financial Corporation Ltd. - Vancouver
Ocean Company Limited - Windsor, Nova Scotia
Pacific Finance Acceptance Company Limited - Toronto
Robertson Finance Co. Ltd. - New Westminster, B.C.
Seaboard Finance Company of Canada Limited - Toronto
Signature Finance Ltd. - Edmonton
Traders Group Limited - Toronto
Triad Acceptance Company - Toronto
Union Acceptance Corporation Limited - Toronto
United Dominions Corporation (Canada) Limited - Toronto

BALANCE SHEET DATA OF THE TEN LARGEST SALES FINANCE COMPANIES

Appendix 2

FISCAL YEAR END, 1953 - 1966

THOUSANDS OF DOLLARS

ASSETS	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Cash	26,944	27,488	19,836	27,829	42,182	32,950	40,894	31,104	31,608	31,317	25,820	34,534	23,379	39,900
Marketable securities				26	106	16,219	85,024	95,005	71,303	61,836	66,888	81,846	57,087	55,521
Notes and accounts receivable:														
Retail	654,503	602,743	708,220	940,879	967,246	916,733	1,029,269	1,111,270	1,060,551	1,169,714	1,313,714	1,539,125	1,693,504	1,619,023
Wholesale	135,216	101,375	145,786	199,341	205,086	198,840	201,799	237,032	195,496	253,053	308,319	265,003	446,136	377,859
Real estate loans	10	22	13	25		29	139	99	106	7,007	8,770	28,102	48,028	43,786
Capital loans to dealers	2,866	3,422	5,334	5,813	6,419	7,070	8,438	10,968	14,035	14,061	14,808	16,606	18,624	34,536
Sundry accounts receivable	2,090	3,719	3,585	3,701	4,942	3,684	4,733	6,876	5,177	3,765	5,747	4,618	4,540	13,758
Total receivables	794,685	711,281	862,938	1,149,759	1,183,693	1,126,356	1,244,378	1,366,245	1,275,365	1,447,600	1,651,358	1,853,454	2,210,832	2,184,383
Less: Provision for doubtful accounts	8,384	8,079	9,210	10,981	11,960	12,060	13,208	14,064	14,826	15,610	16,665	18,589	20,959	22,472
Net receivables	786,301	703,202	853,728	1,138,778	1,171,733	1,114,296	1,231,170	1,352,181	1,260,539	1,431,990	1,634,693	1,834,865	2,189,873	2,161,911
Investments in:														
Subsidiary companies	18,240	25,613	31,842	47,266	56,017	59,468	88,773	128,828	192,754	254,018	344,556	395,805	458,792	591,475
Associated companies	1	1	0	650	598	621	1,714	4,851	9,423	9,707	3,075	3,979	4,882	6,557
Investment in fixed assets to produce rental income			232	373	315	387	364	345	1,095	2,097	7,553	6,322	8,456	19,823
Fixed assets	3,283	3,210	3,453	4,160	4,555	4,642	4,970	4,942	5,186	5,142	4,875	5,894	7,277	6,965
Leasehold improvements	256	339	402	431	519	583	604	666	784	723	693	649	680	675
Unamortized cost of acquisition of borrowed money	2,389	2,630	2,386	3,517	7,229	4,904	6,811	7,453	6,937	7,851	8,362	14,109	16,540	17,376
Other assets	1,209	1,492	1,651	1,007	2,612	2,713	2,751	2,614	2,328	4,090	4,415	5,234	5,918	4,408
TOTAL ASSETS	838,623	763,975	913,530	1,224,037	1,285,866	1,236,783	1,463,075	1,627,989	1,581,957	1,808,771	2,100,930	2,383,237	2,772,884	2,809,190

Source: The Federated Council of Sales Finance Companies Survey

Appendix 2 (Continued)

LIABILITIES	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Bank borrowings	191,124	103,916	172,419	242,576	155,855	182,269	194,359	163,340	109,031	127,247	177,119	157,451	271,544	230,556
Other demand loans					681	470	3,852	996	425	547	1,632	716	793	7,659
Short term notes	211,976	167,352	237,245	330,753	409,333	295,516	424,227	489,132	409,043	532,516	655,629	842,178	782,062	671,312
Long term notes - more than 2 years to maturity when issued	139,847	156,216	155,790	198,323	227,328	231,448	276,204	336,019	375,880	413,391	467,894	564,542	610,687	676,663
Bonds and debentures	104,117	128,756	124,991	153,856	192,869	199,516	208,530	250,840	264,534	276,386	271,956	265,669	289,205	346,239
Total debt	647,064	556,240	690,445	925,508	986,066	909,219	1,107,172	1,240,327	1,158,913	1,350,087	1,574,230	1,830,556	1,954,291	1,932,429
Accounts payable	28,470	30,407	22,649	41,869	32,077	38,326	32,509	39,874	58,530	70,437	93,425	87,820	140,133	131,098
Dealers' credit balances	32,970	33,855	36,211	43,485	46,243	44,411	44,401	42,457	39,538	37,164	37,596	38,362	38,653	40,381
Advances from parent or associated companies	5,560	5,000		6,102			10,000	10,000	11,000	11,025	12,025	12,025	183,197	201,519
Other liabilities	157	123	128	209	2,278	1,212	1,363	1,428	1,746	1,909	2,617	3,301	3,817	1,971
Unearned service charges	40,761	40,401	50,356	68,800	76,595	78,273	92,824	104,050	98,129	108,157	119,735	135,795	146,756	158,363
Shareholders' equity														
Preferred stock	17,989	18,651	19,867	30,167	29,650	34,892	35,138	34,551	40,014	40,788	48,788	52,482	74,768	88,325
Common stock	37,194	46,179	56,520	64,252	62,183	65,487	68,304	74,104	83,708	88,918	102,254	105,249	108,364	114,810
Capital surplus	354	402		238	679	1,205	1,520	1,941	2,364	2,834	3,784	3,841	3,981	5,359
Earned surplus	28,104	32,717	37,354	43,407	50,095	63,508	69,344	78,536	87,020	95,472	103,813	111,497	116,490	133,105
Contingent reserves						250	500	721	995	1,980	2,663	2,309	2,444	1,830
Total capital accounts	83,641	97,949	113,741	138,064	142,607	165,342	174,806	189,853	214,101	229,992	261,302	275,378	306,047	343,429
TOTAL LIABILITIES AND CAPITAL	838,623	763,975	913,530	1,224,037	1,285,866	1,236,783	1,463,075	1,627,989	1,581,957	1,808,771	2,100,930	2,383,237	2,772,884	2,809,190

Source: The Federated Council of Sales Finance Companies Survey

Appendix 2 (Cont'd)

LIST OF COMPANIES

WITHIN THE

"TEN LARGEST SALES FINANCE COMPANIES IN CANADA"

Avco Delta Corporation Canada Limited
Canadian Acceptance Corporation Limited
Chrysler Credit Canada Ltd.
Commercial Credit Corporation Limited
General Motors Acceptance Corporation of Canada Limited
Industrial Acceptance Corporation Limited
Laurentide Financial Corporation Ltd.
Traders Group Limited
Union Acceptance Corporation Limited
United Dominions Corporation (Canada) Limited

Appendix 3

SURVEY [1] OF VALUE OF DEBT BY HOLDER

AS AT DECEMBER 31, 1968

Security Holder		Millions of Dollars	Per Cent of Total
1.	Bank (including loans)	131.4	9.1
2.	Insurance companies	310.7	21.4
3.	Trust companies	158.3	10.9
4.	Other financial institutions (including investment dealers)	273.1	18.9
A.	Sub-total of financial institutions	873.5	60.3
5.	Corporations n.e.s.	309.0	21.3
B.	Sub-total of corporate holders	1,182.6	81.6
6.	Other registered holders	47.6	3.3
7.	Unregistered holders [2]	219.4	15.1
C.	Total	1,410.8	100.0

Note 1. The FCSFC survey was instituted on February 21, 1969. The responding companies were:

Associates Acceptance Company Limited
Canadian Acceptance Corporation Limited
Commercial Credit Corporation Limited
General Motors Acceptance Corporation
Laurentide Financial Corporation Ltd.
Traders Group Limited
Pacific Finance Acceptance Corporation Limited
Union Acceptance Corporation Limited
United Dominions Corporation Canada Limited

A tenth company was unable to respond with precise data within the time limitation but estimated that more than 90% of its securities would be held by corporations - financial and non-financial. (See sub-total B.)

With regard to smaller sales finance companies, the smaller the company the more completely does it rely on bank credit only. Therefore, the effect of including the total membership of the Federated Council in the survey would be to increase the importance of financial institutions as holders of the industry's debt.

Note 2. "Unregistered holders" refers to a class of investors in long term debentures of sales finance companies whose names are registered with third parties, usually a trust company, but not with the issuing company. It is estimated that more than 50% of the amount of securities held by this class (or approximately 8% of the total debt) is in fact held by corporations and financial institutions.

APPENDIX I

GEORGE WESTON LIMITED

SUITE 1500/25 KING STREET WEST, TORONTO, CANADA. PHONE: 363-2301

OFFICE OF THE PRESIDENT

February 3, 1969

Senator Salter A. Hayden
The Senate
Parliament Buildings
Ottawa, Ontario

Dear Senator Hayden:

We wish to convey through you our concern and objection to Bill S-17 entitled "An Act Respecting Investment Companies".

We understand that the purpose of the bill is to establish a system of reporting and inspection for companies that are engaged in finance operations.

However, as drafted, the legislation would apply to a company which, for prudent business reasons, carries on its industrial operations through subsidiaries rather than as divisions of one company. A substantial part of our operations are conducted through subsidiaries which are engaged in large industrial commercial activities in every province in Canada, under local management.

We and our subsidiaries are required to comply with a multitude of statutes regulating business activities, including provincial securities statutes and company law statutes. We are led to believe that additional legislation is being contemplated by federal authorities in the field of company law and securities law which will further regulate business activities of federal companies.

We consider that neither our company nor our subsidiaries are "finance companies" which should be subject to Bill S-17.

Continued .....,.

Senator Salter A. Hayden February 3, 1969

We urge that the definition of "investment company" contained in the bill be drafted to exempt from its application a company which is engaged in industrial commercial activities through subsidiaries.

We would be pleased if you would let us know if you consider it desirable for us to make further and more detailed comments in connection with this matter.

Yours very truly,

G.E. Creber

GEC:dc

G. E. Creber
President

APPENDIX J

Cable Address: "ATHLETE"
Telephone: 932-6161 (Area Code 514)

P.O. BOX 6500
MONTREAL 3

IMPERIAL TOBACCO COMPANY OF CANADA LIMITED
3810 ST. ANTOINE STREET
MONTREAL 30

February 26, 1969

The Honourable Lazarus Phillips, O.B.E., Q.C., LL.D.,
One Place Ville Marie,
Montreal 113, P.Q.

Dear Senator Phillips -

We have studied Bill S-17, an Act respecting Investment Companies, and we strongly support the arguments that you put forward in your speech of November 26th in the Senate. We feel this Bill should be revised in such a manner that industrial companies will be excluded.

Imperial Tobacco Company of Canada Limited is primarily a manufacturing company. Its operations in tobacco, as well as other manufacturing activities in which it is engaged, are carried out by itself and its manufacturing subsidiaries. Presently, we do not fall within the definition of Section 2(f) of Bill S-17. However, if our diversification programme in the future were to be financed by borrowed funds, we might well find ourselves eventually categorized as an investment Company.

We do not believe Bill S-17 is intended to restrict the legitimate expansion of manufacturing companies such as ourselves, but rather it appears that its immediate objective is to control and regulate finance and acceptance companies. Therefore, we strongly suggest that the Bill be amended to meet these objectives and exclude industrial companies.

Regarding subsection 2 of Section 20 of Part II, we most heartily endorse your criticisms. It seems incongruous that the Superintendent should have the power to recast financial statements that have been approved by a Board of Directors, certified by a qualified firm of auditors, possibly accepted by income tax authorities, etc.

Please be assured of our best wishes for success in your endeavours to have Bill S-17 amended. In the hope that it may add some weight to your arguments, we are taking the liberty of sending a copy of this letter to the Senate Committee on Banking and Commerce.

Yours sincerely,

W.H. Booth,
Vice-President - Finance.

c.c. Senate Committee on Banking and Commerce

APPENDIX I

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 23

WEDNESDAY, MARCH 5th, 1969

First Proceedings on Bill S-29,
intituled:
"An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

WITNESSES:

Canadian Petroleum Association: D. E. Lewis, Q.C., member, Legal Committee and L. E. Walton, member.

OBSERVERS:

Department of Indian Affairs and Northern Development: Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch; R. F. McLeod, Administrator, Oil and Gas Section, Northern Economic Development Branch.

The Queen's Printer, Ottawa, 1969

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 23

WEDNESDAY, MARCH 5th, 1969

First Proceedings on Bill S-29,

intituled:

"An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

WITNESSES:

Canadian Petroleum Association: D. E. Lewis, Q.C., member, Legal Committee and L. K. Walton, member.

OBSERVERS:

Department of Indian Affairs and Northern Development: Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch; R. R. McLeod, Administrator, Oil and Gas Section, Northern Economic Development Branch.

The Queen's Printer, Ottawa, 1969

29821—1

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (*Bedford*)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 27th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow, for the second reading of the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

29821—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, March 5th, 1969.

(24)

At 11.10 a.m. this day the Senate Committee on Banking, Trade and Commerce met to consider Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguère, Haig, Hollett, Inman, Isnor, Kinley and Savoie. (20)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

CANADIAN PETROLEUM ASSOCIATION:

D. E. Lewis, Q.C., member, Legal Committee.

L. K. Walton, member.

The following observers were present:

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT:

Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch.

R. R. McLeod, Administrator, Oil and Gas Section, Northern Economic Development Branch.

At 11.50 a.m. the Committee adjourned further consideration of the said Bill until Wednesday, March 12th, 1969.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 5, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-29, respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: We have another bill to consider this morning, at least to the extent of hearing a delegation make a submission. We have Bill S-29 before us, dealing with the production and conservation of oil and gas in the Yukon and Northwest Territories. I take it that it is the desire of the Committee to have the proceedings printed.

Hon. Senators: Agreed.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: This morning we will hear the submissions of the Canadian Petroleum Association. We will have to discuss with their witnesses how far they wish to go this morning, because the Deputy Minister who wished to appear this morning is unfortunately out of town for this week on Government business, and I assured him that we would not close our proceedings without giving him the opportunity of being heard.

This morning we have Mr. D. E. Lewis, Q.C., Mr. L. K. Walton, Mr. J. B. McDonald and Mr. J. M. MacNicol. The submission on behalf of the Canadian Petroleum Association has been distributed.

Now, Mr. Lewis, you are going to speak for the group. Would you just tell the Senate Committee who the other members are and what their positions are, and then you can go ahead with your submission.

Mr. D. E. Lewis, Q.C., Member of the legal Committee, Canadian Petroleum Association: Honourable Chairman and honourable senators, the Canadian Petroleum Association is being represented by myself, and I will give you some background in a moment, and Mr. Ken Walton, who is the Chairman of the Northwest Territories Committee of the Canadian Petroleum Association. He is a land man with 23 years' experience with Imperial Oil Limited and he has been a representative on a number of land committees of the association throughout the years. Mr. Jim McDonald is a petroleum engineer, a graduate of the University of Oklahoma, and has been Chairman of the Saskatchewan Technical Committee of the Petroleum Association, the Vice-Chairman at the present time of the Central Reserves Committee, the Chairman of the Regulation Review Committee for Alberta during the last two or three years and Chairman of the Saskatchewan Regulation Committee. New regulations were issued in 1969 in Saskatchewan and he was on the committee that worked with the Government on those, just as he was a member of the committee which worked with the Alberta Government when their regulations were put out in 1968. Mr. Jim MacNicol is the manager of the Ottawa office or division of the Canadian Petroleum Association and is manager of the pipeline division. He has had some 13 years in industry and is located in Ottawa and can be reached by telephone at any time anybody wishes to discuss any oil problems with him.

I have been employed with Imperial Oil, with a slight exception, for a period of 20 years. I am co-author with Professor Andy Thompson of a three-volume legal text on Canadian oil and gas. The latter two volumes deal with legislation, and this text has become a service. In addition to that, I represented industry in Australia at the time they were writing their off-shore code. I was there for a little over a year and in preparation was exposed to international law as it related to conservation and tenure. That may

give you some help as to my own background. I am a member of the Legal Committee of the Association.

Senator Connolly (Ottawa West): For the record, those who know Mr. Lewis in connection with the Canadian Bar Association know that he is one of the leaders of that association in respect of the law as it relates to this industry.

The Chairman: I think we have certainly established the competency of the delegation before us this morning, Mr. Lewis. Are you going to make a submission supplementing the brief you have filed?

Mr. Lewis: Yes, sir. I have one or two observations to make.

I would first like to acquaint the senators with the Canadian Petroleum Association. I think the background might help. The Canadian Petroleum Association is a non-profit organization consisting of more than 200 companies engaged in the oil and gas industry in Canada. About half of the membership is directly involved in the exploration, development, production and transportation of crude oil and natural gas and gas products, and the other half is engaged in activities ancilliary to exploration and production. So that the membership represents the working-interest owners as distinct from the royalty owners of approximtely 97 per cent of Canada's oil and gas production.

The association has a division in each of British Columbia, Alberta and Saskatchewan; these are separate entities dealing with the problems in those provinces. So far as common problems are concerned, or problems of the Northwest Territories and the Yukon, those are looked after by a central committee which has representatives on it from each of the provinces, and it is headed by a board of governors. The work, as in other major organizations in Canada, is done through a committee system. For example, we have a Legal Committee, there are land committees, Northwest Territories committees, reserve committees and that sort of thing.

We appreciate very much the fact that the bill was put over for two weeks so that we could be represented, and after we received the copy of the bill it was sent out to the various committees that deal with the Northwest Territories and was considered by them. The short brief that we submitted to this committee was the result of the work of those committees as co-ordinated and discussed with the Board of Governors.

In the main we are in agreement with the intent and objects of the Act, namely that of conservation. We think it will be achieved. The Act as I think you know, is similar so far as powers of conservation are concerned with bills that you will find in the western provinces. There are some differences, but the differences, I think, are mainly to meet the problems of the territories and the structure of the Department of Indian Affairs and Northern Development. I might say again that we have over the years discussed conservation with that department.

We made clear by representations the points we think should appear in the bill and there has been complete accordance between the two groups on the technical phases of conservation.

As to the bill itself I think we made clear in this brief the majority of points which we think should either be reconsidered or amended. I don't know whether I should go over any of those.

The Chairman: Well, they will be filed. But I think there are a few of them that it might be well to refer to. The first one is on page 2 where you suggested that the powers to make regulations should be extended to provide for regulations in relation to processing and transportation as well. Now section 12 deals with the regulatory powers of the Governor in Council in connection with the exploration and drilling, production and conservation of oil and gas. The general authority of the bill is broad enough to cover that area, but you might need a definition for "processing". What does it mean?

Mr. Lewis: Generally speaking, we are thinking of gas plants and the processing of crude oil. Generally when gas comes out of the ground it has to be made marketable and that is normally done through a scrubbing or processing plant where sulphur and other impurities are taken from the gas and they in turn become by-products. They are then sold. Now when you read the particulars of the powers that are granted on pages 7 and 8 you will find that they really do cover processing. I think it is section 12 (p) on page 8 prescribing minimum acceptable standards.

Senator Prowse: Is that not also covered by paragraphs (i) and (j)?

Mr. Lewis: Paragraphs (i) and (j) would deal with that too. All we are saying here is that when you read the powers on the next page you will find they talk about transportation which is done by pipeline and other areas where processing would be covered. Our suggestion is that in the general clause it should show that transportation...

The Chairman: Before going on to that, you have first of all the general language in section 12 about the Governor in Council making regulations with respect to the exploration and drilling for the production and conservation of oil and gas. That is a pretty general heading. I would think nobody produces this product just to feel happy about having it. It will be inherent in all these other phases. Then looking at the rest of the language it says, "...in particular, but without restricting the generality of the foregoing, may make regulations..." and then you have all these paragraphs which although they have not specifically used the words "transportation and processing" certainly embrace those items. The question is whether we need the specific language. If we do, I am sure the committee would not have any objections to adopting it.

Senator Prowse: Mr. Lewis, section 12 at the moment says "The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation of oil and gas and, in particular, but without..." etc. Now what you would like in there would be something to the effect that he may make regulations with respect to production and conservation, processing and transportation. Would that meet your requirement?

Mr. Lewis: Well we thought after the word "conservation" there should also be "processing and transportation".

The Chairman: We understand the point you are making, Mr. Lewis.

Senator Prowse: That clarifies the other sections.

The Chairman: Later we will find out what the departmental view is on that. We are not proposing the amendment at this stage. There is another item which I think you should comment on. I am referring to paragraph 2 (a) where you say "There are circumstances where one person may hold several leases with varying rates of royalty within a spacing unit". And the amendment you are suggesting would permit the owner to pool his several leases for the purpose of drilling or producing operations. I am reading now from page 2 of the brief that has been filed on February 28.

Mr. Lewis: This concerns section 21(1). It is a peculiarity of the Northwest Territories that when you look at the bill—the Canada Oil and Gas Land Regulations—which grants you the tenure to the land you hold, you are given time to change from a permit to a lease and you have the right to take the corridor—that part that goes back to the Crown but may be leased from the Crown upon agreement to pay a sliding scale royalty on production. The part you own, as a right through the permit, has a 10 per cent royalty throughout its life and the other part has a varying royalty and the position you could find yourself in is that you could have a pool and part of the land would be held at 10 per cent royalty and the other part is on a sliding scale in accordance with the production, and the point is we may want to develop this land from either the area that has the increased royalty or the part that has the smaller royalty with a smaller number of wells, and to make certain you know the part that belongs to the Crown and the part that belongs to you, you have to show or have some sort of working interest that would be in proportion, probably to the land itself, or to the actual portion of it which is produceable. Therefore we say that one company might want to unitize with the Crown—and normally this is done with two or more companies that cover a pool and they unitize or go on together to operate as one. Usually in the territories that is the position if one company wanted to unitize for the purpose I have mentioned. I do not know if I have made that too clear.

The Chairman: Well, we will hear the view from the other side later.

There is another thing I would like you to comment on specifically. It is on page 3 of your brief, referring to section 13 (2) (b), you suggest a re-draft. What is the purpose of that?

Mr. Lewis: I think Mr. Walton can explain that better than I can.

The Chairman: Mr. Walton.

Mr. Walton: We have used virtually the same wording, as in the bill but it is changed a little to make it a little clearer, in our

opinion. The way it appeared originally, we felt it could be redrafted and made just a little clearer. It is just a matter of drafting.

The Chairman: On section 27, Mr. Lewis?

Mr. Lewis: We felt that section 27 needed revision. I think we understand the intent of the section itself, but we would point out that section 27 . . .

The Chairman: This is on page 20.

Mr. Lewis: . . .allows the minister to request unitization of a pool, if he feels that unitization will prevent waste.

When you look at sections 17 and 18 you will find that the conservation engineer is given practically the same type of power, in effect. He has the right to issue a hearing order and close operations if he feels there is waste. If he did that, we feel the companies would probably unitize on their own. There is a method of voluntary unitization, and the effect of the section is adequately handled by those two particular sections.

The Chairman: I take it your real, basic objection is that section 27 gives the minister the power, and without any hearings. . .

Mr. Lewis: That is the second part of it.

The Chairman: . . .and without any appeal.

Mr. Lewis: Yes. I was going on to the second part. We feel that throughout the act there is a committee set up which you can appeal to from the conservation engineer, and he is allowed to have a hearing. In this particular area we feel, if the section stays in, the industry would like to have a hearing, and the reason is this. When you get to unitization of a pool, companies, with their engineering staff, might come to different conclusions as to the method of unitization or of efficient production of the pool in order to prevent waste. You might find that someone would think the best way to do it is to inject gas into the pool and have a gas injection. On the other hand, they might feel the natural reservoir is sufficient. There is a water drive and the water will come up and flush it through; or you may have to pump water down to help the natural water drive, if there is one; or they may decide the best method of arriving at conservation would be some type of miscible fluid, with the use of condensates or light ends going down into the reservoir and flushing through in the same way as dry cleaning fluid. You might get the maximum amount of oil that way, as long as your economics are sound.

If there are two or more companies in a pool, we feel it is only fair that they be heard before a board or some regulatory group that can understand the technical ramifications and come to some conclusion and, at that time, possibly give a direction. But just to come out and give the direction as written in section 27, we feel, is not in the best interests of the industry or in the best interests of conservation. So, we are suggesting that if the section is maintained we should have the right of a hearing and appeals, of course, that go in the act with the other sections.

Senator Connolly (Ottawa West): Who do you suggest should appoint that board of review—the minister, in the event of a request?

Mr. Lewis: The act does call for a conservation committee, and possibly it could be used.

The Chairman: Have you any comment on Part III, Mr. Lewis, dealing with appeals and administration?

The first provision in section 38 is:

> (1) Except as provided in this Act, every decision or order of the Committee is final and conclusive.

That is the Conservation Committee you are talking about, is it?

Mr. Lewis: Yes. I must say the Legal Committee had some difficulty in understanding the appeal section. It follows, to a certain degree, the one in the National Energy Act, and it appears to us that the Exchequer Court of Canada, in section 38, is given all the power of appeal; it is the only place to which you can appeal. Then, under the next section it is taken away, so you end up with a very limited position on appeal, mostly with regard to law and jurisdiction.

I think that is the only thing, with the exception of section 41, which gives the right of the committee to go to the Supreme Court of Canada. There were some problems raised, when you look at section 41 and 40, because you get into a position that the Governor in Council could possibly over-rule a Supreme Court decision, in that if the committee asked the Supreme Court of Canada to decide on a question of law, and it was decided against them, then they would be compelled under

the act to make an order; but, of course, the Governor in Council has the power, under section 40, to reverse an order of the committee.

Senator Connolly (Ottawa West): But not of the court.

Mr. Lewis: They cannot reverse the court itself, but if the court reaches a decision, then, as I read this, the committee is bound by the court and would have probably to reverse its own order, and then the Governor in Council could reverse or quash the order. It is, in effect, a method some lawyers were concerned about.

Senator Connolly (Ottawa West): It is certainly going in the back door, trying to do it that way.

Senator Prowse: In other words, you could go through the committee, and then there could be an appeal from the committee to the Exchequer Court and you could get a decision from there, and then have the minister throw the whole thing out?

Mr. Lewis: No. The way I read it, the committee, under Section 41, can go to the Supreme Court of Canada on a question of law or jurisdiction, or leave may be granted a company to do it. Then the Supreme Court of Canada could find, for instance, the order was bad and outside the jurisdiction. Then under the act the committee would have to reverse the order, and then the Governor in Council could quash the order made by the committee.

Senator Prowse: My point is that in reading it it seems to me that what the act purports to do is to set up an appeal procedure—and it would be an expensive one, by the way—whereby you could go through all these appeal procedures and when all that is finished the minister could say, "We do not want this," and, bingo, that is the end of it, you have had it, and there is nowhere to go from there.

Mr. Lewis: It is not the minister, but the Governor in Council.

Senator Prowse: That is the same thing.

Mr. Lewis: Well, . . .

Senator Prowse: The final arbiter is going to be the Governor in Council.

Mr. Lewis: Yes, under the act.

Senator Prowse: Regardless of any decisions made previously, because the residue of power lies there.

Mr. Lewis: I think so, under section 40.

Senator Prowse: I was confused when I read that section 38(2) gives exclusive jurisdiction to the Exchequer Court, and then subsection (3), unless I read it awfully carelessly, seems to take it away. Section 38(3) immediately proceeds to take away all the rights given you by section 38(2).

Mr. Lewis: That is the conclusion I have come to, and I think there is a similar provision in the National Energy Board Act.

Senator Prowse: The only protection is that the courts consistently refuse to take any notice of those limitations.

Mr. Lewis: That may be, but under section 41 you have the right of appeal to the Supreme Court.

Senator Prowse: Yes, and then they say you can appeal on a question of law or a question of jurisdiction, or a question of fact and law and jurisdiction, but how do you get before the court?

Mr. Lewis: I must say that we were confused with this. First of all, it seems to give the power to the Exchequer Court, and then it takes it away, and I really do not know what is left.

Senator Prowse: You have not discovered just where you can get your foot in?

Mr. Lewis: No.

Senator Connolly (Ottawa West): With reference to Senator Prowse's objection and your own, Mr. Lewis, about the wiping out of the effect of section 38, if you go to the court for leave do you not have to argue the question of law and fact, and, in effect, are you not then getting your case before the court. If they find that it is not justified then you have really had your day in court, have you not? You will be arguing the merits when you go through that procedure, will you not?

The Chairman: But, senator, if you look at this for a moment you will see that subsection (3) of section 38 in effect says that you cannot challenge a decision or order of the committee by any proceedings known as *certiorari*, prohibition, mandamus, or injunction.

Senator Prowse: Or any other proceeding.

The Chairman: Yes. You cannot challenge it by that means. But, they say in section 41 that you can appeal the decision on certain grounds to the Supreme Court of Canada.

Senator Prowse: That would be a decision that they did not have the jurisdiction, which would be...

The Chairman: No, it is upon a question of law or a question of jurisdiction. In other words, the facts as found by the committee in the first instance cannot be challenged, and the only appeal you have is an appeal on law or jurisdiction from the committee's decision to the Supreme Court of Canada, because the Exchequer Court only comes in if the committee wants an opinion, which is obtained by way of something like a stated case. Ordinarily, this will be an opinion in relation to some point that the committee is considering. The committee can go to the Exchequer Court and ask for that opinion. The Exchequer Court gives the advice, which is remitted back to the committee, and then I would judge that the committee can pay attention to it or not pay attention to it, as it likes. But, you have no appeal in relation to what the Exchequer Court thinks. Your appeal is from the decision of the committee directly to the Supreme Court of Canada.

Mr. Lewis: I think that that is correct, sir.

The Chairman: Yes. I think you can labour your way through it, and it is all right.

Mr. Lewis: I might say that after we studied it we had no real objection, and we are not raising this as an objection, but I thought it should be brought to your attention.

The Chairman: The only qualification might be that you do not want a head-on clash in respect of a decision of the Supreme Court of Canada, which the committee must then with all speed put into its decision, and then at that stage find yourself faced with a decision of the Governor in Council who may at any time, in his discretion, either upon petition of any interested party, or of his own motion, vary or rescind any decision or order of the committee.

If you were going to apply that power after the Supreme Court of Canada had given its decision, why, you are playing ducks and drakes with the whole appeal procedure. There should be...

Senator Prowse: This, then, gives them a residual absolute jurisdiction.

The Chairman: Yes, there is a residual absolute jurisdiction there.

Senator Connolly (Ottawa West): There was a section in the Railway Act, I think, in respect of where you had a hearing before the Board of Transport Commissioners, as it then was, that provided that that decision would not stand—this was an administrative court, if you will, but a good court—unless it was confirmed by order in council. Once or twice these things were disallowed without the evidence being given. I think this is a similar situation. I think the chairman has pointed it out very clearly.

The Chairman: I think we have got to take a good look at this. The question you have to decide is whether the decision of the Supreme Court of Canada is final and conclusive. If you say that, then, of course, the Governor in Council stops somewhere along the line. You always have a right to take an appeal to the Supreme Court on a question of law, or a question of jurisdiction, from any order of the committee. If the committee makes an order, and the Governor in Council says something different, then the committee must adopt what the Governor in Council says. That is an order of the committee, and your right of appeal to the Supreme Court of Canada must be from that last decision of the committee.

Perhaps you can work your way through this, but I would like to see the statute made a little clearer on the relative positions, and the timing of when the Governor in Council may act under section 40, and when you may appeal under section 41. I think we have got to look at that.

Senator Prowse: Do I understand your interpretation, Mr. Chairman, to be that section 38, referring to the Exchequer Court, is intended to make the Exchequer Court a party of legal reference, and that is all?

The Chairman: For an opinion. They want the advice of the Exchequer Court.

Senator Prowse: Before they decide a point of law?

The Chairman: Yes, on a question of law or a question of jurisdiction they can go to the Exchequer Court and get advice, and they can take it or not, as they like.

Senator Prowse: Once the committee has decided what they want to do with that, then

the appeal will lie to the Supreme Court of Canada?

The Chairman: Your appeal only comes when the committee makes a decision. They use the description here of a stated case. Magistrates, on a question of jurisdiction and a question of law, are very often asked to state a case for the opinion of a higher court. The decision is then referred back to the magistrate, and he decides in accordance with that decision. But, there is nothing here which says that the committee must accept the opinion of the Exchequer Court.

Senator Prowse: And it is at that point that your right of appeal to the Supreme Court arises, so that the real right of appeal is to the Supreme Court.

Senator Haig: Except that the cabinet can reverse it.

Senator Prowse: That would be on a matter of policy, I would think.

Senator Haig: What is the point of the appeal procedure if in the end result the cabinet is going to make the decision?

The Chairman: This is a question we have to take a good look at.

Senator Connolly (Ottawa West): May I ask a question more from the practical point of view, and which may be of more importance to the industry? In the event that these appeals are taken—obviously, they are time consuming—are there situations in the development of an oil or gas field in which speed is of the essence in respect to making a decision of this kind? Would the time factor be a deterrent to using the appeal procedure?

Mr. Lewis: I think it could be, sir, when you are dealing with production. You could be put in the position of being shut in for some reason, and you would be appealing one of these orders and...

The Chairman: Well, the appeal to the Supreme Court must be made within one month after the making of the decision or order.

Senator Connolly (Ottawa West): But then you have got to get on the list.

The Chairman: It must be set down for hearing in the Supreme Court within 60 days of the making of the order.

Senator Prowse: There is provision there for a stay, and there is provision for conditional rights to continue.

The Chairman: The only thing that is not stated in here is what limited period of time by statute we will permit the Supreme Court of Canada to have for giving their judgment.

Senator Prowse: It would be tricky.

The Chairman: It would.

Mr. Lewis: Just to answer Senator Connolly's question, I could visualize a problem in the field of pipelines where two or three people applied and one was granted and then the people who were turned down may have the right of appeal and the people who had the order might start construction. You could run into a situation like that.

Senator Prowse: But not under this act. It seems to me that even with the transmission in there you would be under this act for what amounts to local things within the territories themselves. The moment you start to cross a border at all, you then come under the National Energy Board Act and their control of the pipelines.

Mr. Lewis: When you look at the map of Canada you see some pretty big pipelines and territories. I am just suggesting it as a possibility.

Senator Prowse: You can go a long way before you begin to hit a border.

The Chairman: We will make a note of that. Is there anything else you wish to add, Mr. Lewis?

Mr. Lewis: Yes. There is one point on the geographical extent of the bill. We considered this and thought that again we should mention it. I have prepared a map of Canada which I would like to leave with you. We have put in a heavy black line showing you the division of power between the Department of Energy, Mines and Resources and the Department of Indian Affairs and Northern Development. This act, as we read it, refers to the upper portion which comes within the ambit of Indian Affairs and Northern Development.

Senator Connolly (Ottawa West): The northern portion, that is.

Mr. Lewis: Yes, the part above the black line on my map, which is mostly north of 60, and then across the north part of Hudson's

Bay, with the exception that there are two islands at least in Hudson's Bay and one or two in the Hudson strait that seem to come within the ambit of this act, whereas if you read the division of powers of the departments you find that they come within the area where the administration is handled by the Department of Energy, Mines and Resources.

This gives us some concern. We do not know how serious it is. We point that out because there is an area of conflict in here. Again the industry would like to deal with one body. Of course, this is a question of Government policy, but when you are dealing with conservation and that sort of matter, the industry takes the view that it would be preferable to have one act covering the whole federal area, whether it be off-shore or on-shore. We know there are some arguments against that, but it seems to us that it is easier from our point of view to be dealing with one group rather than have to worry about crossing these lines. And there are areas where you might have off-shore or pools crossing the line, and if you do not have the same conservation rules and regulations it could give some concern down the road.

Of course, the development is in the very early stages there and we just do not know how serious this is, but we point out that it could be of some concern.

As you recognize, most of the off-shore areas of Canada are not covered by this conservation act.

Senator Prowse: Nor is there any authority in this act to rationalize production as between various provincial areas in the Northwest Territories.

Mr. Lewis: That is true.

Senator Prowse: We have no jurisdiction in that area now with the exception, possibly, of the Energy Board.

Mr. Lewis: Not yet. That is correct. There is no proration or market-sharing.

Senator Prowse: Or anybody to deal with it.

Senator Connolly (Ottawa West): Is there any land up in the territories that is owned by or is under the control of the National Parks Division?

Mr. Lewis: Perhaps Mr. Walton could answer that question.

Senator Connolly (Ottawa West): My point is that you are not allowed to drill in parks or to produce in parks.

Senator Prowse: There are no parks in the Northwest Territories.

Mr. Walton: I think your question was whether there were any areas in the territories that are under the jurisdiction of the federal Government in the national parks.

Senator Prowse: There are no park areas up there yet.

Senator Connolly (Ottawa West): I think there are.

Mr. Walton: I think there are. Are there not? I would have to look at that more carefully. I thought that Wood Buffalo Park went into the Northwest Territories.

Senator Prowse: No. It is in northern Alberta. It has been a matter of concern to us out there for a long time. It ends at the border.

Senator Connolly (Ottawa West): At any rate, there is a definite prohibition against drilling in parks.

Mr. Lewis: I do not know of any park up there, sir.

The Chairman: Is there anything else?

Mr. Lewis: No, the only other point that was touched on very lightly by Senator Prowse was that of the pipeline problem. You will notice in section 12(j), at the bottom of page 7 of the bill that one of the regulatory powers that the Governor in Council is given is the power to authorize the minister, or such other person as the Governor in Council deems suitable, to exercise such powers and perform such duties as may be necessary for the removal of gas and oil from the territories.

The concern we have there is whether there is a possibility of a conflict with the National Energy Board Act with the removal of gas. The energy act talks about extensions from a province or across a province, and we were not too certain what was meant by section 12(j). It may be tankers or something else. At any rate we raised the point that in our view there may be a conflict there.

Senator Prowse: Unless they mean the National Energy Board is the instrument to look after that.

Mr. Lewis: This is just the powers they have for regulations. They may not be taken.

Senator Prowse: There is an area for conflict at present.

Mr. Lewis: We submit that there is, sir. I think that is all I have to say, Mr. Chairman. Again I want to reiterate our appreciation for having been able to be heard.

The Chairman: It is just part of our policy here that any person wanting to make a submission concerning legislation will be heard.

Now, we have here, representing the department, Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch, Department of Indian Affairs and Northern Development. With him is Mr. R. R. McLeod, Administrator, Oil and Gas Section of the same division of that branch of the Department of Indian Affairs and Northern Development.

Dr. Woodward, what is your position today?

Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch, Department of Indian Affairs and Northern Development: Mr. McLeod and I are here only as observers for today, sir.

The Chairman: As I mentioned earlier, the Deputy Minister asked us not to conclude our hearings until he would have the opportunity of considering the submissions which were to be made today and which we have just heard. He therefore will appear at our next meeting, as I understand. I think we should meet his wishes in that regard in order to get his views in relation to what has been said in this submission. Now, the committee adjourns until next Wednesday.

The committee adjourned.

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 24

WEDNESDAY, MARCH 12th, 1969

Sixth Proceedings on Bill S-17,

intituled:

"An Act respecting Investments Companies".

ORGANIZATION REPRESENTED:

Investment Dealers' Association of Canada.

APPENDIX:

"K"—Brief submitted by the Investment Dealers' Association of Canada.

The Queen's Printer, Ottawa, 1969

29823-1

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (*Ottawa West*)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and–

The question being put on the motion, it was–

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was–

Resolved in the affirmative".

ROBERT FORTIER,
Clerk of the Senate.

29823–1½

MINUTES OF PROCEEDINGS

Wednesday, March 12th, 1969.
(26)

At 11.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson.–(14)

Present, but not of the Committee: The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse.–(5)

The following witness was heard:

INVESTMENT DEALERS' ASSOCIATION OF CANADA:

Stanley E. Nixon, President.
(Executive Vice-President, Dominion Securities Corporation Limited, Montreal, Quebec)

It was agreed that the brief submitted by the above organization be printed as Appendix "K" to these proceedings.

At 12.25 p.m. the Committee adjourned consideration of the said Bill until Wednesday, March 19th, 1969; and *resumed* consideration of Bill C-154, "Plant Quarantine Act".

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 12, 1969.

The Senate Committe on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, on the last occasion we adjourned consideration of Bill S-17 it was for the purpose of recalling Mr. Humphrys to review and express his opinions on the various submissions.

Two things have happened since that time. One is that the Investment Dealers' Association of Canada decided they wished to make a submission. They are here today. I think our first order of business is to hear them. In regard to the second item, Mr. Humphrys, of course, had a large order of business. He must review everything that had been said here, and he does not feel that he, as yet, has had sufficient time. I am inclined to agree with him. Of course, we are under pressure to finish this today. My suggestion is that we hear the investment dealers and then adjourn consideration to a further meeting of the committee.

The Investment Dealers' Association of Canada are represented by Mr. Stanley E. Nixon, Executive Vice-President, Dominion Securities Corporation Limited, Montreal, and President, Investment Dealers' Association of Canada.

Also present are:

Mr. Howard R. Bennett, who is with us today. Mr. Bennett, is a Partner, Richardson Securities of Canada, Toronto, Chairman of the Ontario District and Vice-President, Investment Dealers' Association of Canada.

Mr. J. A. S. Penny, Vice-President, Royal Securities Corporation Limited, Montreal, Vice-Chairman, Quebec District Committee, Investment Dealers' Association of Canada.

Mr. R. A. F. Sutherland, Q. C., Counsel, Investment Dealers' Association of Canada.

Mr. H. L. Gassard, Managing Director, Investment Dealers' Association of Canada, Toronto.

We have quite an array for a panel, and Mr. Nixon will make an opening statement.

Mr. Stanley E. Nixon, Executive Vice-President, Dominion Securities Corporation Limited, Montreal and President, Investment Dealers' Association of Canada: Mr. Chairman and honourable senators, I wish to express the appreciation of the Investment Dealers' Association of Canada for the opportunity you have given us to appear before you today.

A general statement of the views of our association on Bill S-17, an act respecting investment companies, is set out in a letter dated February 27, 1969, sent by us to Senator Hayden, Chairman of the Senate Committee on Banking, Trade and Commerce. Copies of this letter were made available for distribution to committee members.

It is not my intention to read this letter, but I will be glad to answer questions which you may wish to direct to any of its contents. Should I not be able to answer your questions, I am accompanied today by Mr. H. L. Gassard, Managing-Director of the IDA and Mr. R. A. F. Sutherland of the Borden, Elliot law firm who act as counsel to our association, and I am confident that among us we should be able to give you the information you desire.

Before inviting your questions, I would like to provide you with some supplementary information on the background and operations of the Investment Dealers' Association of Canada. This information may assist you in your consideration of our strongly held view that members of our association should be specifically excluded, by the legislation itself and not by ministerial exemption, from the operation of the legislation contemplated by Bill S-17.

Our association, founded in 1916, has a history of continuous operations covering more than 50 years. We are an unincorporated, non-profit body. The right to apply for membership in the association is open to all individuals, firms or corporations carrying on business in Canada as investment dealers, provided the applicant satisfies the requirements set out

in our by-laws, and further provided that the application is approved by the IDA executive committee in the district in which the applicant's head office is located, and by the IDA national executive committee. These entrance requirements involve matters such as the nature of the business conducted by the applicant, the experience of the persons who comprise the organization of the applicant, and the applicant's ability to comply with the minimum capital and other financial standards established by the IDA.

The IDA is a national organization. Our membership, our activities and our influence extend from coast to coast. In keeping with the size and diversity of Canada, we have six district organizations. Each of these districts has an executive organization. The senior executive group in the association is the national executive committee which includes representation from the six districts, the president and the immediate past president, the first vice-president and the immediate past chairmen of the Ontario and Quebec districts.

The objectives of the association are directed to the development and maintenance of an environment in Canada favourable to saving and investment, both of which are essential to our continued economic growth, to a rising standard of living, and to the productive employment of our growing population.

For purpose of illustration, here are three paragraphs from the declared objectives of our association as set out in our constitution:

> (1) To encourage through self-discipline and self-regulation, a high standard of business conduct among members, and to adopt and enforce compliance with such practices and requirements as may be necessary and desirable to guard against conduct contrary to the interests of members, their clients or the public;
>
> (2) To establish and enforce compliance with capital, insurance and other requirements for the protection of members, their clients and the public;
>
> (3) To co-operate with and support governments in developing financial legislation for the furtherance of the public interests and to oppose such legislation if it is deemed contrary to the public interest.

For the record, I would point out that our constitution provides that the IDA is not formed for the purpose of affecting the price of securities, nor to interfere in any way with free and fair competition among our members in the business of dealing in securities.

At present, there are approximately 200 firms in Canada which hold memberships in the IDA alone in one or more of the major Canadian stock exchanges, or in the IDA and one or more of these exchanges. These firms deal with the public, as agents or principals, in the purchase and sale of securities. Their operations include the underwriting and distribution of new securities issues, dealings in issues listed for trading on stock exchanges, and dealings in unlisted issues in the over-the-counter market, along with a variety of other services to investors and security issuers.

Out of this total of 200 firms, 115 are members of the IDA and one or more of the stock exchanges, and 41 are members of the IDA alone. In other words, the IDA is representative of, and its by-laws and regulations are applicable to, about 80 per cent of the 200 firms. Our 156 member firms consist of 146 Canadian based organizations and 10 United States based firms. A total of 113 of the Canadian firms operate under provincial letters patent, 27 under federal letters patent, and 16 as partnerships or sole proprietorships. Capital invested, including sub-ordinated loans, in these Canadian firms, is estimated to aggregate about $150 million. Aggregate annual business volume of these firms in the form of new securities issues, dealings in listed and unlisted securities and money market operations, is measured in billions of dollars.

Regulation of the securities industry is not a new idea. Text books tell us that the history of securities regulation in one form or another can be traced back at least as far as a statute in 1285 authorizing the licensing of stock brokers in the City of London. In Canada, our industry—and in particular the members of the IDA—carry on their business within an elaborate framework of regulation. Some of this regulation is exercised by provincial authorities under the securities acts which exist in each province of Canada, and some is exercised under the watchful eye of the provincial authority by self-regulatory bodies such as the IDA and the major Canadian stock exchanges.

Our letter of February 27, 1969 addressed to Senator Hayden, was accompanied by copies of IDA regulations along with a copy of an 111 page statement of policy of the Ontario Securities Commission dealing with the conditions of registration which apply to brokers and dealers in Ontario. This has just come out and it shows you the massive type of regulatory material which dominates our industry. It covers subjects such as minimum capital requirements, bonding and insurance, business records and accounting procedures, and audit requirements and procedures. While the Ontario Securities Commission standards have legal force only in Ontario, I would point out and emphasize that the IDA regulatory standards and requirements in these areas of business policy and practice are almost the same in content and they apply all across Canada.

Members of the IDA are very conscious of their responsibilities to the investing public. This attitude is evidenced by the acceptance and support of IDA programs which involve compliance by all members with practices and requirements designed to maintain the highest standards–first, of ethics in the conduct of their business–second, of financial reliability in their dealings in securities–and, third, of professional competence in their relationships with investors.

Today, we have securities acts which are substantially uniform in content in the provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. These acts came into force in recent years. Quebec and the Maritime Provinces are operating under older acts which confer wide regulatory powers on the respective authorities concerned with their administration. In our opinion, it is not too much to hope that in the reasonably near future, all provinces will have securities acts in substantially the same form.

Federal intervention and active participation in the field of securities regulation seems imminent. It is our hope that this participation will take a form which does not impose unnecessary burdens on the effective working of our capital market, or on the day to day business activities of our industry which is already labouring under a heavy load of governmental and self-regulation.

Our formal submission on Bill S-17 addressed to Senator Hayden under date of February 27, 1969 contains further information with respect to IDA programs of self-regulation, provincial regulation, stock exchange regulation, the financing of member firms, including sources of borrowing and clients' money, and the anticipated federal securities legislation.

In our opinion, Bill S-17 would involve overcontrol of our industry, if it were applied to it. The present mixed pattern of governmental and self-regulation covering disclosure in prospectuses relating to new issues, the licensing of brokers, dealers and sales representatives and related matters, is working effectively in the public interest. This pattern of control is to be expanded in the near future by the introduction of federal securities legislation. Accordingly, we respectfully submit that members of our association incorporated under federal law should not be subjected to the reporting procedures, operating uncertainties, limitations and arbitrary regulatory action proposed in Bill S-17.

In our formal submission to this committee, we offered some observations with respect to the impact on business in general of Bill S-17. As an important part of the financial sector of the Canadian business structure, members of the IDA have a broad association with, and knowledge of, a very wide spectrum of Canadian business life.

Uncertainty is destructive of action in the formulation of business policy in the initiation of corporate expansion programs, and in the making of investment decisions. Enactment of Bill S-17 would create uncertainties of vital importance to the broad group of business enterprises which would be embraced by the simplified definition of an "investment company" set out in the bill. It would also create special uncertainties for the holders of the shares and debt securities of these companies, and for those institutional and private investors who are potential providers of new capital for the financing of corporate expansion.

In our view, the provisions of Bill S-17 are much too wide in scope. Measures designed to exercise the fundamental power of life and death over any sector of the business community should "shoot like a rifle, not like a shotgun". The power to regulate should be created by law only when the target area has been precisely defined, and then only if it is clearly evident that the public interest requires this type of intrusion into corporate operations.

Under the proposed legislation, all companies fitting the description of an investment company, which remain as federal incorporations, will not know for two years whether they are to be subjected to the rigorous regulatory provisions of the legislation. Even after two years, they will still never be sure that an initial exemption from the regulatory provisions may not be reversed at some future date by the simple exercise of ministerial discretion.

Through these brief comments, and the more extended treatment of this subject contained in our letter of February 27, 1969, the IDA records its disagreement in principle with Bill S-17 in its present form. Quite apart from the views already expressed with respect to the position of the members of IDA under this proposed legislation, we respectfully submit that the process of gathering data to enable the selection of specific areas for governmental regulatory action as serious and pervasive as that proposed by this bill should be separated from the enactment of the laws creating the desired regulatory authority when the area of its application has been clearly defined.

The motivation of Bill S-17 is better protection for investors and others who provide funds to financial intermediaries. We are in agreement with this objective, but we do not agree with the method of dealing with the matter as proposed in Bill S-17.

We have not developed a detailed series of suggested amendments to the bill because we are convinced that the proper course of action is to substitute a new bill for the present draft.

The new bill should provide only for the gathering of data from which decisions could later be made on the specific types of financial intermediaries which should come under federal supervision, inspection and control. The sections of the proposed legislation providing for this supervision, inspection and control should not be introduced until these financial intermediaries have been clearly defined.

We also submit that the section of Bill S-17 dealing with assessments is unfair and unreasonable. The main benefits from any effective system of federal supervision and control of financial intermediaries will accrue to the general public rather than to the intermediaries. For this reason we believe the costs of this Government activity should be paid out of general Government revenues rather than assessments on the intermediaries.

Finally, in any legislation on this subject which may be introduced now or later, we believe strongly, for the reasons we have expressed, that its terms should exclude from its operations all members of the Investment Dealers' Association of Canada.

This ends my presentation. As indicated earlier, I or my associates who are with me today will be glad to try to answer any questions you may wish to direct to us on the contents of our formal letter of February 27, 1969, or on the views I have expressed this morning.

The Chairman: Mr. Nixon, may I start the questions? You suggest that the bill initially should only be for the purpose of gathering information. The basis for the bill is that there is an area existing where there is a gap in the protection afforded to the investment public, really in the supervision of the use to which they put funds which they have raised from the public; the way in which they invest it. Within that area it appears to me that certain determinations could be made, and you could have positive law effective at once in relation to those areas. You could also have another part in the bill which would provide for the gathering of information to determine to what extent or how much further this legislation is to go embracing various types of businesses. If we do not accept the principle that there is a need now in some way and to some extent, then we are wasting our time in considering the bill at all. It is just an academic exercise.

Mr. Nixon: I would say, if it can be clearly defined and clearly proven that there are these areas that require this type of supervision and control at the moment, then action should be taken of a specific character to move in on that area. We certainly concur with that view.

The Chairman: It has certainly been the substance of submissions that we have had so far that the definition is much too broad. I think there have been so many opinions expressed—maybe some by me even—that there are areas of exception that should be made.

I think you have seen all that we have said so far. The only other question I want to ask you at this time has to do with your saying that the terms of this legislation should exclude from its operations all members of the Investment Dealers' Association of Canada. Why?

Mr. Nixon: For the very reasons that I had hoped that I had outlined.

The Chairman: I wondered if you had summarized them. There may be one reason that is good enough in itself.

Mr. Nixon: One reason is that we are already subjected to and operating under the heavy load of regulatory action—both self-regulation and regulation by the provincial authorities under the Securities Act.

The Chairman: The regulation that you are talking about has to do with securities.

Mr. Nixon: I am not speaking only of that but also of the day-to-day activities involving such matters as are set out in this voluminous publication of the Ontario Securities people dealing with minimum capital requirements, bonding and insurance, business records and accounting procedures and audit requirements and procedures. It is a most elaborate system of day-to-day control of our business.

The Chairman: It may be that in relation to the IDA we should do what we did in the securities sections in the Canada Corporations Act a few years ago where we provided for a filing of a prospectus, and so on, but also stipulated that if the company were required to file such material with the Securities Commission, it would initially satisfy that requirement by filing the same material in Ottawa.

Mr. Nixon: Something of that type would certainly be workable.

The Chairman: It would remove the suggestion that you are being overburdened with documentation.

Mr. Nixon: Exactly. Well, it is not documentation that we are concerned with. It is the compliance. There is a tremendous burden we have to carry now. If you read through the regulatory material which was passed along to you with our letter, you see that it regulates every phase of activity carried on in our business, sets down minimum standards and provides

for effective examination to ensure that there has been compliance with those standards. And I might say that the standards of development have become much more sophisticated in recent years than they were ten years ago. There is now an elaborate system of control over the industry which is exercised either directly by the Government or by Government sanction.

The Chairman: You are saying that there are various supervisory groups which should get together and work as a team.

Mr. Nixon: We would prefer it that way. We would prefer one authority in the entire country, if it were capable of being accomplished. I also believe in the north star, but I do not believe I can reach it.

Senator Thorvaldson: I take it that companies like Atlantic Acceptance and Prudential were not members of the IDA.

Mr. Nixon: They were completely different. Theirs is a completely different industry in every way and not related in any way except as people who are borrowing money in capital markets and using the services of the investment industry. That is Atlantic, not Prudential.

Senator Thorvaldson: Have there been any business failures among members of the IDA over the past several years that have resulted in heavy losses?

Mr. Nixon: I can make the statement, sir, which I believe to be true–and I have been in the business for 41 years although the business itself has gone on longer than that–that no public person dealing with a member of the Investment Dealers' Association has ever lost securities as a consequence of the insolvency of a member.

Senator Connolly (Ottawa West): That goes back through the depression years?

Mr. Nixon: It goes back through the depression.

Senator Connolly (Ottawa West): Mr. Nixon, what percentage of the work of the IDA is related to the marketing of securities of various corporate enterprises in Canada, approximately?

Mr. Nixon: The great bulk of the work that is done by and developed in the underwriting of new corporate issuess is done by a hard core of about 15 to 20 firms. They would devote, let us say, 30 to 40 per cent of their time to developing new corporate issues and marketing them. The rest of the industry is devoted to distributing issues and trading them in the over-the-counter market.

Senator Connolly (Ottawa West): Then your work would, of course, give your members a very intimate understanding of the corporate structure and stability of the companies whose shares you buy and sell on behalf of clients. Harking back to the general philosophy behind this act, I suppose that in the course of your experience you do come across issues that are proposed by companies which give you concern, and perhaps your members decide to advise their clients not to deal in such securities.

Mr. Nixon: There are two phases to that. First of all you have proposals which . . .

Senator Connolly (Ottawa West): If you will excuse me for just a moment, Mr. Nixon. I wonder if you know what I am trying to get at. You are talking here on behalf of the association, and what you have told us is very valuable, and I think the self regulation which the association has imposed on its members and which they accept is a most important thing for the financial community. But that is one step removed from what it is attempted to get at in this bill. What we are trying to do is clear our own minds as to where the real problem lies.

Mr. Nixon: Well, I do not think the problem lies with the Investment Dealers' Association.

Senator Connolly (Ottawa West): No, I didn't think it did.

Mr. Nixon: When you speak of issues being unacceptable to investment dealers, the first phase of that is that as underwriters of securities we are approached from time to time by companies who wish to "go public"–to use the popular expression of the moment. On examination of their affairs, we turn them down because we feel their securities for one reason or another are not appropriate for public subscription.

Senator Connolly (Ottawa West): This does happen?

Mr. Nixon: This does happen very definitely, sir. The second thing is, once securities get outstanding, however they may be put out, and they are in the hands of the public, there are constant dealings in them. One of the functions of the industry is to advise people as to the varying qualities of the securities and the proper selection to suit the individual investment objective. We are not financial intermediaries in the sense employed throughout the discussions on this bill. We derive our capital from the people who are in day-to-day business and in the operation of business. Our borrowings are from chartered banks and near banks, who are experienced, knowledgeable people providing money to us on a short-term basis against the collateral security of acceptable securities.

We do not at all raise money from the public either in the form of common shares, issued, nor do we raise money by issuing debt securities. We are a professional group dealing with other professionals.

The Chairman: What you are in fact suggesting is that if the definition of "investment" in relation to borrowing was qualified by saying "borrowing from the public" that would exclude you.

Mr. Nixon: Pretty close to it. There are at times in the money market operations where a member of the public or an individual–you see, the word "public" is pretty wide–the people who supply money in the money market can include corporations. The biggest business corporations in the country make their money work as hard as possible. They lend it to us for one day, or a week or two weeks for the purchase of securities that we undertake to buy back from them.

Senator Connolly (Ottawa West): Or that they might in turn sell?

Mr. Nixon: Yes; they work so carefully that they are lenders one day and borrowers the next.

The Chairman: I was using the word "public" to distinguish the kind of underwriting where you offer it to the general public as against where you go into a specialized market like the weekend market for the corporations. If all that kind of thing were excluded from the scope of borrowing, you would not under those circumstances be subject to the act?

Mr. Nixon: I would say that is right. You might have trouble grasping the exact concept and taking in all the facets of our business.

The Chairman: But your presentation today is on the kind of borrowing that you do which is not, you say, generally speaking the kind of borrowing that should be subject to the act.

Mr. Nixon: That is correct. We are not a financial intermediary to be picked up by this bill, and we are already under the framework of regulations directed by government.

The Chairman: In other words you are borrowing from sophisticated lenders?

Senator Thorvaldson: You are not borrowing from the public. Would you say you are 90 to 100 per cent dealers in investments and not investers as such.

Mr. Nixon: Let me put it to you this way, senator; we are never investers voluntarily. Sometimes we hold securities a little longer than we anticipated.

Senator Thorvaldson: You are really dealers as your name implies.

Mr. Nixon: I should not leave any impression that the amount of borrowing engaged in by the industry is small. The figures at the end of February for borrowings by investment dealers in the form of day-to-day loans plus the amounts borrowed from banks and near-banks, the figures for which we have every weekend, aggregate to $850 million. But this is to finance this large mass of short-term papers which develop in Canada in the money market. There we take on inventories of this, and then you want a 60-day piece of paper and you want the money for 10 days. You buy it for 10 days and we buy it back. It is our rolling inventory of securities.

Senator Connolly (Ottawa West): But you are also to a very large extent advisers and counsellors in investments, are you not?

Mr. Nixon: Yes, we are.

Senator Connolly (Ottawa West): Would you say that might even be the principal role, or would it be the underwriting?

Mr. Nixon: I would say it is an associated role. It is part and parcel of the business, but not the major role.

Senator Connolly (Ottawa West): Would the major role be the underwriting?

Mr. Nixon: It would be the dealing in securities. The Investment Dealers' Association embraces many people who are also members of stock exchanges; it embraces some firms that are principally stock brokers. So we cover the whole spectrum, right from people dealing purely as principals, purely as agents, and the mixed group in between. Our main function is dealing in securities as principals or agents; that it, dealing in underwriting, the over-the-counter market, and listed securities on the stock exchanges. It is quite a bundle.

Senator Connolly (Ottawa West): Just taking your last statement, what percentage of your operations is for your own account and what percentage is the accounts of clients?

Mr. Nixon: Essentially everything you do is for the account of clients. The position you may take as a principal at any time is generally undertaken with the idea that you are doing like Eaton's does, taking on an inventory to service the investment requirements of the public as they come along day by day. When you underwrite a new issue you are committed to take it up from the issuing company. Then you work like mad to distribute the issue as quickly as

possible, and you hope you will have distributed it to the public within a relatively short period of time.

Senator Connolly (Ottawa West): The result is that you interpret this bill—and I think quite properly—as primarily a bill to deal with . . .

The Chairman: Investment.

Mr. Nixon: With companies that raise money from the public and then reinvest that money in things for a relatively longer haul.

Senator Connolly (Ottawa West): I had a word a moment ago that has gone from me, but you have said it.

Senator Isnor: Mr. Nixon, it appeared to me from your brief that you stress the overcontrol this bill would have on your company, is that right?

Mr. Nixon: Yes, sir. Because of the tremendous regulation to which we are already subject, it would only be a duplication and another layer of such regulation.

Senator Isnor: That is what I am coming to. You referred to the Ontario Securities Act.

Mr. Nixon: I used it as an example of one that is highly sophisticated in content and symbolic of our whole regulation right across the country.

Senator Isnor: How long has the Ontario Securities Act been in effect?

Mr. Nixon: Their form of regulation began to develop in 1945, in the present sophisticated form, but it is in the last few years that it has really reached the peaks that today it is operated at.

Senator Isnor: And because of the information you have to give to the Ontario Securities Commission for operations, do you think this would be a duplication of that work?

Mr. Nixon: If we were subjected to the operative provisions of the bill and were required to comply with the regulatory procedures, yes.

Senator Isnor: And am I right in suggesting that your operations really do not go east of Ontario?

Mr. Nixon: They certainly do, sir; they are nationwide and they are international.

Senator Isnor: There are no acts such as the Ontario Securities Act east of Ontario?

Mr. Nixon: Senator, I did not make myself clear when I dealt with that in my earlier remarks. The point I was really making was that the Ontario act was the most sophisticated in Canada, and has been, as it were, the leader in setting the pattern, as it has now been adopted by all the provinces to the west.

In Quebec and the Maritimes we have acts in force which are very effective ones, but they are older. For example, the Quebec act is 1955, and we would strenuously hope—and last week we had visits with the authorities in the Province of Quebec with the idea of promoting as quickly as possible the acceptance of the general principles which are now in force accross Quebec, from the Ottawa River to the Pacific Ocean.

Senator Isnor: There is no such act as the Ontario Securities Act in any province east of Ontario?

Mr. Nixon: That is correct—not in precise form; it is in less developed forms. The Quebec act actually provides very wide discretionary powers, but it does not spell them out at great length like the Ontario act, and the Quebec act does not have that many matters that are dealt with in the Ontario act such as take-over bids, proxies, and things of this kind.

The Chairman: I know you are concerned for the Maritimes, Senator Isnor . . .

Senator Isnor: Yes, I am.

The Chairman: I can tell you this, that while the securities laws in the Maritimes may not be as sophisticated as the Ontario act, almost invariably if part of an issue is going to be disposed of, and therefore has to be cleared in the Maritimes, one of the things they insist on getting from you is a letter of approval of the Ontario Securities Commission.

Senator Isnor: Why should they have to go to Ontario for that?

The Chairman: It is not a case of going to Ontario for it, but it is a case of them accepting the Ontario clearance rather than have some kind of law itself.

Mr. Nixon: It is a very expensive business to set up a commission to conduct this regulatory procedure, and for a number of years, the smaller provinces, have relied quite heavily on the provinces who have elaborate staffs and facilities to process these things, particularly new issues with complicated procedures. We prefer to have one authority and one clearance on matters relating to the business, but it has not happened and it is still in the realm of hope rather than fact.

Senator Isnor: Your main objection, then, is the over-duplication of work which would be entailed if this bill went into effect?

Mr. Nixon: It is not duplication of work. We are already living with this great burden of regulation, and to have to comply with another authority is very damaging to our busines operations.

The Chairman: I think there were two points he was making. One was having regard to the way in which they carry on business: firstly, they do not borrow money from the public; and, secondly, in the ordinary way they are dealers and not investors. Therefore, they should not be covered by this bill, because the object of this bill is to close a gap and to protect the public, once they have subscribed for bonds, etcetera, as to the pourposes to which that money is put afterwards. They are dealers and not investors, but he did say this in answer to a question of mine, that if they were compelled to be under this act, and the provisions only required them to file a duplicate of what they had already filed under the Ontario Securities Act, that would not in itself be too onerous. We have made that provision now in the Canada Corporations Act. That is what the witness has said. The Maritimes are not suffering at all from anything that has been said here so far.

Mr Nixon: I may add to what I said before about the Ontario act, that the regulations under this act, this voluminous set of material, are actually derived, over 90 per cent, from the IDA regulations. These are made applicable now to the entire industry–members of the Toronto Stock Exchange, the Broker Dealers' Association. . .

Senator Connolly (Ottawa West): Do you find that most of the issues are processed through the Ontario Act?

Mr. Nixon: Yes. The largest capital market in Canada, of course, is Ontario, so they naturally go there first.

Senator Connolly (Ottawa West): Mr. Chairman, since Mr. Nixon is so knowledgeable in this general field, I wonder if I could go a little further afield with him. The Acceptance companies have been here and they have said, as far as the federally incorporated companies are concerned, that they rather welcome regulation–perhaps not in the way it is done specifically by this bill, but generally to give them a status and prestige, not only in the Canadian market but in foreign markets. Would you be inclined to agree with that?

Mr. Nixon: I would say against the background of the unfortunate events of recent years that the industry has suffered seriously in the eyes of investors, and Government regulation of the industry, I believe, would probably be one of the elements which would assure a rebirth of confidence over the passage of time, and assure a continued ability to raise money, at home and abroad, which these companies need in the conduct of their operations.

Senator Connolly (Ottawa West): One of the other representations made to us from several sources is that industrial holding companies with a large number of operating subsidiaries should specifically be excluded. Would you like to make any comment on that?

Mr. Nixon: I agree with the contention that they should be specifically excluded because they have merely chosen that form of corporate structure. For many reasons, instead of operating the companies directly, they operate them through subsidiaries.

The Chairman: What you are saying is that the investment by a parent or holding company in a corporate tool in the carrying on of the physical operations of manufacturing, et cetera, should not be an investment for the purposes of this act?

Mr. Nixon: That is right. It does not make that company a financial intermediary. It is one way of conducting the ordinary manufacturing and commercial life of the country.

Senator Connolly (Ottawa West): May I ask you another question in respect of having an investment tool–to use the chairman's description–to do the financing for various subsidiaries and affiliates? Would you have any comment to make about upstream and downstream lending?

Mr. Nixon: Perhaps I should declare my interest as a director of Canadian Pacific Investments. We have in Canadian Pacific Investments an arm known as Canadian Pacific Securities, which raises money for loans in any direction. I see no reason why in corporate life these types of loans should not be made. In ordinary business practice they are made all the time, and they are absolutely essential to the efficient operation of corporate enterprises. If one arm of your business is short of money, and another arm is long on money, if you cannot pool the money for the time being then it costs you more money to go out and borrow money for the deficient arm.

Senator Connolly (Ottawa West): They suggest that if such insurance were required this could be provided in the form of a guarantee by the financial company that was doing. . .

Mr. Nixon: Of course, there are not many situations that are comparable to that of Canadian Pacific Securities, where a branch of a company is set up specifically to raise money to be used throughout the family of companies that are associated with it.

Senator Connolly (Ottawa West): There is one other, but I forget which it is. The only other question I have—and I apologize for keeping the committee and you here—refers to this matter of disclosure which is required of companies that should be controlled. Would you say, in your opinion, that that disclosure should be as secret to the department as are disclosures made under the taxing acts?

Mr. Nixon: Categorically.

Senator Hays: I was rather interested, Mr. Nixon, in your observation about the many securities commissions there are in Canada. Do you think it would be desirable for Canada to have just one securities commission? Would the public be better protected?

Mr. Nixon: I do not think the public would necessarily be better protected, but from the viewpoint of the operations of our industry, and the speed with which one can bring a new issue to the market, there would be a benefit. Sometimes we are held up for six or seven weeks in respect to the filing of a prospectus and, of course, on this depends the time at which you can make a public offering. Sometimes you can get a prospectus through one provincial commission, and then another one will hold it up because it has different views. You have to deal with each of these commissions, and the total time involved becomes rather difficult to cope with. Markets can change quite rapidly in that time.

Senator Hays: What about multiplicity of costs?

Mr. Nixon: The costs of compliance with the regulations of various securities commissions are not that heavy. It is the cost in terms of delay in the free working of the capital market that may be heavy. You could expedite things if you had to deal with only one body, which had a certain standard that applied from coast to coast.

The Chairman: Sometimes the speed with which you are able to hit the market is very important.

Mr. Nixon: It is vital sometimes.

Senator Beaubien: May I refer to the Maritimes for a moment? Any member of the IDA doing business in Halifax would be under just as severe supervision and regulation as one in Toronto, would he not?

Mr. Nixon: All members of the IDA, no matter where located, have to adhere to the same set of regulations and standards.

Senator Beaubien: I just want to make sure that Senator Isnor realizes that there is no difference.

Mr. Nixon: I come from New Brunswick, senator, and I do the same thing.

Senator Phillips (Rigaud): I should like to address myself to a very pertinent question that the chairman raised. If the definition of "borrowing from the public" excludes borrowings from banking and other recognized institutions, and day to day financial dealings, would the bill then exclude, in effect, members of your association?

Mr. Nixon: I would think, Senator Phillips, that the definition would have to be broader than that, because the participants in the money market embrace a broad range of your whole corporate community.

Senator Phillips (Rigaud): Would you like to suggest, for the guidance of the committee, a definition of "borrowing from the public"—a definition that would ensure that members of your association are not affected by this bill. I think that that is the crucial point so far as your submission is concerned. Would it not be possible for you and your associates to indicate the exclusions involved in the term "borrowing from the public" which would characterize the nature of your business?

Mr. Nixon: Ontario has adopted one technique that could be used. They define sales that are exempt from the application of the act. If one were making a distribution of a new issue, and one could do it partly under one section of the act which exempts insurance companies, trust companies, and the like, and then there is another section that says that sales amounting to $97,000 and over are free. A dollar figure of that kind might solve the problem. The bill might provide that any borrowing in excess of a certain amount is not covered by the bill. That is the reverse way of getting at it, as opposed to trying to define precisely the people involved.

Senator Phillips (Rigaud): I would like to suggest that in the redrafting, if any, of this bill it would be helpful if your association would submit to the chairman, and through the chairman to the committee, a proposed amendment that would indicate the type of borrowing from the public which would be excluded from the provisions of this bill.

The Chairman: Either the type that should be excluded, or the type that should be included?

Senator Phillips (Rigaud): Yes, either way.

Senator Thorvaldson: The phrase "borrowing from the public," or the bank, is not used.

The Chairman: The definition so far simply says "borrowing on the security of".

Senator Thorvaldson: That is the only definition there is.

The Chairman: We must therefore suggest where we might be able to distinguish and eliminate certain areas by the definition.

Senator Phillips (Rigaud): There are hundreds of millions of dollars that members of the Investment Dealers' Association borrow in terms of an hour by borrowing money from the bank and then the cheque comes in on the sale of the securities. Surely that is not the type of borrowing to be contemplated by this bill. Ninety per cent of public borrowing is done on that basis.

Mr. Nixon: Nor the kind of borrowing we do day to day on the financial money market.

Senator Phillips (Rigaud): That is what I meant, the financial money market.

Senator Desruisseaux: Mr. Nixon, as President of the IDA you represented that you had about 80 per cent of the investment dealers in Canada as members. Therefore, about 20 per cent appear to be non-self regulatory. Is that correct?

Mr. Nixon: No, that is not right. Those are people who are not members of the IDA, but they are members of one or more of the Montreal, Toronto or Vancouver Stock Exchanges.

Senator Desruisseaux: Inasmuch as they sell some securities that go through the exchanges.

Mr. Nixon: As members of the exchanges they are subject to the same pattern of rigorous control, supervision and examination as we are.

Senator Desruisseaux: Does that leave others outside?

Mr. Nixon: There is a certain group of dealers, yes. The broker-dealers in Toronto, in Ontario, of course, are now subjected to the Ontario Securities Act. There are certain dealers elsewhere throughout the country who are not members of stock exchanges nor members of the IDA but they are few in number and their operations are not large. They are under the direct supervision, you might say, of provincial securities commissions, or people who administer the securities acts in the province where they are licensed to carry on business.

Senator Desruisseaux: When Atlantic Acceptance failed there were repercussions on the investment dealers of Canada. Correct me if I am wrong, but there was a stoppage of financing, which may have been coincidental with other reasons. In your view as President of the Investment Dealers' Association of Canada, what could have been done by the Government of Canada over this question of Atlantic Acceptance?

Mr. Nixon: That is a large question. You said that there was a reaction on investment dealers. I would say there was a reaction against the whole acceptance business and an impairment of the ability of that industry to get money from the public to finance and expand their operations. Whether any form of regulations would have triggered an earlier discovery of the things that went on in Atlantic I am not in a position to know. There were obviously financial statements which made things appear to be right which were not right. However, I have never believed that you can legislate honesty, experience or integrity. I do not know whether the more rigorous application of supervision and control by a regulatory body would have produced any better results. It might have precipitated discovery.

Senator Desruisseaux: In your association you do just that, regulate yourselves?

Mr. Nixon: We regulate ourselves within our own business.

Senator Desruisseaux: There must be a reason for it.

Mr. Nixon: The reason is because we believe it is better in business to maintain high standards, because obviously that will rebound to your benefit; your whole business is founded on confidence.

Senator Desruisseaux: Suppose the Government of Canada were faced with a situation similar to that of Atlantic Acceptance and it became necessary to legislate and do what we could to prevent a recurrence of it?

Mr. Nixon: Where it can be clearly defined that there is a need for regulation, where there is a vacuum, or inadequate regulation, it is perfectly legitimate to move into it. What we feel is wrong is throwing a net over a very large percentage of the Canadian economy in order to trap two or three fish at the end of the line.

Senator Desruisseaux: Any suggestion from the Investment Dealers' Association on what could be done in this respect would be appreciated. As sponsor of the bill, I think we should have something that would be acceptable to federally incorporated companies of Canada.

Mr. Nixon: We agree completely that if an area can be identified in which, in the interests of the public, a clear case can be made for introducing regulation,

control and supervision where it does not now exist, or where it is at the moment inadequate and can be improved, we say that is fine. However, we do say that these areas must be clearly identified before these measures are imposed. We do not agree with the idea of subjecting everybody to a lifetime of uncertainty whether or not they will be in or out of this net of control. We say identify the areas first and then move.

The Chairman: This is what we will try to do, to distinguish and draw the lines where they should be drawn. Are there any other questions? You have nothing further to add, Mr. Nixon?

Mr. Nixon: No, thank you, sir.

The committee adjourned consideration of the said Bill and proceeded to the next order of business.

Appendix "K"

INVESTMENT DEALERS' ASSOCIATION
OF CANADA
ESTABLISHED 1916

112 KING STREET W.
TORONTO 1

February 27, 1969.

Hon. Salter A. Hayden,
Chairman,
Senate Committee on Banking,
Trade and Commerce,
Senate Building,
OTTAWA, Ontario.

Dear Senator Hayden:

Re: Bill S-17, An Act respecting
Investment Companies

The membership of the Investment Dealers' Association of Canada ("IDA") includes most of the investment dealers in Canada operating as such and comprisés 139 limited companies, nine partnerships and two sole proprietorships. Our Association is naturally very interested in Bill S-17 not only as it would affect our Members in connection with their own businesses but as it would affect our corporate clients and the investment community generally.

Our counsel have advised that the extremely broad definition of "investment company" as set forth in Section 2 of the Bill would make the proposed Act apply to most of our Members that are incorporated under the laws of Canada. Our Members do borrow money and use their assets for the purchase of securities, typically to the extent of more than 25% of their total assets.

Many of our Members function not only as brokers, broker dealers, and underwriters but also as financial intermediaries in a more generalized sense.

These clearly are functions requiring in the public interest high standards of integrity and competence and necessitating public regulation and industry self-regulation covering, among other things, licencing, minimum capital requirements, bonding, detailed financial reporting, audit controls, "snap" audits and examinations, and detailed rules governing dealings with securities and funds of clients. It is natural that ours is already a highly regulated industry and that provincial and stock exchange regulation, as well as our self-regulation, is steadily becoming more vigorous and refined.

We respectfully submit, however, that Members of our Association should be specifically excluded, by the legislation itself and not by discretionary ministerial exemption, from the operation of the legislation contemplated by Bill S-17 for the following reasons:

1. SELF-REGULATION

Our Members are subject to the far reaching self-regulation imposed, principally on a nation-wide basis, by our By-laws and Regulations (copies of which are delivered herewith). Under such By-laws and Regulations Members are:

(i) required to maintain their capital at least up to specific minimum levels;

(ii) required to select their auditors from panels of auditors approved annually by the IDA District Executive Committees;

(iii) subject to "snap" audits by the Association Auditor or his nominees;

(iv) subject to examination of their financial condition, books, client accounts, securities on hand, fidelity insurance coverage and affairs generally by the IDA's full-time Chief Examiner and/or members of his staff or persons appointed by him;

(v) required to submit financial statements in accordance with standard reporting forms (copies of which are delivered herewith) developed jointly by the IDA and certain stock exchanges; and

(vi) generally, required at all times to be able to show compliance with our By-laws and Regulations and to answer to appropriate committees, or the National Executive, of the IDA with respect to complaints received by the IDA from members of the investing public in connection with alleged misconduct of a Member.

The most recent initiative to prevent loss to clients of our Members has been the joint decision by the IDA and certain stock exchanges to create a $1-1/2 million discretionary contingency fund, for which the funds have been raised. Our counsel are presently cooperating in the drafting of the legal instruments which will govern the administration of this fund.

2. PROVINCIAL REGULATION

Our industry operates within the context of Provincial securities legislation which requires that persons be registered to deal in securities and which regulates those so registered. Although there is considerable variation in the provincial statutes and in the size and experience of provincial securities commissions, recent years have seen much new securities legislation, increasing cooperation among provincial securities administrations, larger staffs, and increasingly vigorous and refined regulation requiring as a condition of continuation of registrations increasingly higher standards of conduct and financial reliability. We submit that regulation under securities acts, including the anticipated federal securities legislation (which incidently, directly and through cooperation with provincial securities commissions, can make available to federal authorities the information and data as to our industry and thus satisfy one of the purposes of Bill S-17) is more appropriate to the business of our Members and our industry than the type of regulation envisaged by Bill S-17 even as the same may be amended in the light of your Committee's deliberations.

The fact of close provincial regulation is a salient reality of the business of our Members, and the "Securities Act" approach of controlling those who may make a business of dealing in securities and of requiring full disclosure with respect to securities offered to the public is the mode of regulation most appropriate to our industry.

In this connection there is delivered herewith, as an illustration of a recent provincial initiative, a copy of the Ontario Securities Commission's February 17, 1969 Statement of Policy on Conditions of Registration.

3. STOCK EXCHANGE REGULATION

Most of our Members are also subject to regulation by Canadian stock exchanges, and, although such regulation is not directly related to the purposes of Bill S-17, it constitutes yet another area of scrutiny of our Members affairs.

4. NO PUBLIC FINANCING

The equity capital of our Members is provided by persons who are or have been active in their businesses or, to a lesser extent and usually for relatively short duration, by the estates of such persons. Members do not offer or issue their equity securities or issue debt securities to the public and this makes them very different from true investment companies and emphasises the inappropriateness of their regulation by the proposed legislation.

5. DEPOSITS NOT SOLICITED

Our Members do not solicit or accept deposits, as such, from members of the general public nor publicly offer their own short term or other obligations.

6. SOURCES OF BORROWINGS

The equity capital of many of our Members is supplemented by borrowings from their own shareholders or partners by way of

subordinated loans which are made under agreements approved by the IDA and providing that such capital may not be withdrawn until the Association Auditor is satisfied that such withdrawal will not impair the maintenance of required working capital levels.

In volume, borrowing from outside sources is much more important. The principal sources of borrowed capital of our Members are the chartered banks but significant amounts are also borrowed from "near banks" such as trust companies, and loan and trust corporations, and commercial and industrial corporations and governmental agencies having temporary surpluses of funds available for short term investment. Our Members borrow from the more financially sophisticated lenders, persons who are engaged professionally in the management of money and who do not require the sort of protection envisaged by Bill C-17. To subject an already highly regulated industry to additional regulations and reporting requirements requires the justification of a manifest public interest.

7. CLIENTS' MONEYS

Moneys owing by our Members to their clients at any given time consist mostly of "float" (funds arising from transactions in process) and funds held temporarily at the client's request pending investment or other use. In some cases, or invariably with some clients, where the amounts are substantial, the Member will be required to pay interest on such balances. The clients in such cases are invariably knowledgeable in financial matters

and not the sort of persons requiring, particularly in the light of existing regulation of our Members, the protection of the proposed legislation. In any event such funds are usually held on "open account" and do not involve the issuance of promissory notes or "evidences of indebtedness" as envisaged by Section 2 of Bill S-17.

8. INEQUALITY OF APPLICATION

Bill S-17, if enacted, will apply only to companies incorporated under the laws of Canada. We regret that we do not at this time have significant data on how many of our members are federally incorporated and how many are provincially incorporated but we do know that we have some Members in each category. Some of our Members would therefore be affected and some not. The uncertainty of the effect of the proposed legislation, not only because of the contemplated discretionary exemptions but also because of the wide latitude for future regulations, and the widespread feeling among our Members that they should not be lumped in with true investment companies or finance companies, will make it very tempting for those now operating under federal charters to obtain provincial charters. The fact that our incorporated Members are closely held corporations, with most of their shares held by persons active in their businesses, would make it very easy for them to take the steps required to obtain provincial charters.

9. ANTICIPATED FEDERAL SECURITIES LEGISLATION

It has been repeatedly announced that there is soon to be federal legislation relating to the securities business and the establishment of a federal Securities Commission. Presumably such legislation will be constitutionally justified on the basis of the interprovincial and international nature of many securities transactions, that is, based on the nature of the business rather than on the place of incorporation. Such regulation could not be evaded on the basis referred to in the foregoing paragraph. Presumably also a federal Securities Commission would work in closest cooperation with the provincial securities commissions and there would be a real possibility that the creation of the federal commission would not, because of such cooperation, lead to a significant increase in the present filing requirements affecting our Members. It is submitted that federal regulation of our Members and our industry under the proposed Securities Act is much more appropriate than regulation under Bill S-17. If banks, trust companies, insurance companies and loan companies can be excluded on the ground that they are already regulated by existing federal legislation and if a federal Securities Act is soon to be forthcoming, surely federally incorporated Members and all federally incorporated securities dealers should be specifically excluded from the operation of Bill S-17, on the ground that the federal Securities Act will cover them and inevitably be far more appropriate to the nature of their businesses.

Departing from the consideration of the position of our

IDA Members, I should like to make the following general observations with respect to Bill S-17.

A. SPECIFIC EXCLUSIONS

In general the scheme comprising an extremely wide definition and provision for specific exemptions at the discretion of the Minister involves too broad an application of ministerial discretion and would introduce too much uncertainty into the commercial community. The difficulty of framing a precise definition is recognized and probably justifies the extremely broad definition in the draft Bill although it would not justify its enactment into law. We believe that the draft Bill in its present form will cause companies likely to be affected to make representations and that, as a result of such representations, it will obtain, before the Bill should be proceeded with, information as to broad categories of companies almost certain to qualify for ministerial exemption. In our view such categories should be specifically excluded by the legislation itself before the Bill becomes law.

The need for data does not of itself justify the Bill in its present form. The fact that the alleged mischief desired to be cured cannot be more clearly delineated is itself a fact calling in question the need for legislation of such breadth and scope. In the interests of certainty the legislation should be focused as much as possible at the outset.

B. UNCERTAINTIES

The general framework of the Bill, with its very wide

definition of "investment company" and provision for exemption of certain companies by the exercise of ministerial discretion and with the two year delay in the coming into force of the provisions of Part II, will have the effect of introducing an atmosphere of uncertainty, if not apprehension, for companies with the definition of investment company. The very broad power to make regulations and the suggestions, however tentatively and moderately expressed before your Committee by representatives of the Department, that in the future there may be regulations prescribing categories of investment companies and prescribed capital ratios for such categories, will exacerbate the feelings of uncertainty. A natural result would seem to be a trend toward provincial incorporations and possibly a tendency for existing federal companies to seek re-incorporation provincially. The sense of uncertainty is itself bad for business, inhibiting initiative and encouraging a "wait and see" attitude.

C. PERSPECTIVE

Undoubtedly Bill S-17 received at least some of its impetus from the spectacular and widely publicized failures of certain companies that would have been within the definition of "investment company" had they been federally incorporated. In the interests of perspective it would be well to consider the hundreds of millions of dollars that have been raised through public offerings in Canada of securities of "investment companies" since, say, World War II without losses to investors or any

suggestion of impropriety on the part of the issuers. Such figures ought to be available from the Dominion Bureau of Statistics or the Bank of Canada and would serve to put the situation into better perspective.

D. OTHER REGULATIONS AND CONTROLS

The business failures referred to above have accelerated revisions of provincial securities legislation to provide for fuller disclosures by such types of companies, have caused the Canadian Institute of Chartered Accountants to clarify the extent and manner to which the auditor of a holding company may rely upon the reports of other auditors as to the affairs of subsidiary companies, have increased the wariness of investment dealers, analysts and investment departments and impelled many companies to provide much fuller disclosure both in their prospectuses and in supplemental financial data supplied to the investment community; have, for example, caused the IDA in collaboration with the Federal Council of Sales Finance Companies to develop and bring into regular use the Canadian Sales Finance Long Form Report (a copy of which form is delivered herewith) to provide standard and detailed reporting by finance companies (permitting comparisons), have resulted in the appointment of a Royal Commission in Ontario to enquire into one of such failures and, generally, through required disclosures under securities legislation and through market vigilance have made a recurrence of such failures less likely. Underwriters and institutional investors have increasingly required the inclusion in trust deeds relating

to debt issues of tougher covenants relating to the maintenance of liquidity and tighter restrictions on the ratio of equity to debt. This type of control, based on statutory requirements as to disclosure, negotiated provisions and professional scrutiny by institutional investors or by underwriters on behalf of their clients, when based on recent and reliable financial information, has the advantage that it can be applied flexibly and before the event with respect to each issue and so avoids the rigidities likely to be inherent in certification and categorical regulation.

E. NATURE OF MARKET

It is a truism that a very high proportion of investments in debt securities are being made by institutional investors such as insurance companies, pension funds, and large corporations which either have or are valued clients of persons having professional investment departments.

The nature of the market is important because the rigidities and limitations on freedom implicit in Bill S-17 are in themselves costs and disadvantages which have to be justified, if at all, on the basis that they will effectively serve some more than counterbalancing public interest. The Bill would discriminate between "investment companies" and other types of commercial activity. There are cases where such discrimination is justified. For example the public interest in security for depositors in banks or trust

companies, for persons paying premiums on insurance policies or for estate assets under administration has extremely high priority and justifies stringent regulation even at the cost of rigidity and lower returns. But "investment company" as defined would cover a broad spectrum of commercial activity where there is a significant public interest in permitting business judgment to operate in a context of relative freedom and flexibility. The case for Bill S-17 in its present form does not appear to have been made.

F. SECTION 8

The Department admits, in its explanation for the deferral of the effective date of Part II that it does not know what the scope of the legislation will be. In this context Section 8, or at least that part of it that would prohibit loans to companies in which "any corporation that is a substantial shareholder of the (lending) company ... has an interest", is premature and should not come into effect until much more is known about the classes of transactions to be affected.

I would be pleased to answer any questions or give any further explanations in connection with the points of view expressed above and would be grateful if you would let me know whether you think it would be helpful if the IDA were to appear before your Committee.

Yours truly,

(sgd.) Stanley E. Nixon

President

CONSTITUTION AND BY-LAWS

Investment Dealers' Association of Canada

November 1968

301/68

CONSTITUTION

1. The name of the Association shall be

INVESTMENT DEALERS' ASSOCIATION OF CANADA

2. The objects of the Association shall be:

(a) to foster and sustain an environment favourable to saving and investment, thus encouraging the accumulation of capital needed for continued economic development, for a rising standard of living and for the productive employment of a growing population;

(b) to encourage through self-discipline and self-regulation a high standard of business conduct among Members and to adopt, and enforce compliance with, such practices and requirements as may be necessary and desirable to guard against conduct contrary to the interests of Members, their clients or the public;

(c) to establish, and enforce compliance with, capital, insurance and other requirements for the protection of Members, their clients and the public;

(d) to provide a medium through which Members may confer among themselves on matters of common concern and through which they may undertake collective consultation and co-operation with governments, financial institutions and other associations;

(e) to co-operate with and support governments in developing financial legislation for the furtherance of the public interest and to oppose such legislation when it is deemed contrary to the public interest;

(f) to provide educational facilities to improve the professional competence of Members' employees, and to make available to the public information and instruction on saving and investment.

3. It is expressly declared that the Association is not formed for the purpose of affecting the price of government, municipal or corporation securities, nor to enable Members to form or effect combines, agreements or arrangements tending to affect the price of securities, nor shall the Association at any time discuss or take action upon questions which would in any way interfere with free and fair competition among Members in the business of buying, selling and dealing in securities.

4. The principal office of the Association may be in Toronto or in such other city as the National Executive Committee may from time to time determine. The By-laws of the Association may provide for the division of the Association into Districts.

5. Except as otherwise provided in the By-laws of the Association the National Executive Committee of the Association, constituted in such manner as the By-laws from time to time provide, shall be the governing body of the Association. The By-laws may provide for such other Committees, both National and District, constituted in such manner and having such powers and duties as the By-laws may from time to time prescribe.

6. The National Executive Committee may from time to time enact, amend, repeal and re-enact By-laws of the Association with respect to all matters pertaining to the conduct, administration, management and control of the affairs of the Association and of the various Districts of the Association and the furthering of the objects of the Association, including, without in any way limiting the generality of the foregoing, the conditions of eligibility for Membership in and of continuing as a Member of the Association; the rights and duties of and standards to be maintained by Members; the investigation of complaints against Members, the disciplining of Members and the imposition of penalties against Members, including fines, suspension and expulsion; and, generally, the enforcement of the By-laws of the Association and of Regulations made pursuant thereto.

7. By-laws enacted by the National Executive Committee and any amendment, repeal or re-enactment thereof shall be effective and shall remain in force only until the Annual or Special Meeting of the Association next following the date of the making of any such By-laws or of any such amendment, repeal or re-enactment, as the case may be, unless confirmed by resolution passed by the affirmative vote of at least two-thirds of the votes given thereon at such Meeting. If so confirmed any such By-law or any such amendment, repeal or re-enactment thereof shall continue in force thereafter subject to subsequent repeal or amendment as in this Constitution provided, but in default of confirmation at such Meeting as aforesaid shall at and from that time cease to have force or effect.

8. Until amended, repealed or added to in manner aforesaid, the present By-laws of the Association shall continue to be the By-laws of the Association.

9. This Constitution may be amended by resolution passed at a General or Special Meeting of the Association by the affirmative vote of at least three-fourths of the votes given on such resolution, provided that any such amendment shall first have been approved or recommended by the National Executive Committee. Notice of any proposed amendment shall be given to the Members at least thirty days prior to the Meeting.

BY-LAWS

BY-LAW No. 1

INTERPRETATION AND EFFECT

1.1 In these By-laws, unless the context otherwise requires, the expression:

(a) "Affiliate of a Member" means a corporation or firm, as the case may be, which in the ordinary course of business buys and sells securities from and to the public and, in the case of a corporation,

(i) (I) more than 50% of the outstanding shares in the capital stock of the corporation carrying voting rights at any time when no contingency has occurred which confers voting rights upon any other shares in the capital stock of the corporation, or

(II) if any such contingency has occurred, then and for so long as such contingency continues, more than 50% of the outstanding shares in the capital stock of the corporation carrying voting rights,

are owned or controlled by the Member; or

(ii) the directors, officers or principal shareholders of the corporation comprise the principal shareholders or a majority of the directors of the Member or a majority of the partners of the Member; and

in the case of a firm, the partners of the firm comprise a majority of the partners of the Member or the principal shareholders or a majority of the directors of the Member.

(b) "Annual Meeting" means the Annual Meeting of the Association;

Amended by instrument in writing, November 1968

(c) "applicable" in relation to a District Executive Committee or a District Audit Committee means the District Executive Committee or District Audit Committee for the District in which the applicant for Membership or a Member has its principal office and in relation to a Business Conduct Committee means the Business Conduct Committee having jurisdiction in the District in which the Member has its principal office, except in any case as otherwise expressly provided in any By-law.

(d) "Association" means the Investment Dealers' Association of Canada;

(e) "Constitution" means the Constitution of the Association;

(f) "investment character" in relation to a business means that at least 50% of the total gross profits of the business, or, if the applicable District Executive Committee in its discretion so approves, at least 50% of the total dollar volume of the business, results from or consists of the underwriting, distributing or buying and selling from and to the public in Canada, and either as principal or agent, of investment securities;

(g) "investment securities" includes:

(i) government, municipal, hospital, school, corporation and religious institution bonds, debentures, notes and other securities not in default as to principal or interest;

(ii) preferred shares not in arrears of dividends;

(iii) such common shares with demonstrated earning power, whether or not dividend paying, such shares in investment companies and such other securities as the applicable District Executive Committee, with the concurrence of the National Executive Committee, may from time to time approve as investment securities;

(h) "Managing Director" means the Managing Director of the Association;

(i) "Member" means Member of the Association;

(j) "Membership" means Membership in the Association;

(k) "officer" includes Chairman of the Board, President, Vice-President, Secretary and Treasurer;

(l) "Principal Contributor of Capital" means an individual, firm or corporation having an interest, either directly or indirectly, to the extent of not less than 5% in the capital of a firm or corporation, whether by way of loan, guarantee, ownership or otherwise;

(m) "recognized stock exchange" means any stock exchange designated by the National Executive Committee for the purposes of any one or more of these By-laws;

(n) "registered representative" includes any person who trades in securities with the public in Canada other than a person who trades exclusively in securities which are authorized investments for trustees or trust funds in any Province in Canada;

(o) "Regulations" means the Regulations of the National Executive Committee, and, where applicable, includes any Regulations of a District Executive Committee;

(p) "Secretary" means the Secretary of the Association.

(q) "securities commission" means, in any jurisdiction, the commission, person or other authority authorized to administer any legislation in force relating to the offering and/or sale of securities to the public and/or to the registration or licensing of persons engaged in trading securities.

(r) "securities dealer" means an individual or corporation whose principal business consists of the underwriting, distributing or buying and selling from and to the public in Canada either as principal or agent of stocks, bonds and debentures.

1.2 Words importing the singular include the plural and vice versa, and words importing any gender include any other gender.

1.3 In the event of any dispute as to the intent or meaning of the Constitution or By-laws or Regulations, the interpretation of the National Executive Committee shall be final and conclusive.

1.4 The enactment of these By-laws shall be without prejudice to any right, obligation or action acquired, incurred or taken under the By-laws of the Association as heretofore in effect or under the Regulations passed pursuant thereto, and any proceedings taken under the By-laws as heretofore in effect or under such Regulations shall be taken up and continued under and in conformity with these By-laws and the Regulations as from time to time in effect so far as consistently may be.

BY-LAW No. 2

MEMBERSHIP

2.1 The National Executive Committee shall, in its discretion, decide upon all applications for Membership but shall not consider or approve of any application unless and until it has been approved by the applicable District Executive Committee.

Amended 23/9/68

2.2 Any individual, firm or corporation carrying on or proposing to carry on business in Canada shall be eligible to apply for Membership if

(a) the applicant has carried on business as a securities dealer whose business has been of an investment character for a period of one year ending not more than 120 days prior to the date of application for Membership or, in case the business of the applicant has not been carried on for at least one year, if the applicant agrees that, if admitted to Membership, the business carried on by the applicant will be that of a securities dealer whose business will be of an investment character;

(b) the applicant, in the case of an individual, or at least three-fifths in number of the partners of the applicant in the case of a firm, or at least three-fifths in number of the directors and three-fifths in number of the officers in the case of a corporation and three-fifths in number of the salesmen of the applicant have been continuously carrying on or engaged in or employed in the business of securities dealers whose business has been business of an investment character in Canada, or elsewhere if approved by the National Executive Committee in any particular case, for a period of at least five consecutive years preceding the date of application for Membership;

(c) All directors of the applicant in the case of a corporation, or all partners of the applicant in the case of a firm are graduates of either The Canadian Securities Course or former Educational Course I of the Association, provided that any director or partner of an applicant may be exempted from this requirement by the National Executive Committee if such director or partner:–

(i) will not be involved in sales contacts with clients;

(ii) qualifies for exemption from the requirement that he take The Canadian Securities Course by virtue of an application made by him in the same manner and upon the same basis as an applicant for registration as a registered representative could obtain a like exemption under sub-division (ii), (iii) or (v) of Regulation 303; or

(iii) was, on July 1, 1967, a director or partner of a Member.

(d) the applicant has such minimum amount of net free capital as Members are required to have and maintain under the By-laws and Regulations; and

(e) the business of each firm or corporation which, if the applicant were a Member would be an Affiliate of the Member, and the business of the applicant, on a consolidated basis, are at the date of application for Membership and have been for a period of twelve months prior thereto business of an investment character.

2.3 For the purposes of this By-law, the business of an individual, firm or corporation having a head office or principal place of business outside of Canada but carrying on business at one or more branch offices in Canada means the portion only of the business relating to operations in Canada.

2.4 An application for Membership shall be in such form and executed in such manner as the National Executive Committee may prescribe and shall contain or be accompanied by such information and material as the By-laws, the National Executive Committee and the applicable District Executive Committee may require, including:

(a) in the case of a firm, the names of all partners, in the case of a corporation, the names of all directors and officers, and in each case the names of all Principal Contributors of Capital, and if any such Principal Contributor of Capital is a firm or corporation the names of all the partners and Principal

Contributors of Capital of such firm or of all directors and officers and Principal Contributors of Capital of such corporation;

(b) a statement of the business and financial history, arrangements, associations and affiliations of the applicant, or the partners of the applicant, in the case of a firm, or the directors and officers of the applicant, in the case of a corporation, for the five year period immediately prior to the date of application for Membership;

(c) a description of the character of the business carried on or proposed to be carried on by the applicant and, except in the case of a business which has not been carried on for at least one year, such percentage breakdown of the total gross profits or, if the applicable District Executive Committee in its discretion so approves, of the total dollar volume of the business into such categories, and for such period, as the National Executive Committee and the applicable District Executive Committee may require;

(d) the name of any association the members of which trade in securities of which the applicant or any partner, director or officer of the applicant is a member;

(e) a statement that the applicant is or has applied to be registered or licensed as a dealer in securities under the applicable law of the Province or Provinces in which the applicant carries on or proposes to carry on business and that the applicant will be and remain so registered or licensed so long as it remains a Member;

(f) an acknowledgment that the applicant has received a copy and is cognizant of the Constitution, By-laws and Regulations and an agreement that if admitted to Membership the applicant will comply therewith as from time to time in force;

(g) a statement that no change in the ownership or control of the applicant is contemplated within the twelve months' period following the date of the application, or if no such statement may be made, a description of any contemplated change in ownership, including the names and addresses of all individuals, firms and corporations involved;

(h) a description of all legal proceedings instituted, pending or threatened to which the applicant is, or to its knowledge may be, a party or of which any of its property is the subject.

Amended 23/9/68 2.5 An application for Membership with any accompanying material shall be submitted in duplicate to the Secretary, who shall make a preliminary review of the same and either:

(a) if such review discloses substantial compliance with the requirements of the By-laws and Regulations, transmit one copy to the Chairman of the applicable District Executive Committee, or

(b) if such review discloses any substantial non-compliance with the requirements of the By-laws and Regulations, notify the applicant as to the nature of such non-compliance and request that the application for Membership be amended in accordance with the notification of the Secretary and refiled or be withdrawn. If the applicant declines so to amend his application for Membership or to withdraw the same, the Secretary shall forward the same to the Chairman of the applicable District Executive Committee together with any accompanying material and a copy of his notification to the applicant.

2.6 The Secretary, upon instructions from the applicable District Executive Committee, shall notify all Members of the receipt of the application for Membership. Any Member may within fifteen days from the date of the mailing of such notification by the Secretary lodge with the Secretary an objection to the admission of the applicant and in such event the objection shall be referred for consideration to the applicable District Executive Committee.

Amended 23/9/68 2.7 The Secretary, upon instructions from the applicable District Executive Committee shall thereupon request the applicant to submit to the applicable District Association Auditors:

(a) Financial statements of the applicant as of a date not more than 45 days prior to the date of application for Membership (or as of such earlier date as the applicable District Association Auditors may in their discretion permit), prepared in accordance with

(i) the form prescribed by the By-laws and Regulations and required to be filed annually by Members with the applicable District Association Auditors, or

(ii) if the applicant proposes to compute its capital and file financial statements in accordance with the requirements of a recognized stock exchange, the form prescribed by such recognized stock exchange;

(b) If the financial statements prescribed by clause (a) above are audited, a report by the applicant's auditor (which shall be a person or firm acceptable to the applicable District Executive Committee) on such financial statements in the form prescribed for annual reports by Members' Auditors;

(c) If the financial statements prescribed by clause (a) above are unaudited,

(i) financial statements of the applicant as of a date not more than 180 days prior to the date of application prepared in accordance with either of the forms referred to in clause (a) above;

(ii) a report by the applicant's auditor (which shall be a person or firm acceptable to the applicable District Executive Committee) on the financial statements referred to in sub-clause (i) above in the form prescribed for annual reports by Members' Auditors; and

(iii) a letter from the applicant's auditor relating to the financial statements referred to in clause (a) above in such form as shall be prescribed by the applicable District Association Auditors:

(d) An additional report by the applicant's auditor to the effect that, based on his examination of the affairs of the applicant:

(i) as of the date of the financial statements prescribed by clause (a) above, the applicant has the minimum amount of net free capital required for Members under the By-laws and Regulations;

(ii) the applicant keeps a proper system of books and records;

(iii) all securities of a customer fully paid for and which have come into the possession of the applicant and are not subject to any lien or charge in favour of the applicant shall be segregated and distinguished as held in trust for the customer owning the same.

(iv) the applicant has in force the insurance prescribed for Members under the By-laws and Part II of the Regulations.

(e) Such additional financial information, if any, relating to the Applicant as the applicable District Association Auditors may in their discretion request.

Amended 23/9/68 2.8 If and when such District Association Auditors have received the financial statements and the reports of the applicant's auditor referred to in By-law 2.7 and are satisfied as to the several matters mentioned in By-law 2.7 (d) (i) to (iv), then such District Association Auditors shall so notify the Secretary who shall forthwith thereafter notify the applicable District Executive Committee.

2.9 Upon notification of the Members by the Secretary pursuant to By-law 2.6 and the expiration of the fifteen day period referred to therein and upon receipt of the notification from the District Association Auditors pursuant to By-law 2.8, the applicable District Executive Committee in its discretion may either disapprove the application or, at the expiration of a period of six months or of such lesser period as such Committee in any particular case may determine, may approve the application, notwithstanding any objection thereto that may have been made by any Member.

Amended 23/9/68 2.10 If and when the application is approved by the applicable District Executive Committee, the Secretary shall obtain the recommendation of the Chairman of such District Executive Committee as to the proper Annual Fee for the applicant and for such purpose the Chairman shall consult the Managing Director.

Amended 23/9/68

2.11 The Secretary shall submit to the next succeeding meeting of the National Executive Committee each application which has been approved by the applicable District Executive Committee, together with the recommendation of the Chairman of such District Executive Committee as to the Annual Fee for the applicant.

Amended 23/9/68

2.12 The National Executive Committee shall thereupon consider the application at such meeting at which its decision as to admission of the applicant and the Annual Fee payable by it shall be expressed by resolution passed by the affirmative vote of at least a majority of all of the members of the National Executive Committee.

2.13 If and when the application has been approved by the National Executive Committee and the applicant has been duly licensed or registered as a dealer in securities under the applicable law of the Province or Provinces in which the applicant carries on or proposes to carry on business, and upon payment of the Entrance Fee and Annual Fee, the applicant shall become and be a Member.

2.14 Notwithstanding the foregoing, if an applicant qualifies for exemption from payment of the Entrance Fee and if the applicable District Executive Committee approves of such exemption and gives its approval to the application for Membership, the applicant shall be admitted to Membership without reference to the National Executive Committee for final decision if all other conditions relating to an application for Membership have been duly complied with except such conditions, if any, as such applicable District Executive Committee, with the written approval of the President, may deem appropriate to be waived under the circumstances of any particular case.

Enacted by instrument in writing April 1968

2.14A Notwithstanding the provisions of By-Laws 2.6, 2.9, 2.11, 2.12 and 2.13, wherever an applicant for Membership is an affiliate of a Member (as defined) which confirms its intention to continue its Membership in the Association, the applicable District Executive Committee shall promptly, after receipt of notification by the District Association Auditors, as provided in By-Law 2.8, either approve or disapprove the application and notify the Secretary of their decision. The Secretary shall thereupon notify by writing each member of the National Executive Committee and the National Executive Committee may, in its discretion, forthwith approve the application by instrument in writing signed by a majority of the members thereof.

2.15 A Certificate of Membership signed by the President or any member of the National Executive Committee and by the Managing Director or Secretary, may be issued to a Member upon admission to Membership.

Amended 23/9/68

2.16 The Secretary shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Association.

2.17 The Secretary shall furnish to the securities commissions of all the Provinces of Canada a list of Members, including in a separate division thereof the names of Non-Resident Members, and from time to time as changes occur in the Membership shall communicate such changes to such commissions. Any such list shall indicate or be accompanied by a letter or memorandum indicating that the By-laws, unless otherwise specifically provided, do not apply to Non-Resident Members and that Non-Resident Members are not obliged to furnish financial statements to the Association.

BY-LAW No. 3

ENTRANCE AND ANNUAL FEES

3.1 The Entrance Fee shall be $1,000.

3.2 The Annual Fee for each Member shall be such amount, not less than $500 nor more than $4,000 as the Budget and Investment Committee in its discretion may determine, having regard to the size and character of the business of the Member. The Budget and Investment Committee may from time to time re-determine the Annual Fee to be payable by each Member, provided that any such re-determination shall not take effect before the fiscal year of the Association next following the fiscal year of the Association in which such re-determination has been made. Before any such determination or re-determination is made, the Budget and Investment Committee shall obtain, but shall not be obliged to act upon, the recommendation of the Chairman of the applicable District Executive Committee.

3.3 Such Annual Fee shall be paid in advance by each Member not later than the 1st day of May in each year and notice of the Annual Fee payable shall be mailed to each Member on or about the next preceding 1st day of March; provided that if an applicant for Membership is approved by the National Executive Committee at any time between September 30th and December 31st in any year, the Annual Fee for the balance of the fiscal year shall be one-half of the Annual Fee, and if between December 31st and March 31st, the Annual Fee for the balance of the fiscal year shall be one-quarter of the Annual Fee.

3.4 Notwithstanding the foregoing, in the event that:

(a) an applicant for Membership has acquired the whole or a substantial part of the business and assets of a Member or Members in good standing whose Annual Fee for the then current fiscal year has been paid in full and who is or are resigning from Membership concurrently with the admission of the applicant to Membership, and

(b) at least a majority in number of the partners of the applicant, in the case of a firm, or at least a majority in number of the directors and at least a majority in number of the officers of the applicant, in the case of a corporation, are partners, or directors and officers, as the case may be, of the retiring Member or Members,

then the applicant, if the applicable District Executive Committee so approves, shall be exempted from payment of the Entrance Fee and from payment of the Annual Fee for the then current fiscal year.

3.5 Notwithstanding By-law 3.2 the National Executive Committee shall have power to make an assessment in any fiscal year upon each Member not to exceed 50% of the Annual Fee payable in such year by such Member. Each Member shall pay the amount so assessed upon it within thirty days after receiving written notification thereof from the Secretary.

3.6 If the required Annual Fee of a Member has not been paid by the first day of July in any year, or the amount assessed upon any Member pursuant to By-law 3.5 has not been paid within thirty days after the Member has received written notification thereof from the Secretary, the Secretary shall, by registered mail, request the Member to pay the same and draw the Member's attention to the provisions of this By-law 3.6. If the entire amount owing by the Member has not been paid within thirty days from the date the Secretary has mailed his request the Secretary shall notify the National Executive Committee to this effect and the National Executive Committee may, in its discretion, terminate the Membership of the Member in default. If the National Executive Committee decides to terminate the Membership of a Member pursuant to the provisions of this By-law 3.6 the Secretary will be requested to notify the Member, by registered mail, of the decision of the National Executive Committee. A former Member whose Membership has been terminated pursuant to the provisions of this By-law 3.6 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Association for all amounts due to the Association from the former Member.

BY-LAW No. 4

BRANCH OFFICE MEMBERS

4.1 Where any Member has one or more branch offices having a manager and staff either in the District in which the principal office of such Member is situated or in any other District, each such branch office shall be a Branch Office Member.

4.2 No Entrance Fee or Annual Fee shall be payable in respect of any Branch Office Membership.

4.3 A Branch Office Member shall have the same privileges in its District as any other Member except that at all District meetings each Member shall have one vote only in respect of all its offices, whether principal or branch, in the District.

4.4 The representative of any Branch Office Member in any District shall be eligible for election as Chairman or member of the District Executive Committee of such District.

4.5 Each Branch Office Member shall be entitled to send one or more representatives to the Annual Meeting.

BY-LAW No. 5

NON-RESIDENT MEMBERS

5.1 Any member in good standing of the Investment Bankers Association of America which does not carry on business in Canada or have a branch office in Canada may be admitted as a Non-Resident Member.

5.2 An application for Non-Resident Membership shall be made in writing addressed to the Secretary and shall be submitted to the National Executive Committee, which may, in its discretion, either approve or reject the same.

5.3 Upon approval of any such application by the National Executive Committee and upon payment by the applicant of the prescribed Entrance Fee and Annual Fee, the applicant shall become a Non-Resident Member.

5.4 The Entrance Fee for a Non-Resident Member shall be $50 and the Annual Fee for a Non-Resident Member shall be $200 or such other sum as the National Executive Committee may from time to time determine.

5.5 A certificate of Non-Resident Membership signed by the President or any member of the National Executive Committee and by the Managing Director or the Secretary may be issued to a Non-Resident Member upon admission to Non-Resident Membership.

5.6 The Secretary shall keep a separate register of the names and business addresses of all Non-Resident Members.

5.7 Every Non-Resident Member shall be entitled to receive notice of and to send a representative to the Annual Meeting and shall be placed on the regular mailing list of the Association, but no Non-Resident Member nor any representative of a Non-Resident Member shall be entitled to vote at any such meeting or be appointed to the National Executive Committee or any other Committee of the Association or of any District or to have any other privileges as a Member.

5.8 The By-laws shall not be applicable to Non-Resident Members unless otherwise specifically provided therein.

5.9 The National Executive Committee shall have power from time to time in its discretion to forfeit the Membership of a Non-Resident Member or to suspend the rights and privileges of such Non-Resident Member for such period and upon such terms as the National Executive Committee may determine, and there shall be no appeal from any such decision of the National Executive Committee.

BY-LAW No. 6

MAINTENANCE OF CHARACTER OF BUSINESS

6.1 Every Member and every Affiliate of a Member shall continue to carry on business in such a way that the business of the Member, or if the Member has Affiliates, the business of the Member and its Affiliates, on a consolidated basis, is business of an investment character, and whenever required by the applicable District Executive Committee, the Member shall establish to the satisfaction of such Committee that its business, or its business and the business of its Affiliates, on a consolidated basis, as the case may be, continues to be of such character.

6.2 A Member shall, if and when requested by the applicable District Executive Committee or the National Executive Committee, file a report with such Committee within such time as may be specified in such request, showing the percentage breakdown of the total gross profits of the Member or of the Member and its Affiliates, on a consolidated basis, if the Member has Affiliates or, if the Committee in its discretion so approves, of the total dollar volume of the business of the Member or of the Member and its Affiliates, on a consolidated basis, if the Member has Affiliates, in all cases for any period specified by the Committee within the twelve month period next preceding the date of the request, or, at the option of the Member, for the whole of such twelve month period into the following categories, namely:

(i) treasury bills, bonds, debentures and notes; and

(ii) shares.

6.3 Where it appears from any such report that the business in shares of the Member or the Member and its Affiliates, as the case may be, resulted in or comprised more than 50% of the total gross profits or total dollar volume, as the case may be, of the business of the Member or of the Member and its Affiliates, on a consolidated basis, as the case may be, for such period, the Member shall show separately the percentage breakdown as to gross profits or dollar volume as the case may be, of its or their business, as the case may be, in shares into

(i) preferred shares not in arrears of dividends;

(ii) common shares with demonstrated earning power whether or not dividend paying;

(iii) shares in investment companies;

(iv) other shares;

(v) such other categories as the Committee may require.

6.4 A Member which at the time of application for Membership had not been carrying on business in Canada for at least one year, shall also file with the applicable District Executive Committee a report in respect of each successive six month period during the two years next following its admission to Membership containing the information prescribed by By-law 6.2 and, if applicable, by By-law 6.3. Each such report shall be so filed within thirty days after the expiration of the six month period to which the report relates.

6.5 If it appears to the applicable District Executive Committee or to the National Executive Committee from any report required to be filed with such Committee that the business of the Member, or if the Member has Affiliates, the business of the Member and its Affiliates, on a consolidated basis, was not of an investment character for the period covered by the report, then such Committee shall by written notice to the Member require the Member on or before such date (hereinafter called the "review date") as such Committee may in its discretion specify to satisfy such Committee that the business of the Member, or of the Member and its Affiliates, on a consolidated basis, as the case may be, in respect of a period of twelve months, or such longer period as such Committee may approve terminating not more than 120 days before the review date, is of an investment character. Any such notice from such Committee may also require the Member prior to the review date to file such interim report or reports, covering such period or periods, as to the character of the business of the Member, or of the Member and its Affiliates, on a consolidated basis, as the case may be, as such Committee in its discretion may specify.

Amended by instrument in writing, November 1968

6.6 If the Member fails to satisfy the applicable District Executive Committee or the National Executive Committee, as the case may be, in accordance with By-law 6.5, on or before the review date, the applicable Business Conduct Committee shall be so informed and such failure shall constitute failure to comply with By-law 6.

BY-LAW No. 7

CHANGES IN PARTNERS, DIRECTORS AND PRINCIPAL CONTRIBUTORS OF CAPITAL

7.1 Within three days after any change is made in the partners, directors, officers or Principal Contributors of Capital of a Member or, in case any such Principal Contributor of Capital is a firm or corporation, within three days after any change is made in the partners of such firm or in the directors or Principal Contributors of Capital of such corporation, and before making any public announcement of any such change, the Member shall give written notice thereof to the Secretary and as to the length of time any new partner, director or Principal Contributor of Capital has been continuously engaged in business as an investment dealer and giving such other information concerning any such change as may be required under any Regulations and requesting approval of such change by the applicable District Executive Committee.

7.2 The Secretary shall forthwith forward such notice or a copy thereof to the Chairman of such District Executive Committee who may in his discretion either approve such change or refer the request for such approval to such District Executive Committee and who shall forthwith advise the Secretary of such approval or reference.

7.3 The District Executive Committee may in its discretion approve or reject any request for approval referred to it and the decision of such Committee shall be forthwith communicated to the Member and to the Secretary.

7.4 If any such change involves the election or appointment of a new director or admission of a new partner of a Member, no approval shall be given under By-law 7.2 or 7.3 unless such new director or partner

(a) will not be involved in sales contacts with clients, or

(b) is a graduate of either The Canadian Securities Course or former Educational Course I of the Association, or

(c) has been exempted from the requirement that he take The Canadian Securities Course by virtue of an application made by him in the same manner and upon the same basis as an applicant for registration as a registered representative could obtain a like exemption under subdivision (ii), (iii) or (v) of Regulation 304; or

(d) was, on July 1, 1967, a director or partner of a Member.

7.5 If the District Executive Committee does not approve any such change and the Member concerned does not rescind such change within such time as may be specified by the Committee, the Committee may in its discretion recommend to the National Executive Committee that the Member be required to apply for continuance of Membership and the National Executive Committee may in its discretion so require, in which case the Secretary shall so notify the Member in writing stating the time within which the National Executive Committee has required the Member to apply for continuance of Membership.

7.6 The Member shall thereupon make application for continuance of Membership within the time required by the National Executive Committee. Such application shall be made and dealt with in the same way as an application for Membership under By-law 2, except that:

(a) no additional Entrance Fee or Annual Fee for the then current fiscal year shall be payable; and

(b) the application may be approved by the applicable District Executive Committee without reference to the National Executive Committee for final decision if all other conditions relating to an application for Membership have been duly complied with.

7.7 If an application for continuance of Membership is disapproved by the District Executive Committee, the Member shall have the right within ten days after receiving notice of such disapproval to appeal therefrom to the National Executive Committee. The National Executive Committee may approve or disapprove of such application and its decision shall be final.

7.8 If the Member does not apply for continuance of Membership within the time required by the National Executive Committee or within such further period, if any, as the applicable District Executive Committee may permit, or if the application of the Member is disapproved by the applicable District Executive Committee and, in case of an appeal, by the National Executive Committee, the Membership of the Member shall thereupon terminate.

7.9 The Secretary shall be informed promptly of any such approval or disapproval of the District Executive Committee and of the National Executive Committee and shall thereupon notify the Member thereof by registered mail.

7.10 Any Member whose Membership terminates in accordance with By-law 7.8 shall be entitled to a pro rata refund of the Annual Fee in respect of the unexpired balance of the current fiscal year.

BY-LAW No. 8

RESIGNATION FROM MEMBERSHIP

8.1 A Member wishing to resign shall address a letter of resignation to the National Executive Committee in care of the Secretary.

Amended 23/9/68

8.2 A Member which tenders its resignation shall in its letter of resignation state its reasons for resigning and shall file with the District Association Auditors of the District in which the Member has its principal office either

(i) a balance sheet of the Member reported upon by the Member's Auditor without qualification as of such date as such District Association Auditors may require; or

(ii) a report from the Member's Auditor without qualification that in his opinion the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any;

and a report from the Member's Auditor that clients' free securities are properly segregated and earmarked.

8.3 Notice of such letter of resignation shall forthwith be given by the Secretary to the National Executive Committee, the applicable District Executive Committee, all other Members, the securities commissions of all of the Provinces in Canada and the Bank of Canada.

8.4 Unless the National Executive Committee, in its discretion otherwise declares, a resignation shall take effect as of the close of business (5.00 p.m. Head Office local time) on the date the Secretary receives from the District Association Auditors a written statement certifying that, in their opinion, based on the balance sheet and/or reports referred to in By-law 8.2 the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any, and if, to the knowledge of the Secretary after due enquiry, the Member is not indebted to the Association and no complaint against the Member or any investigation of the affairs of the Member is pending.

Amended by instrument in writing, November 1968

8.5 If no such resignation has taken effect within six months after the date of receipt by the Secretary of the letter of registration, the Secretary shall so notify the applicable Business Conduct Committee and that Committee may, on not less than fourteen days' notice to the Member, require the Member to appear before such Business Conduct Committee to show cause why it should not be expelled from the Association. At such appearance, the Member shall be entitled to be represented by Counsel and to call, examine and cross-examine witnesses. If the Member fails to appear, the applicable Business Conduct Committee may forthwith expel the Member from the Association and the decision of the applicable Business Conduct Committee shall be final.

8.6 When the resignation of a Member becomes effective the Secretary shall so advise the Member resigning and all other Members, the National Executive Committee, the securities commissions of all of the Provinces of Canada, the Bank of Canada, all District Association Auditors, and such other persons or bodies as the applicable District Executive Committee may direct.

8.7 A Member resigning from the Association shall not be entitled to a refund of any part of the Annual Fee for the fiscal year in which its resignation becomes effective; provided that where the resignation of a Member does not become effective until the fiscal year next following the fiscal year in which its letter of resignation was tendered, the resigning Member shall not be liable to pay any part of the Annual Fee for the fiscal year in which its resignation becomes effective.

8.8 A Member resigning from the Association shall surrender to the Secretary its Certificate of Membership.

Enacted 24/9/68

8.9 The National Executive Committee may, in its discretion terminate the Membership of any Member which has ceased to carry on business as a security dealer or whose business has been acquired by an individual, firm or corporation who or which, as the case may be, is not a Member of the Association. If the National Executive Committee decides to terminate the Membership of a Member pursuant to the provisions of this By-law 8.9 the Secretary will be requested to notify the Member, by registered mail, of the decision of the National Executive Committee. A former Member whose Membership has been terminated pursuant to the provisions of this By-law 8.9 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Association for all amounts due to the Association from the former Member.

BY-LAW No. 9

DISTRICTS

9.1 For the purposes of the Association there shall be a division into 6 Districts, as follows:

(i) the Pacific District composed of the Province of British Columbia;

(ii) the Alberta District composed of the Province of Alberta;

(iii) the Mid-Western District composed of the Provinces of Saskatchewan and Manitoba;

(iv) the Ontario District composed of the Province of Ontario;

(v) the Quebec District composed of the Province of Quebec;

(vi) the Atlantic District composed of the Provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

29823—4

BY-LAW No. 10

NATIONAL COMMITTEES

10.1 There shall be a National Executive Committee of the Association composed of the President, the immediate Past President, the First Vice-President, the Vice-Presidents of the Association, the immediate Past Chairman of the Ontario District Executive Committee and the immediate Past Chairman of the Quebec District Executive Committee. In the event that any person shall hold the office of President for two successive years, the immediate Past President shall continue to be a member of the National Executive Committee during such President's second year of office.

10.2 A meeting of the National Executive Committee may be convened by the Secretary at the request of the President or, in his absence, of the First Vice-President, or at the written request of three members of the National Executive Committee, at such time and place as may be fixed in the notice convening the meeting. At least seven days' notice shall be given to each member of the Committee. A meeting of the National Executive Committee may be held immediately following the Annual Meeting without notice, notwithstanding that one or more members of the Committee may not be present at the Annual Meeting.

10.3 A member of the National Executive Committee may by writing appoint a proxy to attend and vote for him at any meeting of the Committee. Such proxy shall be a partner of such member or an officer of the corporation represented by such member or any member of the National Executive Committee or of the District Executive Committee of which he is a member.

10.4 Three members of the National Executive Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.5 At any meeting of the National Executive Committee where there is a tie vote on any matter before the Committee, the President shall have a casting vote in addition to his vote as a member of the Committee.

10.6 A By-law, Regulation or resolution consented to in writing by all the members of the National Executive Committee shall be as effective as if passed at a duly constituted meeting of the Committee unless otherwise provided in any By-law.

10.7 There shall be a National Business Conduct Committee of the Association composed of the five most recent Past Presidents of the Association who are Members or partners, directors or officers of Members. In the event of the death, resignation or incapacity to act of any member of the Committee the next most recent Past President who is a Member or a partner, director or officer of a Member shall take the place of such member.

10.8 Meetings of the National Business Conduct Committee shall be held at such times, at such places, upon such notice, and in accordance with such procedure, as the Committee in its discretion may determine. The most recent Past President of the Association present at any meeting of the Committee shall be the Chairman of the meeting.

10.9 Three members of the National Business Conduct Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.10 Each of the National Executive Committee and the National Business Conduct Committee may employ such legal, secretarial or other assistance as it may require.

10.11 Any notice to any National Committee may be in writing addressed to the Committee in care of the Secretary at the principal office of the Association.

Amended 23/9/68 10.12 There shall be a Budget and Investment Committee of the Association composed of the President, the immediate Past President, the first Vice-President, the Chairman of the Ontario District Executive Committee, the Chairman of the Quebec

District Executive Committee, the Managing Director or his nominee and, from the date of his appointment by the National Executive Committee, the President-Elect.

10.13 A meeting of the Budget and Investment Committee may be convened at any time by the President or by the Secretary at the request of the President at such time and place as may be fixed in the notice convening the meeting. At least seven days' notice of the meeting shall be given to each member of the Committee.

10.14 Three members of the Budget and Investment Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.15 A resolution of the Budget and Investment Committee consented to in writing by all the members of the Committee shall be as effective as if passed at a duly constituted meeting of the Committee.

10.16 The National Executive Committee and the President respectively may appoint such Sub-Committees and for such purposes as either of them may in its or his discretion decide. The life of any such Sub-Committee shall not extend beyond the first Annual Meeting next following its appointment.

10.17 to 10.20 inclusive enacted by instrument in writing November 1968

10.17 There shall be a President's Committee of the Association composed of the President, the First Vice-President and such Vice-President or Vice-Presidents as may from time to time and for such periods of time be designated for the purpose by the President. The Managing Director shall be an ex officio non-voting member of the President's Committee.

10.18 Meetings of the President's Committee shall be held at such times, at such places, upon such notice and in accordance with such procedure as the President in his discretion may determine. The President, or in his absence the First Vice-President, shall act as Chairman at all such meetings. A quorum for a meeting of the President's Committee shall consist of three members entitled to vote thereat, and all decisions made or actions taken at any such meeting shall require the unanimous approval of those members present and entitled to vote thereat.

10.19 Subject to By-law 10.20 the President's Committee shall be vested with and may exercise all or any of the powers conferred by the By-laws and Regulations upon the National Executive Committee.

10.20 Any decision made or action taken at a meeting of the President's Committee shall be promptly communicated by telephone, wire or other appropriate means to each member of the National Executive Committee who was not present at such meeting, provided that it shall not be necessary to communicate any such decision or action to any member who, to the knowledge of the President or the Managing Director, cannot reasonably be expected to receive the same within twenty-four hours after such meeting. Unless within twenty-four hours after such meeting a majority of the members of the National Executive Committee have communicated to the Managing Director their disapproval of the decision made or action taken at such meeting, such decision or action, as the case may be, shall be deemed to be the decision or action of the National Executive Committee.

29823–4½

BY-LAW No. 11

DISTRICT COMMITTEES AND MEETINGS

11.1 There shall be a District Executive Committee for each District which, subject to the By-laws, shall have supervision over the affairs of such District. Each District Executive Committee shall be composed of from four to fourteen members, including a Chairman and exclusive of ex-officio members, as may be determined at the annual meeting of Members of the District called to elect the Committee. The immediate Past Chairman of a District shall be an ex-officio member thereof. The President of the Association shall be ex-officio a member of the District Executive Committee for the District in which he resides.

11.2 The Chairman of a Group Committee in a District shall be ex-officio a member of the District Executive Committee and either with or without voting power, as may be determined at the annual meeting of Members of the District.

11.3 Each District Executive Committee may make and from time to time amend or repeal such Regulations, not inconsistent with the Constitution or By-laws or Regulations of the National Executive Committee, as it deems advisable for the organization and management of the affairs of such District. Regulations made by a District Executive Committee shall be effective and remain in force unless and until amended or repealed and all such Regulations for the time being in force shall be binding upon all members of the District.

11.4 Each District Executive Committee shall meet at least once in each calendar month unless the Chairman otherwise determines and shall report to the Secretary forthwith after each meeting in respect of any matters brought up at such meeting affecting the interests of the Association and shall from time to time report on all matters affecting the interests of the Association within its District. The Secretary shall submit all such reports to the National Executive Committee.

11.4A Each District Executive Committee shall at its first meeting after the Annual Meeting, select in accordance with By-law 16.3 a panel of Members' Auditors for the ensuing year.

11.5 The Chairman or any two members of a District Executive Committee may call a special meeting of such Committee at any time.

11.6 A voting member of a District Executive Committee may by writing appoint a proxy to attend and vote for him at any meeting of such Committee. Such proxy shall be a partner of such member, or an officer of the corporation represented by such member or any member of the District Executive Committee.

11.7 Three members of a District Executive Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

11.8 Unless otherwise provided in the By-laws, a District Executive Committee shall not act for or in the name of the Association and shall not have any power to bind the Association except as may be authorized by resolution of the National Executive Committee.

11.9 There shall be a District Audit Committee for each District composed of the Chairman of the District Executive Committee and two other persons appointed by the Chairman who are partners, directors or officers of Members of the District and the Managing Director who shall be a non-voting member of the District Audit Committee of each District. The Chairman shall report confidentially to the Secretary and to the District Association Auditors of the District the names of the two persons so appointed.

11.10 Two members of a District Audit Committee present in person shall form a quorum at any meeting thereof and any action taken by any two members of the Committee present at any meeting of the Committee shall constitute the action of the Committee.

Amended by instrument in writing, November 1968

11.11 There shall be an Eastern Business Conduct Committee which shall have jurisdiction in the Ontario, Quebec and Atlantic Districts and a Western Business Conduct Committee which shall have jurisdiction in the Pacific, Alberta and Mid-

Western Districts. Each Business Conduct Committee shall be composed of ten Members or partners of Member firms, or directors or officers of Member Corporations with experience in the investment business and the Managing Director, who shall be a non-voting member. At its first meeting following the Annual Meeting, the National Executive Committee shall appoint a Chairman and nine other members of each Business Conduct Committee, who shall hold office until the next ensuing Annual Meeting. A retiring member shall be eligible for re-appointment. Neither the President nor any Past President of the Association shall be eligible as a member of either Business Conduct Committee. Vacancies from time to time occurring in the membership of a Business Conduct Committee may be filled by the National Executive Committee.

*Amended by instrument in writing, November 1968

11.12 Meetings of each Business Conduct Committee shall be held at such times, at such places, upon such notice and in accordance with such procedure, as such Business Conduct Committee in its discretion may determine.

IDEM

11.13 For any meeting of a Business Conduct Committee the quorum shall be three members (not including the Managing Director), who shall be selected for the purpose by the Chairman of such Business Conduct Committee, provided that at any such meeting at least one of such members shall reside in a District other than (i) the District in which the Member in respect of whom such meeting is held has its principal office or (ii), in the case of a meeting held pursuant to By-law No. 18, the District in which the registered representative is acting as such or in which the applicant for registration proposes to act as a registered representative. At any such meeting any action taken by a majority of those members present and entitled to vote shall constitute the action of the Business Conduct Committee.

IDEM

11.14 Each Business Conduct Committee may employ such legal, secretarial or other assistance as it may require.

IDEM

11.15 Any notice to a Business Conduct Committee may be in writing addressed to the Committee in care of the Secretary at the principal office of the Association.

11.16 Each District Executive Committee may appoint the following Standing Committees for its respective District to deal with the following matters:

(i) Education

(ii) Provincial Government Legislation

(iii) Municipal Administration and Finance

(iv) Taxation

(v) Public Relations

(vi) Speakers' Panel

(vii) Stock Exchange Liaison

and may combine any two, but not more, of such Standing Committees into one Committee, in which case the Committee shall bear a suitable name indicating that it is a Joint Standing Committee.

11.17 Each Standing Committee, including a Joint Standing Committee, shall consist of not less than three members, including one of the members of the District Executive Committee who shall be the Chairman of such Standing Committee. The number of members of any Standing Committee which shall constitute a quorum at any meeting thereof shall be determined by the District Executive Committee.

11.18 The Chairman of each District Standing Committee shall be appointed by the incoming District Executive Committee immediately after the latter has been elected, and the members of each such District Standing Committee shall be ap-

pointed as soon as practicable thereafter. The Chairman of each District Standing Committee shall report to the Secretary at least three weeks before the Annual Meeting the names of the members of the Committee of which he is Chairman.

11.19 Each District Executive Committee may also appoint such other Sub-Committees and for such other purposes within its District as it may in its discretion decide.

11.20 With the concurrence of the National Executive Committee any District Executive Committee may authorize a Group Committee for any City within its respective District. A Group Committee shall bear the name of the City for which it is authorized coupled with the word "Group". Each such Group Committee and the Chairman thereof shall be elected by the local Members in the City concerned.

11.21 The life of any Standing Committee or other District Sub-Committee shall not extend beyond the term of office of the District Executive Committee by which it is appointed or authorized.

11.22 A meeting of the Members of any District may be called by the District Executive Committee and shall be called by such Committee on the requisition in writing of seven Members of such District. Notice of the time and place of any such meeting shall be given to the Members of the District.

11.23 Voting at any meeting of the Members of a District may be carried out in the same manner as provided for voting at meetings of the Association and proxies for such purpose shall be lodged with the Chairman of the District Executive Committee.

BY-LAW No. 12

OFFICERS AND THEIR DUTIES

12.1 The officers of the Association shall be the President, the First Vice-President, the Vice-Presidents, the Managing Director, the Director of Education, the Secretary, and such other officer or officers as the Association may determine, including an Honorary President, an Honorary Vice-President and an Honorary Treasurer. The Honorary President, the Honorary Vice-President, the Honorary Treasurer, the Managing Director, the Director of Education and the Secretary shall be appointed by the National Executive Committee. All officers other than the Managing Director, the Director of Education, the Secretary and any other officers appointed to the permanent staff of the Association shall be Members or partners, directors, officers or branch managers of Members.

12.2 The President shall preside at meetings of the Association and of the National Executive Committee, and shall perform such other duties as are required of him by the By-laws.

12.3 The First Vice-President shall work with and assist the President in the performance of his duties and shall carry out such other duties as the President or the National Executive Committee may direct, but shall not, except to the extent that the National Executive Committee may from time to time direct, perform duties of the District Executive Committees or any officers thereof.

12.4 Each Chairman of a District Executive Committee shall be a Vice-President and shall, in addition to the performance of his duties as such Chairman, assist the President in the performance of his duties.

12.5 The Managing Director shall have such authority and responsibility for the management and development of the interests and objectives of the Association and shall perform such duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President.

12.6 The Director of Education shall have such authority and responsibility for the management and development of the internal and external education programmes of the Association and shall perform such duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President or by the Managing Director.

12.7 The Secretary shall have charge of the minute books and other books and records of the Association, shall conduct the correspondence of the Association, and shall perform such other duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President or by the Managing Director.

12.8 An Auditor for the Association shall be appointed every year at the Annual Meeting, who shall audit the accounts of the Association.

BY-LAW No. 13

ELECTION OF OFFICERS OF ASSOCIATION AND OF DISTRICT EXECUTIVE COMMITTEE MEMBERS

13.1 The President shall take office at the Annual Meeting and his term of office shall continue until the next ensuing Annual Meeting. The President shall be a Member, a partner of a Member firm, or a director of a Member corporation. Unless he shall take the office of President by virtue of By-law 13.2, the President shall, subject to By-law 13.3, be appointed by the National Executive Committee, after consultation with the Nominating Committee, at least one month prior to the Annual Meeting.

13.2 The First Vice-President shall take office at the Annual Meeting or if there is no First Vice-President in office at the time of his appointment, then at the time of such appointment, and his term of office shall continue until the next ensuing Annual Meeting when, subject to By-law 13.3, and subject to the President in office not having been reappointed under By-law 13.8, he shall assume the office of President. The First Vice-President shall be a Member, a partner of a Member firm, or a director of a Member corporation. The First Vice-President shall be appointed by the National Executive Committee, after consultation with the Nominating Committee, prior to the Annual Meeting.

13.3 Notwithstanding By-law 13.2, the National Executive Committee may nominate one or more persons for the office of President and may submit the nominations, together with the name of the First Vice-President, to the Annual Meeting which shall elect the person or one of the persons so nominated or the First Vice-President as President.

13.4 The Nominating Committee shall consist of the last five Past Presidents of the Association. The Immediate Past President shall be the Chairman of the Nominating Committee. It shall be the duty of the Nominating Committee to make one or more nominations to the National Executive Committee for the office of First Vice-President or, whenever requested by the National Executive Committee, for the office of President, and the National Executive Committee may, but shall not be bound to, appoint as First Vice-President or President, as the case may be, any person so nominated.

13.5 If, at any Annual Meeting, the office of First Vice-President was, immediately prior to such Annual Meeting, vacant and the National Executive Committee has, prior to such Annual Meeting, failed to appoint a President and failed to nominate persons whose names may be submitted to the Annual Meeting, nominations for the office of President may be made at such Annual Meeting, and the President shall be elected at such Annual Meeting from among the persons so nominated.

13.6 No person shall hold the office of President for more than two terms in succession.

13.7 In the event of a vacancy in the office of President caused by the death, resignation or disability of the President, the First Vice-President shall succeed to the office of President for the remainder of the term. In the event of a vacancy in the office of President caused by the death, resignation or disability of the President at a time when there is no First Vice-President the National Executive Committee may appoint a President to fill the vacancy for the remainder of the term.

13.8 In the event of a vacancy in the office of First Vice-President caused by the death, resignation or disability of the First Vice-President, the National Executive Committee may, after consultation with the Nominating Committee, appoint a First Vice-President to fill the vacancy for the remainder of the term. Under the circumstances of succession provided for in By-law 13.7 or in this By-law 13.8, the National Executive Committee may reappoint the President or the First Vice-President or both of them to their respective offices for the next succeeding term.

13.9 The Members of each District shall annually, at least four weeks before the Annual Meeting, elect the Chairman of the District Executive Committee for such District. No person shall be elected Chairman of a District Executive Committee

for more than two terms in succession. In the event of a vacancy in the office of Chairman caused by the death, resignation or disability to act of the Chairman, the members of the District Executive Committee may appoint a Chairman to fill the vacancy for the remainder of the term.

13.10 The Members of each District shall elect the members of the District Executive Committee to succeed the members retiring at the next Annual Meeting and the election shall be held annually on the same day as the election of the Chairman of such Committee. The members of such Committee shall be elected for a two year term, the members who have been in office for two years to retire at each Annual Meeting. The length of time a member has been in office shall be computed from his last election. A retiring member shall be eligible for re-election. In the event of a vacancy on the Committee caused by the death, resignation or disability to act of a member thereof, the Committee may appoint a person to fill the vacancy for the remainder of the term of such member.

13.11 The election of the Chairman and members of a District Executive Committee may be by vote at a meeting of Members of the District, or in such other manner as the District Executive Committee may determine.

13.12 At least one month before the Annual Meeting the District Executive Committee for each District shall advise the Secretary in writing of the names of the Chairman and members of the Committee elected for the ensuing year, and the newly elected Chairman and Committee shall take office on the date of the Annual Meeting next following their election.

13.13 In the event that the Members of any District shall in any year fail to elect a Chairman and/or members of the District Executive Committee, the President may at any time before the Annual Meeting appoint a Chairman and/or members to succeed those whose terms will expire at the ensuing Annual Meeting, and the term of office of any Chairman or members so appointed shall be the same as if he and/or they had been elected by the Members of the District.

13.14 The President and all elected officers of the Association and the members of a District Executive Committee shall hold office until their successors are duly appointed or elected.

BY-LAW No. 14

MEETINGS OF THE ASSOCIATION

14.1 The Annual Meeting of the Association shall be held at such time and place and on such day or days in June in each year as the National Executive Committee shall determine, and written notice of the Meeting shall be given to all Members by the Secretary at least six weeks before the Meeting.

14.2 Upon fifteen days' previous notice in writing given to all Members, the National Executive Committee may call a Special Meeting of the Association and shall, on requisition in writing by not less than seven Members in good standing, call a Special Meeting of the Association for the purpose or purposes set forth in such requisition. Any Special Meeting shall be held at such time and place as the National Executive Committee may determine.

14.3 All Members, partners of Member firms, directors and officers of Member corporations and employees of Members shall be entitled to be present at Meetings of the Association. Each Member shall be entitled to only one vote at any Meeting, regardless of the number of Branch Office Memberships of the Member. Such vote, in the case of a firm or corporation, shall be cast by the senior partner or director or officer present, or if no partner, director or officer is present, by a proxy.

14.4 Any Member may by writing appoint a proxy to attend and vote at any Meeting on behalf of such Member. No person shall act as a proxy unless he is otherwise entitled to be present at a Meeting as a Member or as a partner, director, officer or employee of a Member. Instruments of proxy shall be lodged with the Secretary not later than 10:00 a.m. of the day of the Meeting, or of any adjournment thereof, and unless so lodged no proxy shall be used or acted upon.

14.5 No Member who is in arrears in respect of his Annual Fee shall be entitled to attend or vote either in person or by proxy at any Meeting of the Association.

14.6 At any Meeting, unless a poll is demanded by the Chairman or by any person present, a declaration by the Chairman as to whether or not a resolution has been carried or carried unanimously or by any particular majority on a show of hands shall be conclusive evidence of the fact. If at any Meeting a poll is so demanded, it shall be taken in such manner as the Chairman may direct, and the result of the poll shall be declared by the Chairman, whose declaration shall be conclusive evidence of the fact.

BY-LAW No. 15

ASSOCIATION ACCOUNTS AND FUNDS

15.1 The fiscal year of the Association shall terminate on the 31st day of March in each year.

15.2 The Budget and Investment Committee shall prepare and submit to the National Executive Committee on or before the 31st day of March in each fiscal year a budget setting forth the estimated receipts and expenditures of the Association for the ensuing fiscal year together with such financial proposals as the Budget and Investment Committee may deem desirable.

15.3 The Managing Director or other officer designated by the National Executive Committee shall be the custodian of the funds of the Association, and shall cause to be deposited to the credit of the Association in a chartered bank or a trust company approved as indicated in By-law 15.4 all moneys received. Such officer shall keep proper books of account and shall exhibit them at all reasonable times to any member of the National Executive Committee. A proper voucher shall be obtained for every expenditure made on behalf of the Association.

15.4 The Association may transact its banking business with and keep one or more bank accounts at any office or offices of any one or more chartered banks and/or trust companies in Canada (hereinafter called the "Bank") approved by the Budget and Investment Committee.

15.5 Subject to By-law 15.6, all cheques and other orders for the payment of money shall be signed in the name of the Association by any two of the following, namely, the President, any Vice-President and the Honorary Treasurer or by any one of the foregoing and any one of the Managing Director, the Secretary and the Director of Education (but without power to overdraw except as provided in By-law 15.7) and any one of the said persons shall have power on behalf of the Association to negotiate with, deposit with or transfer to the Bank (but for credit of the account of the Association only) all cheques and other orders for the payment of money and for such purpose to endorse the same or any of them on behalf of the Association, and from time to time to arrange, settle, balance and certify all books and accounts between the Association and the Bank, to receive all paid cheques and vouchers and to sign and deliver the Bank's form of settlement of balances and release. Any endorsement in the name of the Association by rubber stamp or otherwise shall be valid and binding.

15.6 The Association may keep a special bank account, to be designated "Special Imprest Bank Account", at any office of any chartered bank in Canada, in which there may be deposited from time to time to the credit of the Association sums not in excess of $10,000 in the aggregate in each calendar month and on which cheques may be drawn up to a maximum amount of $250 per cheque. Cheques upon the Special Imprest Bank Account may be signed in the name of the Association either as provided in By-law 15.5 or by the Managing Director and either the Secretary or the Director of Education.

15.7 The National Executive Committee may from time to time (and either by way of overdrawing the Association's bank account or otherwise) borrow money on the credit of the Association up to but not exceeding fifty per centum of the principal amount of the securities for the time being constituting investments of the funds of the Association, and as security for any such borrowing may pledge any or all of such securities. All promissory notes and other instruments necessary or desirable in connection with such borrowings and pledges shall be signed in the name of the Association by any two members of the Budget and Investment Committee who are authorized signing officers under By-law 15.5 or by any one of such members and the Managing Director.

15.8 The Budget and Investment Committee may from time to time authorize the investment of any funds of the Association in securities issued or guaranteed by Canada or any Province in Canada, the sale of any such securities and the reinvestment of all or any part of the proceeds in any such securities. The Budget and

Investment Committee may also authorize the investment of any such funds in securities other than of such classes but only if the maturity date of such securities is not later than the end of the fiscal year in which the investment is made.

15.9 The Managing Director or other officer designated under By-law 15.3 shall manage the investment of the funds of the Association under the direction of the Budget and Investment Committee.

Enacted 23/9/68

BY-LAW NO. 16

DISTRICT ASSOCIATION AUDITORS, MEMBERS' AUDITORS, FINANCIAL REPORTING AND EXAMINER

16.1 Any District Executive Committee with the approval of a majority vote of the Members of the District may appoint a firm of accountants as auditors for its District. Such auditors, who shall be known as District Association Auditors, shall have the powers and perform the duties set forth in the By-laws.

16.2 The District Association Auditors for each District shall be paid by the Association such remuneration and expenses as shall be agreed upon by the District Executive Committee. The District Executive Committee shall annually divide the amount of such remuneration and expenses among those Members whose principal offices are located in the District in such manner as the Committee in its discretion may determine, and shall give written notice to each such Member of the amount payable by the Member in accordance with such determination. In the event that any Member fails to pay the amount so payable by it, or any portion thereof, such amount or such portion, as the case may be, shall be paid out of the general funds of the Association and thereafter until repaid shall constitute a debt of such Member to the Association.

16.3 Each District Executive Committee shall select annually a panel of accounting firms (which may include the District Association Auditors). In addition, each District Executive Committee may at any time appoint one or more additional firms of accountants to or remove one or more firms of accountants from such panel. Except as otherwise provided by the By-laws and Regulations, each Member shall select from the panel its own auditor and the fees and expenses in respect of each audit or examination shall be paid by the Member concerned.

16.4 Subject to By-law 16.5, each Member shall file annually with the District Association Auditors for the District in which the Member has its principal office, two copies of the following financial statements as at the end of the Member's fiscal year or as at such other fixed date as may be agreed with the District Association Auditors, which date shall be registered with the District Association Auditors and with the Examiner namely:

Statement A Statement of assets and liabilities with certificate of Members and Report of Member's Auditor
Statement B Statement of net free capital
Statement C Statement of adjusted liabilities
Statement D Statement of capital requirement

All such statements shall be prepared on such forms as the National Executive Committee may from time to time prescribe for the purpose, shall be supplemented by such additional schedules as may be appropriate, and shall be filed through the Member's Auditor with the District Association Auditors for such District within five weeks of the date as of which such statements are required to be prepared, subject to such extension of time, if any, as the District Association Auditors may in their discretion grant upon the request in writing of the Member's Auditor.

The District Association Auditors for such District shall,

(a) if no such extension of time has been granted, forthwith advise the applicable District Audit Committee of the failure of the Member's Auditor to make the filings required by this By-law 16.4 within the time herein prescribed;

(b) if any such extension of time has been granted, forthwith thereafter submit to the applicable District Audit Committee a report thereon, which shall specify the reasons for granting the extension and the period thereof;

(c) if any such extension of time has been granted and the filings required by this By-law 16.4 have not been made within the period of such extension, forthwith thereafter advise the applicable District Audit Committee of the failure to make such filings.

16.5 Any Member which

(i) is also a member of any stock exchange designated under the Regulations for the purpose of this By-law;

(ii) is subject to the audit requirements of such exchange; and

(iii) elects to compute its minimum net free capital in accordance with the rules of such stock exchange;

shall file annually with the District Association Auditors in lieu of the financial statements required under By-law 16.4 two copies of the financial statements and related information as and when filed by such Member with such stock exchange or the auditors thereof. If the District Association Auditors so require, such Member shall also establish to the satisfaction of such District Association Auditors that as of the date of the statements filed with such stock exchange or the auditors thereof the Member's capital was sufficient to meet the requirements of such stock exchange. An election under this By-law 16.5 and any revocation of any such election shall be subject to the approval of the District Association Auditors who may give or withhold such approval as in their discretion they think fit.

16.6 In addition to the statements under By-law 16.4 or 16.5, as the case may be, each Member shall file with the District Association Auditors, through the Member's Auditor, particulars of the name and relationship to the Member of each Affiliate of the Member and, if and when the District Association Auditors so request, such financial statements and reports with respect to the affairs of any such Affiliate of the Member as the District Association Auditors consider necessary or advisable.

16.7 Subject to By-law 16.5, every Member's Auditor shall examine the accounts of the Member as at the date referred to in By-law 16.4 and shall make a report thereon to the District Association Auditors in such form as the National Executive Committee may from time to time prescribe. Each Member's Auditor shall also make such additional examinations and reports as the District Association Auditors may from time to time request or as the District Executive Committee may from time to time direct.

16.8 The Member's Auditor shall conduct his examination of the accounts of the Member in accordance with generally accepted auditing standards and the scope of his procedures shall be sufficiently extensive to permit him to express an opinion on the Member's financial statements in the form prescribed. Without limiting the generality of the foregoing, the scope of the examination shall, where applicable, include at least the procedures set out in Part 1C of the Regulations.

16.9 Every Member's Auditor for the purpose of any such examination shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member being examined, and no Member shall withhold, destroy or conceal any information, document or thing reasonably required by the Member's Auditor for the purpose of his examination.

16.10 In addition to filing the annual statements and Auditor's report required under this By-law 16 each Member shall also file in each year with the District Association Auditors for the District in which the Member has its head office or principal Canadian office two interim statements as of dates to be selected by the Examiner. The Examiner shall not inform the Member of the dates he has selected until after the close of business on the respective dates. Such additional financial statements shall be prepared in the same form as the annual statements required hereunder (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Two sets of such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. The provisions relating to filings set forth in the last sentence of By-law 16.4 shall apply to this By-law 16.10 mutatis mutandis provided that the word "Member" shall be substituted for the words "Member's Auditor" where the same appear in subdivision (a) thereof.

16.11 Any Member which

(i) is also a member of any stock exchange designated under the Regulations for the purposes of this By-law;

(ii) is subject to the audit requirements of such exchange; and

(iii) elects to compute its minimum net free capital in accordance with the rules of such stock exchange;

shall file in each year with the District Association Auditors in lieu of the financial statements required under By-law 16.10 two copies of all interim financial statements and related information as and when filed by such Member with such stock exchange or the auditors thereof. If the District Association Auditors so require, such Member shall also establish to the satisfaction of such District Association Auditors that as of the date of the statements filed with such stock exchange or the auditors thereof the Member's capital was sufficient to meet the requirements of such stock exchange. An election under this By-law 16.11 and any revocation of any such election shall be subject to the approval of the District Association Auditors who may give or withhold such approval as in their discretion they think fit.

16.12 If any Member's Auditor fails to make the examination or reports required under the By-laws and Regulations, or if, upon examination of any Member's financial statements or Member's Auditor's report, the District Association Auditors are of opinion that the financial condition or conduct of the business of any Member is unsatisfactory or that any Member is not complying with the By-laws and Regulations, the District Association Auditors shall report accordingly to the applicable District Audit Committee with such recommendations as they consider advisable. The District Association Auditors may in their discretion refer to such Member by number only unless or until requested by the District Audit Committee to disclose the name of the Member.

Amended by instrument in writing, November 1968

16.13 If within such limited period as the District Audit Committee may permit, the situation reported upon by the District Association Auditors has not been rectified to the satisfaction of the District Association Auditors and the District Audit Committee, or if the situation has been so rectified but the District Audit Committee is of opinion that in the interests of the Association the Member concerned should be disciplined, the District Audit Committee shall

(i) have power to impose, and shall impose, a fine of not less than $250 or more than $2000 or a reprimand, or both, if in the opinion of the Committee the offence of the Member is minor in nature and the Member admits the offence, waives a hearing, furnishes a statement pledging future compliance and accepts the penalty imposed; or

(ii) refer the matter to the applicable Business Conduct Committee for disciplinary action, making such recommendations as the District Audit Committee may think advisable, and at the same time shall advise the Member concerned that it has been reported adversely to the Business Conduct Committee.

16.14 If at any time any District Association Auditors are of the opinion that the By-laws and/or Regulations are not being properly enforced in any specific case by reason of failure of any Committee to act upon any report or recommendation made thereunder by such District Association Auditors in such manner and with such promptness as the District Association Auditors consider necessary in the circumstances, the District Association Auditor shall advise the President and Secretary of the particulars of such lack of enforcement.

Amended by instrument in writing, November 1968

16.15 Upon receipt of any such advice form the District Association Auditors the President shall convene a meeting of the National Executive Committee to which he may summon the District Audit Committee and the applicable Business Conduct Committee and any Member who has been reported upon adversely by the District Association Auditors. If the National Executive Committee is not satisfied by the explanations given by the District Audit Committee and/or the Business Conduct Committee it may reprimand them or either of them and, if any Member's Auditor has failed to make any examination or report required by the By-laws, may direct the District Executive Committee to strike such Member's Auditor from the panel of Member's Auditors of the District.

16.16 The National Executive Committee may appoint a person as Examiner for the Association. The Examiner shall have such powers and perform such duties as the By-laws and Regulations may prescribe and as the National Executive Committee may otherwise from time to time assign to him.

16.17 Subject only to the general direction of the National Executive Committee and of the Managing Director, the Examiner may make such examinations of and investigations into the affairs of any Member as he considers necessary or desirable to determine whether or not the financial condition and conduct of the business of such Member is satisfactory and such Member is complying with the By-laws and Regulations.

Amended by instrument in writing, November 1968

16.18 The Examiner shall also undertake such special examinations of and investigations into the affairs of any Member as any Audit Committee or Business Conduct Committee may request.

16.19 For the purpose of any examination or investigation pursuant to By-law 16.17 or By-law 16.18, the Examiner shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member concerned, and no Member shall withhold, destroy or conceal any information, documents or thing reasonably required by the Examiner for the purpose of his examination or investigation.

16.20 If upon any examination or investigation pursuant to By-law 16.17 the Examiner is of opinion that the financial condition or conduct of the business of any Member is unsatisfactory or that any Member is not complying with the By-laws or Regulations, he shall report accordingly to the applicable District Audit Committee and to the applicable District Association Auditors with such recommendations as he considers advisable, and thereupon the provisions of By-law 16.13 shall apply with the substitution of the Examiner for the District Association Auditors to the same extent and in all respects as though such report had been made to the District Audit Committee by the District Association Auditors. The Examiner may in his discretion refer to such Member by the number only unless or until requested by the District Audit Committee to disclose the name of the Member.

BY-LAW No. 17

MINIMUM CAPITAL, CONDUCT OF BUSINESS, AND INSURANCE

Amended 23/9/68

17.1 Every Member shall have and maintain at all times such minimum net free capital in such amount and in accordance with such requirements as the National Executive Committee may from time to time by Regulation prescribe.

17.2 Every Member shall keep and maintain at all times a proper system of books and records.

Amended by instrument in writing October 1968

17.3 All securities of a customer fully paid for and which have come into the possession of the Member and are not subject to any lien or charge in favour of the Member shall be segregated and distinguished as held in trust for the customer owning the same. None of such securities shall be borrowed by any Member unless (i) the Member has received the prior approval in writing of the customer owning such securities and (ii) either an amount of cash equal to the market value of the securities borrowed has been deposited in a chartered bank in trust for the customer or certificates representing securities having at least the same market value as the securities borrowed have been segregated and distinguished as held in trust for the customer owning the same (or lodged in escrow with a chartered bank on behalf of such customer).

Amended by instrument in writing, November, 1968.

17.4 Every Member shall fulfil its contracts and any Member which in the ordinary course of business finds that any other Member refuses or is unable to fulfil its contracts shall immediately report such fact to the Chairman of the applicable Business Conduct Committee.

17.5 Every Member shall effect and keep in force insurance against such losses, and in such minimum amount or amounts in respect of such losses or any of them, as the National Executive Committee may from time to time by Regulation prescribe.

17.6 Every Member's Auditor shall, during the preparation or upon the completion of every examination under the provisions of By-law 16.7, forward to the District Association Auditors of the District in which the Member has its principal office a report by the Member, confirmed by the Member's Auditor, indicating whether or not the Member is complying with the provisions of By-law 17.5 and, if not, stating

(i) the losses insured against, and

(ii) where minimum amounts of insurance against such losses are prescribed by the National Executive Committee, the amount of insurance carried by the Member in respect of such losses.

17.7 If any such report indicates that a Member is not complying with the provisions of By-law 17.5, the District Association Auditors shall report thereon to the applicable District Audit Committee.

Enacted 23/9/68

17.8 No Member shall publish or circulate any financial statement unless such statement is accompanied by a report of the Member's Auditor upon such statement.

BY-LAW No. 18

REGISTERED REPRESENTATIVES

18.1 No Member shall employ any person as a registered representative in any Province in Canada unless:

(i) such person is registered or licensed to sell securities under the statute relating to the sale of securities in the Province in which the person proposes to act as registered representative.

(ii) registration as or interim approval of a registered representative for such Member has been granted by the applicable District Executive Committee or by the National Executive Committee.

18.2 The applicable District Executive Committee shall notify the Secretary of the acceptance, interim approval pursuant to Regulation 305 or refusal by it of any application for registration or any rejection of application pursuant to Regulation 305, and the Secretary shall, upon receipt of such notice, notify the Member and the Securities Commission of the Province in which the applicant proposes to act as a registered representative.

18.3 Application for registration or transfer of a registered representative shall be made to the applicable District Executive Committee in such form as the National Executive Committee may from time to time prescribe and the applicant for registration as a registered representative may be required to take and pass such examinations and pay such fees as the National Executive Committee may from time to time direct.

18.4 The form of application for registration or transfer of registration shall contain an agreement by the proposed registered representative that he is conversant with the By-laws and Regulations of the Association and submits to the jurisdiction of the Association, and that if registration is granted, he will abide by such By-laws and Regulations as the same are from time to time amended or supplemented, and that if such registration is subsequently revoked or terminated, he will forthwith terminate his employment with the Member with whom he is employed at the time of such revocation or termination and thereafter will not accept employment with or perform services of any kind for any Member or any Affiliate of a Member, in each case if and to the extent so provided in the By-laws and Regulations.

18.5 The applicable District Executive Committee may in its discretion revoke or terminate the registration of any registered representative if in the opinion of the Committee, the registered representative has been guilty of any business conduct or practice unbecoming an employee of a Member or detrimental to the interests of the Association, or of failure to comply with the provisions of any By-law or Regulation or of failure to comply with or carry out the provisions of any federal or provincial statute relating to the sale of securities or of any regulation made pursuant thereto, or is otherwise not qualified whether by character, business repute, training, experience or otherwise, to perform the functions and duties of a registered representative.

18.6 If the applicable District Executive Committee proposes to refuse registration of an applicant for registration as a registered representative or the transfer of registration of a registered representative, or proposes to revoke or terminate the registration of any registered representative it shall have the power to summon and shall summon the Member concerned before a meeting of such Committee, of which at least forty-eight hours' notice shall be given to the Member, specifying in general terms the basis of such refusal or the nature of the complaint against the registered representative, as the case may be. Both the Member and the applicant for registration or registered representative, as the case may be, shall be entitled to appear and be heard at the meeting.

18.7 The applicable District Executive Committee shall have power in its discretion upon the affirmative vote of a majority of such members of such Committee as are present in person at the meeting, to refuse the application for registration or a transfer of registration or to revoke or terminate the registration of the registered representative, as the case may be.

Amended by instrument in writing, November, 1968

18.8 The Secretary, upon advice by the applicable District Executive Committee, shall forthwith give notice to the Member of such refusal, revocation or termination and the Member shall have the right within five days after such notice has been given to make application in writing to the Chairman of the Business Conduct Committee having jurisdiction in the District in which the registered representative is acting as such or in which the applicant for registration proposes to act as a registered representative (with a copy of such application to the Secretary), for a review of the decision of the appropriate District Executive Committee. Upon receipt of such application a special meeting of such Business Conduct Committee shall be called for such purpose and at least forty-eight hours' notice shall be given to the Member of such special meeting at which both the Member and the applicant for registration or registered representative, as the case may be, shall be entitled to attend and be heard.

Amended by instrument in writing, November, 1968

18.9 At any meeting called pursuant to By-law 18.8 the Business Conduct Committee shall have power either to confirm the action of the applicable District Executive Committee or to require the applicable District Executive Committee to register the applicant for registration or rescind its refusal of transfer of registration or revocation or termination of registration, as the case may be.

18.10 The action of the applicable District Executive Committee in refusing the transfer of registration or in refusing, revoking or terminating registration shall not become effective until the time for giving notice of review thereof has expired, or if proceedings for review have been instituted, until a decision has been rendered by the Business Conduct Committee which made such review.

18.11 If and whenever the registration of any person as a registered representative for any Member is revoked or terminated, the Secretary shall notify the Member of such revocation or termination and thereupon the Member shall terminate the employment of such person. The Secretary shall also give notice of such revocation or termination to all recognized stock exchanges and all securities commissions.

18.12 Every Member shall notify the Secretary in writing within seven days of the termination of the employment of any person as a registered representative by such Member, whether the employment is terminated pursuant to the provisions of this By-law or otherwise.

29823–5½

BY-LAW No. 19

COMPLAINTS, INVESTIGATIONS AND DISCIPLINE

19.1 Each Member shall be responsible for all acts and omissions of all officers and employees of the Member, including officers and employees of any branch office or branch offices of the Member.

Amended by instrument in writing, November, 1968

19.2 Subject to By-law 19.3 any complaint against a Member shall be in writing and shall be signed and shall be referred to the Chairman of the applicable Business Conduct Committee, provided that complaints against a Member at a branch office shall be referred to the Chairman of the Business Conduct Committee having jurisdiction in the District in which such branch office is situated. The Business Conduct Committee receiving any such complaint shall make such investigation and take such action as it may deem advisable.

Amended by instrument in writing, November, 1968

19.3 Each Business Conduct Committee shall also have the right, and when requested by the District Executive Committee or the District Aduit Committee for a District within the jurisdiction of such Business Conduct Committee shall be obliged, whether or not any complaint has been submitted pursuant to By-law 19.2 to make an investigation of the affairs of any Member having its principal office or any branch office in a District within the jurisdiction of such Business Conduct Committee provided that the Business Conduct Committee shall not be obliged to act upon any such request unless the Member in respect of whom the request has been made has its principal office or a branch office in the District of the Committee making the request; and any such investigation shall include a review of the character of the business, the financial position and the business and financial practices and associations of such Member and/or any such branch office.

19.4 For the purpose of any investigation pursuant to By-law 19.2 or 19.3 a Business Conduct Committee shall have the right:

(i) to require the Member to submit a report in writing with regard to any matter involved in any such investigation;

(ii) to require the Member to produce for inspection by the District Association Auditors and/or the Examiner the books, records and accounts of the Member and of any of its branch offices with relation to any such matter; and

(iii) to require the Member or any partner, director, officer or employee of the Member to attend before such Committee to answer questions and give information respecting any such matter;

and the Member shall be obliged to submit such report, to permit such inspection and to cause such persons to attend before such Committee accordingly.

Amended by instrument in writing, November, 1968

19.5 If, as a result of any such investigation, or without such investigation, a Business Conduct Committee is of opinion that:

(a) any Member having its principal office or any branch office in a District within the jurisdiction of such Business Conduct Committee may have been guilty of any one or more of the following offences, namely:

(i) failure to carry out an agreement with the Association;

(ii) failure to meet liabilities to another Member or to the public;

(iii) any business conduct or practice which such Business Conduct Committee in its discretion considers unbecoming a Member or detrimental to the interests of the Association;

(iv) failure to comply with or carry out the provisions of any of the By-laws or Regulations; or

(v) failure to comply with or carry out the provisions of any applicable federal or provincial statute relating to trading in securities or of any regulation made pursuant thereto; or

(b) the business or financial arrangements, associations and/or affiliations, direct or indirect, of such Member or any branch office of such Member, are objectionable;

such Business Conduct Committee shall have power, in its discretion, upon notice to the Member as provided in By-law 19.6, to summon the Member before a meeting of such Business Conduct Committee to answer the complaints or charges referred to in the notice.

Amended 23/9/68 and Amended by instrument in writing, November, 1968

19.6 Notice in writing of such meeting shall be given by the Business Conduct Committee to the Member concerned at its principal office at least twenty-four hours prior to the date of the meeting. Such notice shall specify in reasonable detail the nature of the complaints or charges against the Member. The Member, if a firm, shall be represented by a partner or if a corporation by a director who is a Principal Contributor of Capital and the Member or individual representing the Member shall be entitled to the accompanied by Counsel at the meeting and to call, examine and cross-examine witnesses.

Amended 23/9/68 and Amended by instrument in writing, November, 1968

19.7 If the Member fails to appear at such meeting when summoned or is adjudged by the Business Conduct Committee to have been guilty of any of the offences referred to in By-law 19.5 (a) or fails to satisfy the objections of the Committee to the arrangements, associations and/or affiliations referred to in By-law 19.5 (b), the Committee shall have power, in its discretion, to impose upon the Member any one or more of the following penalties, namely:

(i) a reprimand;

(ii) a fine not exceeding $5,000;

(iii) suspension of the rights and privileges of the Member for such specified period and upon such terms as such Committee may determine; and

(iv) expulsion of the Member from the Association.

Amended 23/9/68

19.8 The suspension of the rights and privileges of a Member imposed under clause (iii) of By-law 19.7 shall, unless the Committee imposing the same otherwise directs, continue until such Member appears or reappears, as the case may be, before such Committee at such time or times as such Committee may direct and produces evidence satisfactory to such Committee that such Member is not then guilty of any of the offences referred to in By-law 19.5 (a) and/or is not a participant in any objectionable business or financial arrangement, association and/or affiliation referred to in By-law 19.5 (b), as the case may be. Upon such Member so appearing or reappearing, as the case may be, or failing so to appear or reappear, as the case may be, such Committee shall either (i) confirm that such suspension shall terminate as originally prescribed by it or as prescribed by the National Business Conduct Committee pursuant to By-law 19.14, or (ii) continue such suspension for a further period or periods, but may in its discretion provide that no further reappearances by such Member before such Committee will be required during the period of suspension so continued, or (iii) expel such Member from the Association. Any determination of such Committee pursuant to the foregoing clause (ii) shall, for the purposes of these By-laws, be deemed to be the imposition of a new suspension.

Amended 23/9/68 and Amended by instrument in writing, November, 1968

19.9 Any decision of a Business Conduct Committee imposing a penalty shall be in writing and notice thereof shall be given promptly to the Member, and to the President, the Secretary, the applicable District Executive Committee and the National Business Conduct Committee. A copy of the decision or a summary thereof shall accompany or form part of the notice.

19.10 The Member shall have the right, within ten days after notice has been given to it pursuant to By-law 19.9, to appeal to the National Business Conduct Committee from the decision of the Business Conduct Committee and from any penalty imposed by it by giving written notice of such appeal to the Secretary. Such notice shall set out briefly the grounds relied upon for such appeal.

Amended 23/9/68 and Amended by instrument in writing, November, 1968

19.11 The National Business Conduct Committee shall also, within the ten day period mentioned in By-law 19.10, have the right upon its own motion, and shall be obliged upon the written request of the President, to institute proceedings for a review by the National Business Conduct Committee of the decision of the Business Conduct Committee by giving notice of its intention to review such decision to the Member, and to the President, the Secretary, the applicable District Executive Committee and the Business Conduct Committee.

19.12 If the Member gives such notice of appeal from a decision of the Business Conduct Committee or if the National Business Conduct Committee gives such notice of its intention to review the decision, a special meeting of the National Business Conduct Committee shall be held for the purpose of such appeal or review

Ten days' notice of such meeting shall be given by the Secretary to the Member, and to the President, the applicable District Executive Committee, the Business Conduct Committee and the National Business Conduct Committee.

Amended 23/9/68 and Amended by instrument in writing, November, 1968

19.13 At any such meeting of the National Business Conduct Committee the Member concerned, if represented by a partner in the case of a firm, or if represented by a director who is a Principal Contributor of Capital in the case of a corporation. and any member of the Business Conduct Committee whose decision is being appealed and their respective counsel shall be entitled to attend and be heard. The National Business Conduct Committee shall consider the record, if any, of the proceedings before such Business Conduct Committee and may also hear such further evidence as it may deem relevant.

Amended by instrument in writing, November 1968

19.14 The National Business Conduct Committee, upon such appeal or review. may revoke, increase, decrease, modify or confirm any penalty imposed by the Business Conduct Committee or may itself impose any one or more of the penalties referred to in By-law 19.7. If the National Business Conduct Committee itself suspends the rights and privileges of a Member, such suspension, shall, unless the National Business Conduct Committee otherwise directs, continue until such Member appears or reappears, as the case may be, before the Business Conduct Committee before which the Member was summoned to appear, at such time or times as the National Business Conduct Committee may direct and produces evidence of the type required by By-law 19.8. Upon such Member so appearing or reappearing, as the case may be, such Business Conduct Committee shall take the action prescribed by By-law 19.8.

Amended by instrument in writing, November 1968

19.15 Any Member who is disciplined pursuant to this By-law shall pay the whole or such part of the costs of any investigation and proceedings as the Business Conduct Committee, or if the decision of the Business Conduct Committee is appealed to or reviewed by the National Business Conduct Committee, as the National Business Conduct Committee, may deem fair and appropriate in the circumstances. If any investigation is based upon a complaint by a Member and the complaint is found to have been unwarranted the costs of the whole or some part of the investigation and proceedings may be assessed against the complaining member.

Amended by instrument in writing November 1968

19.16 Where a Business Conduct Committee, which has power to summon a Member before a meeting of such Committee to answer any complaint or charge, is of the opinion that any offence of a Member is minor in nature, nothing in this By-law contained shall prevent the Member, with the consent of such Committee, from admitting the offence, waiving a hearing, furnishing a statement pledging future compliance and accepting a specific penalty not exceeding in severity a reprimand or a fine not exceeding $500 or both.

Amended by instrument in writing November 1968

19.17 Any reprimand made by a Business Conduct Committee or by the National Business Conduct Committee may be made in such manner as the Committee imposing the reprimand may in its discretion determine.

19.18 Nothing in this By-law contained shall affect the disciplinary jurisdiction of the District Audit Committee provided for in By-law 16.

Amended 23/9/68

19.19 Notwithstanding anything in this By-law contained, in the event that:

(a) the registration of a Member as a dealer in securities under any statute respecting the sale of securities of any Province in which the Member is carrying on business is suspended or cancelled, or a Member fails to renew any such registration which has lapsed, or

(b) a Member makes a general assignment for the benefit of its creditors or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under the Bankruptcy Act, or a winding-up order is made in respect of a Member, or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of a Member, or

(c) a recognized stock exchange suspends the membership or privileges thereof of a Member who is a member of such exchange,

then the Business Conduct Committee having jurisdiction in the District which comprises or includes the Province concerned, in any of the events referred to in (a) above, or in the District in which a Member has its principal office, in any of the events referred to in (b) or (c) above, shall have power and (except with respect to an event referred to in (c) above) shall be obliged, forthwith upon receiving notice of such event, to suspend the rights and privileges of the Member for such period and on such terms and conditions as such Committee may in its discretion determine as necessary to enable it to investigate the circumstances of the event. For the purpose of such investigation the Committee shall have all the rights provided for in By-law 19.4

Amended by instrument in writing, November 1968

19.20 In any of the events referred to in By-law 19.19 (a), if the Member fails to take appropriate proceedings within the time limited by the statute for a review of or by way of appeal from such suspension or cancellation of registration or fails within such period as such Business Conduct Committee may prescribe to renew any such registration which has lapsed, or if, notwithstanding such review and appeal, such suspension or cancellation of registration is confirmed and becomes final, the Committee may, either with or without notice to the Member, suspend the Member for a further period or expel the Member from the Association, and such suspension or expulsion shall take immediate effect and there shall be no appeal therefrom. If upon review or appeal the registration of a Member under the statute is reinstated, the Committee may reinstate the Member and cancel any suspension imposed by it upon the Member.

Amended by instrument in writing, November 1968

19.21 In any of the events referred to in By-law 19.19 (b), if the Member fails within such period as the Business Conduct Committee may prescribe to satisfy the claims of its creditors and/or obtain a discharge under the Bankruptcy Act or cause the winding-up order or receivership to be discharged or terminated, the Committee may, either with or without notice to the Member, suspend the Member for a further period or expel the Member from the Association, and such suspension or expulsion shall take immediate effect and there shall be no appeal therefrom. If the Member satisfies its creditors and/or obtains a discharge under the Bankruptcy Act or causes the winding-up order or receivership to be discharged or terminated within such period as the Committee may determine, the Committee may reinstate the Member upon such terms and conditions as the Committee may determine and cancel any suspension imposed by it upon the Member.

19.22 Nothing contained in By-law 19.19, 19.20 or 19.21 shall prevent any other proceedings being taken against the Member pursuant to any other provisions of this By-law.

BY-LAW No. 20

PUBLICATION OF NOTICE OF PENALTIES

Amended by instrument in writing November 1968

20.1 If and whenever,

(a) a Member is fined or reprimanded or both by a District Audit Committee pursuant to By-law 16.13, notice of the penalty (which notice shall not include the name of the Member) forthwith after the imposition thereof shall be given to all Members;

(b) a Member is fined or reprimanded or both by a Business Conduct Committee pursuant to By-law 19.16, notice of the penalty (which notice shall include the name of the Member upon which the penalty is imposed unless such Committee otherwise directs) forthwith after the imposition thereof shall be given to all Members;

(c) a Member is fined or reprimanded or both by a Business Conduct Committee in any case to which By-law 19.16 is inapplicable, notice of the penalty (which notice shall include the name of the Member upon which the penalty is imposed unless such Committee otherwise directs) shall be given to all Members, and to such securities commissions, recognized stock exchanges and other persons, organizations or corporations, if any, as the Committee imposing the penalty may direct, forthwith after the expiration of the period limited for an appeal from or review of the decision of the Committee imposing the penalty, provided that if proceedings for such an appeal or review have been instituted within such period, notice of the penalty, if any, shall be deferred until the conclusion of, or abandonment of the proceedings for, such appeal or review;

(d) upon an appeal to or review by the National Business Conduct Committee from or of a decision of a Business Conduct Committee imposing a fine or reprimand or both, the penalty imposed by the Business Conduct Committee is increased, decreased, modified or confirmed or the National Business Conduct Committee itself imposes a fine or reprimand or both, notice thereof shall be given forthwith to all Members, and to such securities commissions, recognized stock exchanges and other persons, organizations or corporations, if any, as the National Business Conduct Committee may direct;

(e) the rights and privileges of a Member are suspended or a Member is expelled from the Association, notice of the penalty and notice of the disposition of any appeal from the imposition thereof shall be given forthwith to all Members, the securities commissions in all Provinces of Canada, recognized stock exchanges, the Bank of Canada and to such other persons, organizations or corporations, if any, as the Business Conduct Committee imposing the penalty or the National Business Conduct Committee upon appeal from or review of the decision of a Business Conduct Committee, as the case may be, may direct. In the event that the penalty is imposed by a decision of a Business Conduct Committee, which is subject to appeal to or review by the National Business Conduct Committee, the notice shall so indicate.

20.2 A notice of a penalty given pursuant to By-law 20.1 shall indicate the general nature of the offence, shall specify the penalty and, except as otherwise provided in clauses (a), (b) and (c) of By-law 20.1, shall include the name of the Member upon which the penalty is imposed.

20.3 A notice of a penalty given pursuant to By-law 20.1 shall be given by publication in the Association Bulletin and in such other manner as the Committee imposing the penalty, or as the National Business Conduct Committee from time to time, may direct, provided however that notice of a penalty given pursuant to clauses (a) and (b) of By-law 20.1 shall be given only by publication in the Association Bulletin.

20.4 A copy of the Association Bulletin containing any notice of the continuance of the suspension of the rights and privileges of any Member or of the expulsion of any Member from the Association shall, forthwith after the expiration of the period limited for an appeal from or review of the decision of the Committee imposing such penalty or in the event of such an appeal or review, forthwith after the conclusion of, or abandonment of the proceedings for such appeal or review, be delivered to each wire service, newspaper and other journal included in the press list of the Association.

BY-LAW No. 21

NO ACTIONS AGAINST THE ASSOCIATION

Amended by instrument in writing November 1968

21.1 No Member and no partner, director or officer of a Member (including in all cases a Member whose rights and privileges have been suspended and a Member who has been expelled from the Association or whose Membership has been forfeited) and no person who, upon application for registration as a registered representative pursuant to By-law No. 18, submitted to the jurisdiction of the Association, shall be entitled to commence or carry on any action or other proceedings against the Association or against the National Executive Committee, the President's Committee, the National Business Conduct Committee, any District Executive Committee, any Business Conduct Committee, any District Audit Committee, or any other National, District or other Committee of the Association, or against any member of the staff or officer of the Association or member or officer of any such Committee or against any Member's Auditor or against any District Association Auditors, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law or Regulation.

BY-LAW No. 22

USE OF NAME; LIABILITIES; CLAIMS

22.1 No Member shall use the name of the Association on letterheads or in any circulars or other advertising or publicity matter, except in such form as may be authorized by the National Executive Committee.

22.2 No liability shall be incurred in the name of the Association by any Member, officer or committee without the authority of the National Executive Committee.

22.3 Whenever the Membership of a Member ceases for any reason whatsoever, neither the former Member nor its heirs, executors, administrators, successors, assigns or other legal representatives, shall have any interest in or claim on or against the funds and property of the Association.

BY-LAW No. 23

NOTICES

23.1 Any notice which is required or permitted by or pursuant to the By-laws may be in writing, mailed in an envelope, postage prepaid, or by telegram, charges prepaid, addressed to the person, firm or corporation to whom or which such notice is directed at his, their or its last known address. Any notice so given shall take effect on the day on which it is placed in the postal letterbox or lodged with the telegraph company, as the case may be.

BY-LAW No. 24

REGULATIONS

24.1 The National Executive Committee may make and from time to time amend or repeal such Regulations, not inconsistent with the Constitution or By-laws, as in its discretion may be advisable for carrying out the provisions of the By-laws or generally for the purposes of the Association, and all such Regulations for the time being in force shall be binding upon all Members.

24.2 Regulations so made shall be effective and remain in force until the Annual Meeting next following the date of the making of such Regulations, and if approved by such Annual Meeting shall continue in force thereafter unless and until amended or repealed.

24.3 In case of any conflict or inconsistency between the provisions of any Regulations made by the National Executive Committee and any Regulations heretofore or hereafter made by any District Executive Committee, the Regulations of the National Executive Committee shall prevail.

BY-LAW No. 25

MINIMUM STANDARDS OF DISCLOSURE FOR SALES FINANCE COMPANIES

25.1 For the purpose of By-law 25.2 and 25.4, "Money Market securities" are defined as debt securities having an original term to maturity of three years or less.

25.2 Except as provided in By-law 25.4, a Member may only transact business, either as principal or agent, in the Money Market securities of those sales finance companies which, in addition to providing audited financial statements on an annual basis, have disclosed to the Member the following documents, to the extent that they are applicable:

(a) The following Robert Morris Associates Questionnaires prepared on a semi-annual basis:

  (i) Commercial Financing Questionnaire

  (ii) Direct Cash Lending Questionnaire

  (iii) Sales Finance Company Questionnaire; and

(b) The Canadian Sales Finance Long Form Report developed by the Federated Council of Sales Finance Companies and the Investment Dealers' Association of Canada dated March 23, 1967 or the most recent revision thereof, prepared on an annual basis.

25.3 The Questionnaires and Report referred to in By-law 25.2 must relate to periods ending, in the case of the Questionnaires, not more than 10 months and, in the case of the Report, not more than 16 months prior to the date of investment in the Money Market securities of the relevant sales finance company, provided that no such Questionnaire or Report shall be required to be disclosed pursuant to this By-law No. 25 until four months after the end of the 1967 fiscal year of the sales finance company required to complete and prepare such Questionnaire and Report.

25.4 A Member may transact business in the Money Market securities of a

(a) sales finance company which finances, in the main, the products of its parent company, or

(b) sales finance company that is a wholly-owned subsidiary of a company that has guaranteed payment of such Money Market securities of such sales finance company

without requiring compliance with By-law 25.2 provided that the Member shall have obtained from the parent of any such sales finance company information which the Member considers adequate.

Enacted 24/9/68

BY-LAW NO. 26

26.1 There shall be a Financial Administrators Section of the Association, membership in which shall be restricted to Secretaries, Treasurers, Comptrollers or other persons having similar responsibilities regardless of title who are employed by Members.

The Section shall undertake studies on matters relating to financial administration referred by the National Executive Committee or any District Executive Committee or by any member of the Section and shall subsequently submit reports or recommendations to the National Executive Committee or to the appropriate District Executive Committee.

The Section shall be governed by an Executive Committee comprised of members of the Section and this Executive Committee shall be responsible to the National Executive Committee.

A representative of the Executive Committee may attend meetings of the Quebec and Ontario District Executive Committees upon the invitation of the Chairman of the applicable District Executive Committee.

The Executive Committee may make such rules relating to the organization of the Section as are deemed necessary and as are approved by the National Executive Committee.

26.2 There shall be a Young Mens' Section of the Association, branches of which may be established in any city in Canada subject to the approval of the applicable District Executive Committee. Each branch shall have a separate constitution, which shall be approved by the applicable District Executive Committee. One purpose of each branch shall be to assist the applicable District Executive Committee as circumstances dictate.

A representative of a branch approved by the applicable District Executive Committee and who shall have at least four years' experience in the investment business may attend meetings of the applicable District Executive Committee upon the invitation of the Chairman of such District Executive Committee.

A branch of the Young Mens' Section may make such rules relating to the organization of the branch as are deemed necessary and as are approved by the applicable District Executive Committee.

Enacted by instrument in writing October 1968

BY-LAW NO. 27

MEMBERS' RIGHTS RESPECTING CLIENTS' INDEBTEDNESS

Whenever a client is indebted to a Member all securities held by such Member for or on account of such client shall (subject to the provisions of Regulation 1100 and to the provisions of any agreement between the Member and the client) be, to an amount reasonably sufficient to secure said indebtedness, collateral security for the payment of such indebtedness as may exist from time to time and such Member shall have the right from time to time, in its discretion, to raise money on such securities and to carry such securities in its general loans, and to pledge and repledge such securities in such manner and to such reasonable amount and for such purpose as it may deem advisable and if such Member shall deem it necessary for its protection it shall have the right, in its discretion, to buy any or all securities of which such client's account may be short or sell any or all securities held for or on account of such client and, without in any way restricting the foregoing, shall have the right to recover from such client the amount of the indebtedness or any part thereof remaining unpaid, either with or without realization of the whole or any part of the securities.

REGULATIONS

of

The National Executive Committee

November, 1968

401/68

Passed
23/9/68

PART IA

CAPITAL REQUIREMENTS AND MARGINS

100. In this Part, the expression:

(a) "active assets" means money and the value of assets readily convertible into money (taken at their market value);

(b) "adjusted liabilities" means total liabilities plus any unrecorded purchase commitments and any other unrecorded liabilities; minus the sum of:

(i) a cash on hand and in banks, including money on deposit in a clients' trust account;

(ii) cash surrender value of life insurance;

(iii) the market value of securities which the Member owns or has contracted to purchase and which have a margin rate of 5% or less;

(iv) (a) debit balances with defined financial institutions;

(b) the market value of securities in inventory having a margin rate greater than 5% and used to reduce sales commitments to "defined financial institutions" on line 8 of Supplementary Schedule 7;

(v) balances receivable (active debits) from approved affiliates;

(vi) the market value of exempted securities included in joint, clients, partners, shareholders, brokers, or dealers accounts not exceeding the debit balance thereof;

(c) "approved affiliate" means a firm or corporation that is an affiliate of the Member and is a member of or subject to the audit and capital requirements of the Toronto, Montreal/Canadian and Vancouver Stock Exchanges or the Investment Dealers' Association of Canada;

(d) "clients' trust account" means a special trust account maintained by a Member with a chartered bank or a trust company and designated "clients' trust account";

(e) "exempted securities" means:

(i) treasury bills, bonds and debentures issued or guaranteed by the Government of Canada, or a Canadian province and U.S. Government treasury bills and bonds;

(ii) Canadian-Bankers acceptances, bank deposit certificates, bank promissory notes and trust company guaranteed investment receipts – all due within 1 year;

(f) "financial institutions" means:

(i) Government of Canada, provincial governments and all crown corporations, instrumentalities and agencies of the federal and provincial governments;

(ii) Bank of Canada, Canadian chartered banks, Quebec savings banks, and the pension funds of such banks;

(iii) Trust and insurance companies licensed to do business in Canada with a minimum paid up capital and surplus of $5,000,000 and pension funds of such trust and insurance companies;

(iv) Central credit unions and regional caisses populaire with a minimum paid up capital and surplus of $5,000,000;

(v) Provincial capital cities and all other Canadian cities and municipalities with populations of 50,000 persons and over and funds under the administration of such cities and municipalities;

(vi) Mutual funds with total net assets of $5,000,000 or more;

(vii) Corporations, and the trusteed pension plans of such corporations, having a minimum net worth of $25,000,000 on the last audited balance sheet, such balance sheet to be available for inspection.

(g) "free credit balances" includes such moneys as are received or held by the Member for the account of clients of the Member:

(i) for investment, pending such investment;

(ii) in payment for securities purchased by clients from the Member where the Member does not own such securities at the time of such purchase, pending the purchase thereof by the Member;

(iii) in payment for part of a new issue of securities which has been confirmed to clients on an "if, as and when issued" basis pending the issue and delivery thereof to the Member; and

(iv) as proceeds of securities purchased from clients or sold by the Member for the account of clients, pending payment of such proceeds to the clients;

(h) "liquid capital" means the amount by which active assets exceed the sum of:

(i) total liabilities;

(ii) net loss (if any) on offsetting future purchase and sales commitments;

with the provision that the resulting amount of liquid capital may be increased by adding:

(i) the loan value (market value less margin) of any subordinated loans of securities that are not included in the accounts; and

(ii) non-current liabilities secured by mortgages on real estate owned by the Member;

(i) "net free capital" means liquid capital after deducting margin (at rates not less than prescribed rates) on securities owned by the Member and securities sold short by the Member (including future commitments) and also after deducting an amount sufficient to provide for any margin deficiencies on:

(i) joint accounts after excluding interests of:

(a) members of the I.D.A., or the Toronto, Montreal, Canadian, Vancouver, New York, American, Midwest, Philadelphia-Baltimore, and London stock exchanges, or the Paris Bourse, or the Acceptance Houses Committee, London

(b) approved affiliates

(c) financial institutions as defined

(ii) partners and shareholders accounts;

(iii) accounts with clients and dealers except:

(a) bona fide cash settlement accounts with members of the I.D.A., or the Toronto, Montreal, Canadian, Vancouver, New York, American, Midwest, Philadelphia-Baltimore, and London stock exchanges, or the Paris Bourse, or the Acceptance Houses Committee, London, and;

(b) bona fide cash settlement accounts with approved affiliates, and;

(c) accounts with defined financial institutions, excluding individual outstanding debit (long/receivable) transactions due for settlement more than 10 days beyond the regular delivery dates as defined in Regulation 800. However, margin will not be required on these extended delivery transactions (or portions thereof) if one of the following two conditions exist:

(1) The Member can specifically identify an outstanding credit (short/payable) transaction(s) with a "defined financial institution", for the same security and also due for settlement more than 10 days beyond the regular delivery dates.

(2) The Member's inventory has a short position in the same security.

(d) bona fide cash settlement accounts that have not been outstanding more than 21 days past the normal settlement date.

(j) "total liabilities" means all liabilities, including adequate provision for income taxes, but excluding debts, the payment of which is postponed in favour of other creditors of the Member pursuant to an agreement in writing in a form satisfactory to the District Association Auditors.

(k) "reporting on a trade date" means including in Statements A, B, C and D and Supplementary Schedules 1 to 9, all assets and liabilities resulting from sales and purchases of securities on or before the reporting date, even though they may be for normal settlement after the reporting date.

(l) "reporting on a settlement date" means excluding from Statements A, B, C and D and Supplementary Schedules 1 to 9, all assets and liabilities resulting from sales and purchases of securities during the last three business days of the reporting period for which the normal settlement date is after the reporting date.

101. Each Member shall have and maintain at all times a minimum net free capital of $50,000; and such net free capital must at least be equal to the sum of:

10% of the first $2,500,000 of adjusted liabilities, plus
8% of the next $2,500,000 of adjusted liabilities, plus
7% of the next $2,500,000 of adjusted liabilities, plus
6% of the next $2,500,000 of adjusted liabilities, plus
5% of adjusted liabilities in excess of $10,000,000.

101B Will cease to be operative as at 1/7/69

101.B Notwithstanding the foregoing, the minimum net free capital requirement for Members who deposit all clients' free credit balances in a separate clients' trust account shall be $25,000, subject to the further requirements of 101.

102. Notwithstanding the foregoing, a Member who is also a member of an exchange recognized by the National Executive Committee as having minimum capital requirements for all members at least equivalent to the requirements prescribed by By-law 17 and the Regulations and which is subject to the audit requirements of the said exchange may at its option compute its minimum net free capital in accordance with the rules of such exchange in lieu of Part 1A of the Regulations. For the purposes of this Regulation 102 the National Executive Committee hereby recognizes, and for the purposes of By-law 16 the National Executive Committee hereby designates, the following exchanges:

The American Stock Exchange
The Canadian Stock Exchange
The Montreal Stock Exchange
The New York Stock Exchange
The Toronto Stock Exchange
The Vancouver Stock Exchange

103. For the purpose of this Part, the following margin requirements are hereby prescribed:

BONDS, DEBENTURES, TREASURY BILLS and NOTES

I. Bonds, debentures, treasury bills, and other securities of or guaranteed by the Government of Canada, of the United Kingdom and of the United States, and Canadian chartered bank acceptances maturing (or called for redemption):

within 6 months	1/10 of 1% of market value
over 6 months to 1 year	1/2 of 1% of market value
over 1 year to 3 years	1% of market value
over 3 years to 10 years	2% of market value
over 10 years	4% of market value

II. Bonds, debentures, treasury bills and other securities of or guaranteed by any Province of Canada, maturing (or called for redemption):

within 6 months	1/2 of 1% of market value
over 6 months to 1 year	3/4 of 1% of market value

over 1 year to 3 years	1 1/2% of market value
over 3 years to 10 years	3% of market value
over 10 years	5% of market value

III. Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada, maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year	5% of market value

Bonds and debentures (not in default) of or guaranteed by any School Corporation, Religious Order or Hospital Corporation in Canada:

5% of market value.

IV. Other non-commercial bonds and debentures, (not in default):

10% of market value.

V. Commercial bonds, debentures and notes, (not in default), maturing:

within 1 year	4% of market value (a)
over 1 year to 3 years	5% of market value (a)
over 3 years to 10 years	7% of market value (a)
over 10 years	10% of market value (a)

(a) (i) if convertible and selling over par, apply the above rates on par value and add 50% of the excess of market value over par when convertible into securities acceptable for margin purposes or 100% of the excess of market value over par when convertible into securities not acceptable for margin purposes. If convertible and selling at or below par, the quoted rates apply.

(ii) if selling at 50% of par value or less, the margin required is 50% of the market value.

VI. Acceptable commercial, corporate and finance company notes – readily marketable and maturing:

within 182 days	2% of market value
183 to 365 days	3% of market value

For the purpose of this Regulation, acceptable notes are notes issued by a company, or guaranteed by a parent, with net worth of not less than $10,000,000 which files an annual prospectus under a Provincial Securities Act and provides the dealer with a copy, or alternatively provides the dealer with a copy of the borrowing by-law and the resolution authorizing promissory notes and listing signing officers.

VII. Bonds in default: 50% of market value

VIII. Income bonds which have paid in full interest at the stated rate for the two preceeding years as required by the related trust indenture which must specify that such interest be paid if earned:

Currently paying interest at the stated rate:

10% of market value

Not paying interest, or paying at less than the stated rate:

50% of market value

BANK PAPER

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year to 3 years	3% of market value
over 3 years to 10 years	5% of market value
over 10 years	10% of market value

TRUST COMPANY PAPER

Guaranteed investment certificates or promissory notes issued by a Canadian trust company maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year to 5 years	5% of market value

ACCEPTABLE FOREIGN BANK AND FINANCE COMPANY PAPER

Deposit certificates or promissory notes issued by a foreign bank, finance company, or agencies of Canadian chartered banks in New York, maturing:

within 92 days	2% of market value
93 days to 1 year	3% of market value
over 1 year and up to 3 years	4% of market value

For the purpose of this Regulation, acceptable paper is deposit certificates or promissory notes issued by a bank or finance company domiciled in the United States or the United Kingdom with net worth of not less than $25,000,000.

NATIONAL HOUSING ACT (N.H.A.)

Insured Mortgages 6% of market value

STOCKS

1. Listed on any recognized stock exchange in Canada or the United States or on the stock list of the London Stock Exchange and selling at over $1:

   50% of market value

2. Subject to the existence of an ascertainable market among brokers or dealers the following unlisted securities shall be accepted for margin purposes on the same basis as listed stocks:

   (a) Securities of insurance companies licensed to do business in Canada

   (b) Securities of Canadian banks

   (c) Securities of Canadian trust companies

   (d) Securities of mutual funds qualified by prospectus for sale in any Province of Canada

   (e) Other senior securities of listed companies

   (f) Securities which qualify as legal for investment by Canadian life insurance companies, without recourse to the basket clause.

   (g) Unlisted securities in respect of which application has been made to list on a recognized stock exchange in Canada and approval has been given subject to the filing of documents and production of evidence of satisfactory distribution may be carried on margin for a period not exceeding 90 days from the date of such approval.

3. All other stocks not mentioned above:

   100% of market value

UNITS

According to components.

104. (1) Where a Member owns bonds or debentures of one maturity issued or guaranteed by the Government of Canada and has a short position in bonds or debentures of another maturity issued or guaranteed by the Government of Canada for which the same rate of margin has been prescribed, the two positions may be offset and the required margin computed with respect to the net long or net short position only. Long and short positions in bonds or debentures issued or guaranteed by a Province of Canada may also be offset in a similar manner if the same margin rate is prescribed for both issues even if this may result in offsetting obligations of one Province against obligations of another Province. This Regulation also applies to future purchase and sales commitments.

(2) Where an underwriter has a commitment to purchase a new issue of securities, the commitment does not require to be margined until the termination of the "withdrawal" clause, provided the "withdrawal" or "out" clause allows for the cancellation of the commitment in the event of unsaleability due to market conditions. After termination of the "withdrawal" clause the issue shall be margined at the margin rate prescribed in Regulation 103 except that the margin rate allowed by the Member's bankers may be used in the course of distribution from the date on which the Member's bankers agreed, in writing, to carry the securities until 30 days have elapsed from the time the issuer of the securities was first in a position to make deliveries. For the subsequent 60 days thereafter unlisted stock that would normally require 100% margin may be margined at 50% provided the rate allowed by the Member's bankers, in writing, does not exceed 50% during this second period.

105. All outstanding purchase and sales commitments and repurchase agreements may be included in the Statement of Assets and Liabilities or in the alternative must be reported in the Statement of Future Purchase and Sales Commitments and included in the Statement of Adjusted Liabilities. Members reporting on a settlement date basis may exclude from this report transactions of the last three business days not due for regular settlement (as defined in Regulation 800), until after the reporting date.

106. No Member shall pay or make any payment on account or in respect of any debt owing by such Member to any creditor of such Member contrary to the provisions of, or otherwise fail to comply with, any subordination or other agreement to which such Member and the District Association Auditors, or a member thereof, are parties.

Passed
23/9/68

PART 1B

MINIMUM RECORDS

107. As required under By-law 17.2 every Member shall make and keep current the following books and records relating to its business.

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) maintained in detail reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account. In addition, statements must be sent to customers on at least the following basis: monthly – for all customers in whose accounts entries of any nature are made during the month; quarterly – for all customers having a dollar balance or security position (including securities held in safekeeping).

(4) Ledgers (or other records) reflecting the following:

(A) securities in transfer;
(B) dividends and interest received;
(C) securities borrowed and securities loaned;
(D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);
(E) securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the trade or settlement dates all "long" and "short" positions (including securities in safekeeping) carried for the Member's account or for the account of customers, showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by a Member, or any employee thereof, shall be so designated.

(7) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers. Such written confirmations shall set forth at least the following:

(a) the quantity and description of the security;
(b) the consideration;
(c) whether or not the person or company registered for trading acted as principal or agent;
(d) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold.
(e) the day and the name of the stock exchange, if any, upon which the transaction took place;
(f) the commission, if any, charged in respect of the trade; and
(g) the name of the salesman, if any, in the transaction.

29823–6½

(8) A record in respect of each cash and margin account containing the name and address of the beneficial owner (and guarantor, if any) of such account and in the case of a margin account a properly executed margin agreement containing the signature of such owner (and guarantor, if any); provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(9) A record of all puts, calls, spreads, straddles and other options in which the Member has any direct or indirect interest or which the Member has granted or guaranteed, containing at least an identification of the security and the number of units involved.

(10) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net free capital, adjusted liabilities and capital required. Such trial balances and computations shall be prepared currently at least once a month.

GUIDE TO INTERPRETATION OF REGULATION 107

Regulation 107 represents a codification of bookkeeping practices now followed by most Members in that it specifies the various items of information which must be reflected upon the firm's books. The Regulation does not, however, require the various books and records specified therein to be kept on any prescribed form or type of book, ledger or card system.

(1) "Blotters or similar records"

The "blotter", as it is often called, is a dealer's or broker's book of original entry and contains an historical account of all the daily transactions of the firm or its customers. The term "blotter" is often used synonymously with "diary", "journal", or "day book". Larger firms may keep a number of different blotters, each to record a separate type of transaction. For instance, a Member operating a seat on a securities exchange ordinarily maintains a clearing house blotter in which are recorded the purchases and sales of cleared securities in board lots and an "ex-clearing blotter" or several other blotters in which are recorded transactions in odd lots, unlisted securities, bonds, cash, receipts and deliveries, and journal entries. Over-the-counter houses may also keep separate blotters for special kinds of business such as a "cash book" showing only payments and receipts of cash. Blotters are either "To Receive" blotters, in which are recorded purchases, receipts of securities and payments of cash. or "To Deliver" blotters, in which are recorded sales, deliveries of securities and receipts of cash

The blotter is usually a loose-leaf affair showing on the bought (to receive) side, from whom bought, quantity, security, certificate numbers, price, amount, interest (if any), commission (if any), trade and settlement dates, and the account for which bought. The sold (to deliver) side shows to whom sold, quantity, security, certificate numbers, price, amount, tax, interest (if any), commission (if any), trade and settlement dates and account for which sold. Blotters or similar records, besides being occasionally kept in bound ledgers, may also be kept on cards separated by days or may consist of carbon copies of customers' confirmations arranged and bound by days, provided that all of the information specified in section 1 of the Regulation is contained with respect to each entry.

(2) "The general ledger"

This is the record in which all asset, liability, capital, income and expense accounts are kept and from which a trial balance can be abstracted in order to prepare financial statements showing the Member's financial condition. Entries in this record are derived from the "blotters" referred to in section 1 of the Regulation. Under present day double entry systems, this record requires little explanation.

(3) "Customers' accounts"

This section requires ledger accounts (or other records) itemized separately as to each cash and margin account of every customer (regardless of the frequency of transactions with or for the customer), and as to each account (if any) of the firm (i.e. inventory) which should show all purchases and sales (including the settlement

dates thereof), receipts and payments of cash and where securities or commodities are otherwise received in or delivered out of the account, all such receipts and deliveries. The records should also itemize all other debits and credits to each such account.

Whether the bookkeeping system is maintained on machines, or the ledger is handwritten, the account pages, or account cards in the case of card system, usually consist of columns for the date, number of shares bought or received into the account, number of shares sold or delivered out of the account, name of security, money debits and credits and usually a balance column and columns for calculating interest on balances. For purposes of this Regulation only, the definition of "customer" shall include the investing public, financial institutions, other investment dealers and stockbrokers, affiliates and partners, shareholders, directors, officers and employees of a Member firm and its affiliates.

Statements sent to customers shall set forth the dollar balance carried forward from the previous statement; all entries shown in the account since the previous statement date; and the final dollar balance and the security position as of the statement date. The statements shall also indicate the items included in the final security position which are held in safekeeping.

Members not depositing clients' free credit balances in a trust bank account should refer to Regulation 1402 for details of the special notation that must be affixed to all statements sent to clients.

(4) "Secondary or subsidiary records"

These records are made up from the blotters or other records of original entry. Hence, the data appearing in such records is generally posted daily or at such intervals as the business requires. There follows a brief description of such subsidiary records.

(A) "Securities in transfer"

The certificates which a Member receives upon consummation of purchases may often be in a "street" name or in the names of individuals who may previously have owned the security. When a Member receives instructions to have certificates registered in the name of the purchaser the certificates are sent to the transfer agent after the purchaser has paid for them. The purpose of this paragraph of the Regulation is to require the keeping of a record showing all securities "in transfer". This record usually shows the number borne by the transfer receipt received from the transfer agent, the number of shares or the par value, name of security, name in which it was registered, new name (i.e., the new name in which new certificates will be registered), date sent out to transfer, old certificate number, date received back from transfer, and new certificate number.

(B) "Dividends and interest received"

For the purpose of this item of the Regulation it is necessary that a record be maintained by the firm with respect to interest or dividends paid by corporations on bonds or stock, respectively, carried by the Member for the account of customers but registered in some name other than that of the customer. The general practice, which would represent compliance with the rule, is to set up a sheet showing the name of the security, the ex-dividend date (or interest date), the rate per share and the payable date. Information is obtained from the "stock record" or, as it is sometimes called, the "securities position record", (the nature of which is explained hereafter) showing the names of both "long" and "short" customers. The information is then recorded on the dividend and interest register. All customers who are "long" are credited with their proportionate interest in monies received by the firm on account of the dividend or interest to which such customers are entitled. All customers who are "short" on the record dividend date, or the interest date in the case of bonds, are charged with the amount of the dividend or interest payable on their short position. In addition, all bearer securities in the firm's possession or in hypothecation on the record or interest date must be examined to determine who the firm must claim against for payment of the dividend or interest. Members should make a practice of registering dividend or interest paying securities in their own name (or the customers' names when they are fully paid) in order to eliminate the clerical work and potential loss that results when a claim must be made against a previous owner.

(C) "Securities borrowed and securities loaned"

In borrowing securities to make deliveries against sales or in lending securities to other dealers or brokers, it is necessary to enter such transactions in the blotters, day book or other records of original entry. This requirement can be complied with by posting from the blotters or other records of original entry onto the securities borrowed and loaned records the date borrowed or date loaned, name of the firm from whom borrowed or to whom loaned, number of shares, name of security, price, amount, and the date returned. In some cases securities borrowed and loaned records also provide an additional column showing the interest rate or premium on stock borrowed or loaned. The information may be kept on cards, in a loose-leaf or in a bound record, and the "date returned" may be stamped in with a regular date stamp.

(D) "Monies borrowed and monies loaned, etc."

A record must be kept of all borrowings, regardless of whether customers' or the firm's securities are pledged as collateral. This record should show the name of the bank, the date, the interest rate, the amount of the loan, terms of the loan, and date when paid. Usually a separate page is made up for each loan. In connection with this information there must be kept a collateral record consisting of the number of shares, or principal amount in the case of bonds, name of the security, and certificate numbers in respect of all collateral pledged to secure the particular loan. Substitutions in collateral are usually shown on an additional column on the page or card kept for the particular loan. This information is obtained from the blotter, cash book, day book or other record of original entry and is transferred to the subsidiary record. Many Members find it convenient (and the Regulation so permits) to keep their loan records on a card index system which reflects the above information. Others keep only their record of collateral substitutions on cards, maintaining a loose leaf or bound ledger for the other required details of such loans.

(E) "Securities failed to receive or deliver"

These are also subsidiary records and are constructed from information contained on the blotters or other records of original entry. Upon learning that a dealer or broker on the other side of a transaction will fail to deliver on the date upon which delivery is due, either under the agreement between the buyer and the seller or under clearing house rules, this item requires that records must be made which should show the "fail date" (i.e., the date on which delivery was due but not made), number of shares (or principal amount of bonds), name of security, purchase price, broker or dealer from whom delivery is due, and date received. Conversely, when the firm fails to deliver it must set up records which should show the date on which delivery was due, number of shares (or principal amount of bonds), name of security, to whom sold, sales price and date on which delivery is made. An additional column may also provide for any remarks pertinent to the failure to receive or failure to deliver of that particular security. The total amount of open items in the "fail to receive" and "fail to deliver" records should agree with the "fail to receive" and "fail to deliver" accounts in the firm's general ledger kept pursuant to section 2 of this Regulation.

(5) "Securities record or ledger"

This section requires that the securities record be posted currently so as to show all positions as of no later than the settlement dates. The securities record may, of course, be posted on the "trade" or execution date or any other date prior to the settlement date. Members which handle a large volume of business may keep separate "securities records" or "position records" as they are often called for stocks and for bonds. The stock or securities record is seldom a bound record but it is usually kept in a loose-leaf book, or in the form of a group of cards or of related groups of cards, containing the above information. The typical security position record is a columnar record with a page or portion thereof for each security. The page should show the name of the security, the customers' and other accounts which are "long" and "short" that security, the daily changes in their position, the location of each security, and the total of the long or short position for the account of customers and the firm and partners. The more frequently recurring items often are printed on the form for speed in recording and in order to eliminate the necessity of writing in each item. Many forms for stock or securities position records are printed with or otherwise contain an appropriate space for the name of the account and a column for

each business day in the month. The month-end securities balances may be carried forward to new sheets at the beginning of each new month. This record should be reviewed frequently to ensure it is "in balance" (i.e. for each security the total long positions should equal the total short positions).

(6) "Memoranda of orders"

In this section the term "instruction" shall be deemed to include instructions between partners or directors and employees of a Member. The term "time of entry" is specified to mean the time when the Member transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

It is the usual practice (and probably the more desirable) to record all of the required information upon the face of the order ticket or other slip which records the order or instruction. If such tickets or slips are filed together, they would themselves constitute the required record in respect of orders or instructions for the purchase or sale of securities.

(7) "Confirmations and notices"

The Provincial Securities Commissions require that every person or company registered for trading in securities who has acted as principal or agent in connection with any trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction, setting forth the details required in this section of the Regulation. For the purposes of clauses (d) and (g), a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

(8) "Records of cash and margin accounts"

A margin agreement between a Member and a customer shall define at least the following:

(a) the obligation of the customer in respect of the payment of his indebtedness to the Member and the maintenance of adequate margin and security;

(b) the obligation of the customer in respect of the payment of interest on debit balances in his account;

(c) the rights of the Member in respect of raising money on and pledging securities and other assets held in the customer's account;

(d) the extent of the right of the Member to make use of free credit balances in the customer's account;

(e) the rights of the Member in respect of the realization of securities and other assets held in the customer's account and in respect of purchases to cover short sales, and whether any prior notice is required, and if notice be required, the nature and extent of it and the obligations of the customer in respect of any deficiency;

(f) the extent of the right of the Member to utilize a security in the customer's account for the purpose of making a delivery on account of a short sale;

(g) the extent of the right of the Member to use a security in the customer's account for delivery on a sale by the Member for his or its own account or for any account in which the Member, any partner therein or any director thereof, is directly or indirectly interested;

(h) the extent of the right of the Member to otherwise deal with securities and other assets in the customer's account and to hold the same as collateral security for the customer's indebtedness; and

(i) that all transactions entered into on behalf of the customer shall be subject to the regulations of the Investment Dealers' Association of Canada and/or any securities exchange if executed thereon.

(9) "Puts, calls, straddles and other options"

Such a record may be kept in any suitable form which shows the date, details regarding the option, name of security, number of shares, and the expiration date. Letters pertaining to such options, including those received from and addressed to customers, should be kept together with the record.

(10) "Monthly trial balances and capital computations"

Such trial balances and computations will serve as a check upon the current status and accuracy of the ledger accounts which Members are required to maintain and keep current and will also help to keep Members currently informed of their capital positions as required under By-law 17.1.

A Member should, of course, keep currently informed as to his capital position and make a computation as often as necessary to insure that he has adequate capital at all times; but Members must preserve only the monthly computation mentioned above. On the other hand, Members whose capital position is substantially in excess of that required, may omit detailed schedules and analyses in support of the computation if they apply a more stringent application of the Regulation governing the computation. For example, when calculating net free capital, inventories can be grouped into broader margin categories and maximum margin rates applied; offsetting provisions such as those contained in Regulation 104 (1) can be ignored; and assets partly allowable or of questionable value can be excluded in their entirety. When net free capital has been calculated in this conservative manner it is necessary to determine the maximum adjusted liabilities that can be supported (i.e. net free capital of $200,000 can support adjusted liabilities of up to $2,000,000). The calculation of adjusted liabilities can then be limited to the deductions necessary to reduce total liabilities to the maximum allowed by the net free capital available.

When a Member cannot prove he has adequate capital he must notify the Association Examiner and the District Association Auditor immediately.

Passed
23/9/68

PART 1C

AUDIT REQUIREMENTS

108. The audit required under By-law 16 shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the previous audit date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities and securities and commodities positions as of the date of the audit and to permit the expression of an opinion by the independent Auditor as to the financial condition of the Member at that date. Based upon such audit, the Member's Auditor shall comment upon any material inadequacies found to exist in the accounting system, the internal accounting control and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed. These comments may be submitted in a supplementary certificate and included with the annual filing or they may be submitted in a separate confidential filing. The opinion expressed by the Member's Auditor shall not contain a qualification where it is reasonably practicable for the Member to revise the statement presentation with respect to the matter that would otherwise be the subject of a qualification.

(A) The scope of the audit shall include the following procedures, but nothing herein shall be construed as limiting the audit or permitting the omission of any additional audit procedure which any Member's Auditor would deem necessary under the circumstances. As of the audit date the Member's Auditor shall:

(1) Compare ledger accounts with the trial balances obtained from the general and subsidiary ledgers and prove the aggregates of subsidiary ledgers with their respective controlling accounts.

(2) Account for by physical examination and comparison with the books and records: all securities, including those held in segregation and safekeeping; cheques and currency; warehouse receipts; and other assets on hand, in vault, in box or otherwise in physical possession. Control shall be maintained over such assets during the course of the physical examination.

(3) Verify securities in transfer and in transit between offices of the Member.

(4) Balance positions in all securities and commodities as shown by the books and records at the audit date.

(5) Reconcile balances shown by bank statements with ledger control accounts. After giving ample time (at least 15 days) for clearance of outstanding cheques and transfers of funds, obtain bank statements and cancelled cheques of the accounts directly from the depositories, and by appropriate audit procedures substantiate the reconciliation as of the audit date.

(6) Obtain written confirmations with respect to the following:

(a) Bank balances and other deposits.

(b) Open contractual positions and deposits of funds with clearing corporations and associations.

(c) Money borrowed and detail of collateral.

(d) Accounts, securities, commodities and commitments carried for the Member by others.

(e) Details of:

(i) Securities borrowed

(ii) Securities loaned

(iii) Securities failed to deliver

(iv) Securities failed to receive

(v) Contractual commitments.

(f) Customers' accounts. Large accounts, numbered or coded accounts, and a sample of other accounts (the size of the sample shall be governed by the adequacy of the internal control which is present) shall be confirmed using positive (requiring written reply) confirmation requests and the remainder of the accounts shall be confirmed using negative confirmation requests. Customers' accounts without balances or security positions and accounts closed since the last audit date shall be confirmed on a test basis (the extent to be governed by the adequacy of the internal control which is present).

(g) Partners', officers', directors', shareholders' and employees' accounts.

(h) Borrowings and accounts covered by subordination agreements acceptable to the District Association Auditors.

(i) Guarantees where required to margin or secure accounts guaranteed as of the audit date.

(j) All other accounts which in the opinion of the Member's Auditor should be confirmed.

Note: Compliance with requirements for obtaining written confirmation with respect to the above accounts shall be deemed to have been made if requests for confirmation have been mailed by the Member's Auditor in an envelope bearing his own return address and second requests are similarly mailed to those not replying to the first requests for positive confirmation. Appropriate alternate verification procedures must be used where replies are not received to second requests.

(7) Obtain a written statement from the proprietor, senior partner (if a partnership) or senior officer and director (if a corporation) as to the assets, liabilities, and accountabilities, contingent or otherwise, not recorded on the books of the Member.

(B) The Member's Auditor shall review the accounting system in order to ascertain whether or not in his opinion it complies with the minimum requirements of Part 1B of the Regulations.

(C) By-law 17.3 requires that all securities of a customer fully paid for and which have come into the possession of the Member and are not subject to any lien or charge in favour of the Member shall be segregated and distinguished as held in trust for the customer owing the same.

(i) Should it be found that any securities which should have been "segregated and distinguished" as required under By-law 17.3 were not so segregated and distinguished, then same must be reported in full to the District Association Auditors setting forth at least the following: the number of shares or par value of bonds; a description of the security; the date the security became hypothecated and the date it was released from hypothecation; the party to whom hypothecated (bank, trust company, etc.); and any other pertinent information.

(ii) In cases where the free securities are out for transfer or have been "failed" with other dealers or are in "safekeeping" with another dealer, all in the normal course of business, it is in order to exclude same from those considered as under hypothecation. A test of the transfer and "fail" items should be made subsequent to the date of the audit to establish that safekeeping items when received are properly segregated. Any items not segregated must be reported to the District Association Auditor. The system of segregation should be reviewed and any inadequacies reported as provided above.

(D) The Member's Auditor shall examine the insurance carried by the Member to determine whether or not it is of the type and in the amount required by Part II of the Regulations. If the Member is not complying with this requirement the Member's Auditor must report in the manner set out in By-law 17.6.

(E)(i) Any condition disclosed by the audit that would cause the net free capital of the Member to be less than that prescribed by the National Executive Committee and set out in Part 1A of the Regulations shall be reported to the District Association Auditor and the Association Examiner immediately upon the ascertainment of such facts.

(ii) Where a serious weakness or breakdown in the accounting system, the internal accounting control or the procedures for safeguarding securities is discovered by the Member's Auditor, he shall report to the District Association Auditor and the Association Examiner immediately upon the ascertainment of such facts.

(F) A copy of the financial statements and all audit working papers shall be retained for at least six years. The two most current years shall be kept in a readily accessible location. All working papers shall be made available for audit and review by the Association Examiners or the District Association Auditor.

PART II

INSURANCE

200. Every Member of the Association shall, by means of a Broker's Blanket Bond or Bonds (with Discovery Rider attached or Discovery Provisions incorporated in the Bond), effect and keep in force Insurance against losses arising as follows:

CLAUSE (A)—FIDELITY—Any loss through any dishonest fraudulent or criminal act of any of the Employees, committed anywhere and whether committed alone or in collusion with others, including loss of Property through any such act of any of the Employees, (**excluding** trading losses—see Clause (A)—"Trading Losses" below);

CLAUSE (A)—"TRADING LOSSES"—Any loss through any dishonest, fraudulent or criminal act of any Employee resulting directly or indirectly from trading with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness or balance;

CLAUSE (B)—ON PREMISES—Any loss of money and securities or other Property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any of the Insured's offices, the offices of any banking institution or Clearing House or within any recognized place of safe-deposit, as more fully defined in the Standard Form of Brokers Blanket Bond (hereinafter referred to as the "Standard Form");

CLAUSE (C)—IN TRANSIT—Any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any Employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company, as more fully defined in the Standard Form;

CLAUSE (D)—FORGERY OR ALTERATIONS—Any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities, as more fully defined in the Standard Form;

CLAUSE (E)—SECURITIES—Any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments, as more fully defined in the Standard Form.

201. Every Member of the Association shall also effect, employ and keep in force Mail Insurance against loss arising by reason of any shipments of money or securities, negotiable or non-negotiable, by first-class mail, registered mail, registered air mail, express or air express.

202. The minimum amounts of Insurance to be maintained shall be as follows:

CLAUSES (A), (B) and (C)

The greater of

(a) $100,000
(b) the previous fiscal year's total expenses, excluding interest,
(c) 3% of money market, commercial and finance paper and 5% of all other securities owned at the previous fiscal year-end,
(d) 15% of the value of securities held for clients at the previous fiscal year end.

CLAUSE (A)—"TRADING LOSSES"

The greater of

(a) $100,000
(b) 6% of the amount of Insurance required under Clauses (A), (B) and (C).

CLAUSE (D)

The greater of

(a) $100,000

(b) 5% of the amount of Insurance required under Clauses (A), (B) and (C).

CLAUSE (E)

The greater of

(a) $50,000

(b) 6% of the amount of Insurance required under Clauses (A), (B) and (C).

SAFE-DEPOSIT BOXES IN BANKS OR OTHER INSTITUTIONS

Where the value of securities carried in a safe-deposit vault of a bank or other institution exceeds the amount of insurance carried under CLAUSE (B), such excess shall be substantially insured by means of a safe-deposit box policy (basic burglary policy) on the contents of the safe-deposit box or boxes in each vault containing such excess value.

SAFEKEEPING IN MEMBERS' OWN VAULTS

Where a Member's and clients' securities are carried in the Member's own vaults and where the value of the securities carried exceeds the amount of insurance carried under CLAUSE (B), such excess shall be fully insured by means of a safe burglary policy.

PROVISOS

(a) The maximum Insurance to be maintained under Clauses (A), (B) and (C) need not exceed $5,000,000.

(b) The value of securities in transit in the custody of any employee or any person acting as a messenger shall not at any time exceed the protection provided under Clause (C).

(c) Members shall be deemed to be complying with By-law 17.5 and these Regulations should there be insufficient coverage, provided that any such deficiency does not exceed 10% of the Insurance requirement and that evidence is furnished within two months of the completion of the annual audit that the deficiency has been corrected.

(d) The "previous fiscal year" referred to in determining the amount of Insurance required under Clauses (A), (B) and (C) is the fiscal year ending not more than fifteen months prior to the completion of the annual audit.

(e) Insurance against Clause (E) losses (Securities) may be incorporated in the Brokers' Blanket Bond or may be carried by means of a Rider attached thereto or by a Separate Securities Forgery Bond.

PART III

REGISTERED REPRESENTATIVES (SALESMEN)

300. For the purpose of By-law 18 and this Part, the Toronto, Montreal, Canadian and Vancouver Stock Exchanges are recognized stock exchanges.

301. Unless the applicant is registered as a registered representative with a recognized stock exchange, the following fees shall accompany each application submitted to the Association:

$10.00 for each REGISTERED REPRESENTATIVE APPLICATION AND AGREEMENT FORM

$ 5.00 for each APPLICATION AND AGREEMENT FORM FOR TRANSFER OF EMPLOYMENT OF A REGISTERED REPRESENTATIVE

Such fees shall be in addition to any charges payable by the Members or their sales representatives for writing of examinations or taking of courses. No such fee shall be refunded, whether or not the application is accepted.

302. A person for whom application for registration as a registered representative of a Member is being made shall take and pass The Canadian Securities Course as a condition precedent to such registration unless such person:

(i) was employed as a sales representative by a Member on November 15, 1962 and has been continuously employed in such capacity since that date;

(ii) is already a graduate of The Canadian Securities Course;

(iii) is registered or approved as a registered representative under the rules of a recognized stock exchange; or

(iv) is exempted pursuant to Regulation 303.

303. The applicable District Executive Committee may, in its discretion, exempt from the educational requirements of Regulation 302:

(i) a person who, for a period of at least sixty days within the six months' period preceding the date of application for his registration as a registered representative, had been a partner or a director of a Member or a member of a recognized stock exchange and who has had at least five years' experience in the investment business;

(ii) a person who is already a graduate of former Educational Course I of the Association and who, in the opinion of the applicable District Executive Committee, has sufficient sales experience in the investment business to warrant such exemption:

(iii) a person who is already a graduate of former Educational Course I of the Association but who, in the opinion of the applicable District Executive Committee, has not sufficient sales experience to warrant exemption under (ii) of this Regulation 303, if such person completes such assignment of The Canadian Securities Course as the applicable Committee may specify and passes an examination based on such assignment;

(iv) a person who:

(a) was formerly employed as a registered representative by a Member or by a member of a recognized stock exchange, and

(b) has had at least five years' experience in the investment business during the ten years preceding the date of application for his registration, and

(c) has had, for a period of at least sixty days within the six months' period preceding the date of application for his registration as a registered representative, experience in the investment business;

(v) in special cases, but only with the approval of the President of the Association, a person who does not qualify for exemption under subdivision (i) or (iv) of this Regulation 303.

304. Notwithstanding Regulation 302, the applicable District Executive Committee may grant interim approval of an application for registration of a person as a registered representative if, at the date of such application, such person:

(i) is employed by a Member solely for the purposes of soliciting orders for mutual fund securities;

(ii) is registered under the securities laws of each jurisdiction in which he deals with the public as a mutual funds salesman; and

(iii) either has been registered in accordance with (ii) above for at least one year ending not less than thirty days' prior to the date of application or has completed the full Canadian Mutual Funds Course prescribed by the Canadian Mutual Funds Association.

provided that:

(i) if such person shall not have passed The Canadian Securities Course within one year from the date of such interim approval, the application for registration of such person shall be deemed to be rejected; and

(ii) during the interim approval period, such person shall not accept orders for the purchase or sale of any securities other than mutual fund securities.

305. The Secretary shall give notice to all recognized stock exchanges in Canada and to all securities commissions in Canada of all registrations of salesmen that are approved and of all registrations of salesmen that are cancelled.

306. The National Executive Committee may from time to time prescribe forms on which all applications for registration or transfer of registration, as the case may be, shall be made.

Passed
23/9/68

PART IV

SUSPENDED MEMBERS

400. During the period of suspension, a suspended Member shall not be entitled to exercise the rights and privileges of Membership and without limiting the generality of the foregoing, the suspended Member a) shall not be entitled to attend or vote at meetings of the Association or of any District of the Association, b) shall remove from its premises any reference to its Membership in the Association, and c) shall no longer use reference to its Membership in the Association in its advertisements, letterhead or other material, and the name of the suspended Member shall be carried in the Association's Blue Book Directory and Membership List but shall be marked with an asterisk and footnote indicating that the Member has been suspended and the period of suspension; provided that during the period of suspension the suspended Member shall continue to be liable for the payment of Annual Fees and of any assessment and provided further that so long as the Member is not in arrears in the payment of its Annual Fee or other indebtedness to the Association, the suspended Member shall be entitled to remain in the Association's Group Insurance Plan or any other insurance or retirement plans in which the Member is enrolled at the time of suspension but if not already enrolled in such Group Insurance Plan or in any other insurance or retirement plans at the time of suspension no Member under suspension may enrol therein. Within ten days after the imposition of a suspension or in the event of an appeal therefrom, within seven days after the confirmation of such suspension by the National Business Conduct Committee, the Member shall return to the Secretary its Certificate of Membership in the Association and shall advise the Secretary in writing that it has complied with the requirements of (b) and (c) above.

PART V

USE OF NAME OF THE ASSOCIATION

500. Members may use the name of the Association on letterheads, circulars, advertising and other publicity matter, except in the case of circulars, advertising and publicity matter (not being signed letters), mailed, delivered, published or otherwise used for the purpose of giving publicity to any specific new issue of securities, other than securities authorized for investment by trustees in any Province; and Members may also use the name of the Association on their office doors and windows; provided that the name of the Association, when so used shall appear in smaller type than the name of the Member, and the reference to the name of the Association and membership therein shall be (in singlar or plural form) in one or other of the following forms:

Member(s) of the Investment Dealers' Association of Canada

and/or

Membre(s) de l'Association Canadienne des Courtiers
en Valeurs Mobilières

or

Member(s) of the Investment Dealers' Association of Canada
—Association Canadienne des Courtiers en Valeurs Mobilières

or

Membre(s) de l'Association Canadienne des Courtiers
en Valeurs Mobilières
—Investment Dealers' Association of Canada.

PART VI

TRADING AND DELIVERY

GENERAL

600. Unless otherwise stated this Part shall apply to all Members and to members of other associations subscribing to the Association's Trading and Delivery Regulations (hereinafter sometimes called "dealers").

601. Members will not become or continue as members of any trading organization or association formed as kindred to the bond business and domiciled in Canada unless such an association has as part of its constitution or regulations an agreement by all its members to concur in and observe the Regulations for trading and delivery practices of the Association. (This does not mean adherence to the Constitution and By-laws of the Association.)

602. All dealers shall conduct their trading business along the lines of the present unwritten, but established, code of ethics.

603. Clearing days are defined as being all business days, except Saturdays and statutory or other legal holidays.

604. All securities having interest payable as a fixed obligation shall be dealt in on an "accrued interest" basis until maturity or a default in such payment either occurs or is announced by the debtor, whichever is the earlier event. This Regulation may be abrogated from time to time in specific cases where common practice and expediency prompt such action; due notice of such special instances to be given to all Members.

605. Sales made of securities prior to actual default or official announcement as specified in Regulation 604, but undelivered at the time of default or such announcement, shall be dealt in on an "accrued interest" basis in accordance with the terms of the original transaction.

606. Subsequent to default or official announcement as specified in Regulation 604, the securities shall be dealt in on a flat basis with all matured and unpaid coupons attached, until such time as all arrears of interest have been paid and one current coupon has been paid when due.

607. Transactions in bonds having coupons payable out of income, if, as and when earned, shall all take place upon a flat basis. Any matured and unpaid income coupons must be attached. Income bonds which have been called for redemption, should continue to be traded on a flat basis even after the call date has been published.

608. When transactions occur in bonds which have been subject to reorganization or capital adjustment with the result that holders have received as a bonus or otherwise, certain stock or script, then such transactions shall be ex stock or script, unless otherwise stated at the time the trade is made. Such bonds shall be traded flat until such time as all arrears have been paid and one current coupon has been paid when due, except where the National Executive Committee shall determine otherwise.

609. No security, with the exception of a new issue at take down date, shall be registered in the name of the customer or his nominee prior to the receipt of payment.

The absorption by a Member of bank or other charges incurred by a customer or his nominee for the registration of a security will be considered an infraction of this Regulation. A Member may absorb transfer fees incurred in the transfer of a security after payment according to a customer's instructions.

610. Members will not deal, either directly or indirectly, with or for the personal account of any employee of other Members without the written consent of a director or partner of the employee's firm. This Regulation shall not apply to the personal transactions of directors and/or partners of Members.

611. Dealers, for the purpose of communication between themselves, will be responsible for the payment of their own telephone charges and send only prepaid telegrams.

612. Should any dealer be in doubt as to whether a specific type of transaction is forbidden under this Part, it is recommended that he secure a ruling on a similar hypothetical case from the Chairman of his District.

613. The purpose of these Regulations is to spell out as far as practical what can be done under these Regulations without breaking the letter or the spirit of them. It is common knowledge that there are innumerable ways of circumventing the purposes of the Regulations, but any such method so adopted can only be considered a direct contravention of the letter and spirit of these Regulations and contrary to fair business practice.

TRADING

(Whether as Principal or Agent)

700. All transactions shall be on an "accrued interest" basis.

701. There are no spread restrictions regarding trading of Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term of one year or less to maturity, (or to the earliest call date where a transaction is completed at a premium).

702. All Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term of over one year but three years or less to maturity (or to the earliest call date where a transaction is completed at a premium) shall be traded in multiples of five cents.

703. All Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years shall be traded in multiples of one-eighth. (When a bond is traded at a premium the earliest call date shall be treated as the maturity date.)

704. (a) Unless prefixed by some qualifying phrase, a dealer calling a market shall be obliged to trade Trading Units (as hereinafter defined), if called upon to trade;

(b) Any dealer asking the size of a stated market must be prepared to buy or sell at least a Trading Unit (as hereinafter defined) at the price quoted if immediately requested to do so by the Member calling the market;

(c) Trading Units shall consist of the following:

(i) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of less than one year to maturity (or to the earliest call date, where the transaction is completed at a premium); $250,000 par value.

(ii) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of one year or longer but three years or less to maturity (or to the earliest call date, where the transaction is completed at a premium); $100,000 par value.

(iii) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term to maturity of longer than three years (where the bond is traded at a premium, the earliest call date shall be treated as the maturity date); $25,000 par value.

(iv) In the case of bonds, debentures and other obligations of or guaranteed by a Province in Canada; $10,000 par value.

(v) In the case of all other bonds and debentures other than Government of Canada direct obligations and Government of Canada Guaranteed obligations and bonds, debentures and other obligations of or guaranteed by a Province in Canada; $5,000 par value.

(vi) In the case of bonds or debentures issued with attached stock warrants, rights or other appendages and traded in unit form; $5,000 par value of bonds or debentures, irrespective of the value of the appendages.

(vii) In the case of common and preferred shares not listed on a recognized stock exchange:

—in lots of 500 shares, if market price is below $1

—in lots of 100 shares, if market price is at $1 and below $100

—in lots of 50 shares, if market price is at $100 or above.

For the purpose of this Regulation, a recognized stock exchange means the American Stock Exchange, the Calgary Stock Exchange, the Canadian Stock Exchange, the Montreal Stock Exchange, the New York Stock Exchange, the Toronto Stock Exchange, the Vancouver Stock Exchange and the Winnipeg Stock Exchange.

705. Any amount less than one Trading Unit shall be considered as an odd lot and any dealer who has been requested to call a market has the option to trade an odd lot at the called market (if so requested) or to adjust his market to compensate for the smaller amount involved.

706. Regulations 704 and 705 shall not apply to dealings in the Pacific, Alberta, Mid-Western or Atlantic Districts or to dealings between the said Districts. They shall apply to all dealings in the Ontario and Quebec Districts and to all dealings between the Ontario and/or Quebec Districts and any other District or Districts.

707. Unless otherwise stated at the time of the transaction, all trades are to be considered for regular delivery.

708. When a deal involves the sale of more than one maturity or the purchase of more than one maturity, the deal covering each maturity shall be treated as a separate transaction. No contingent (all or none) dealings are permitted.

709. In trading securities which are dealt in both as actual bonds, debentures, or other forms of securities and as certificates of deposit, and in the absence of an existing ruling making them interchangeable for delivery, delivery shall be made in the form of actual securities unless it is stipulated at the time of the transaction that they are (a) certificates of deposit, or (b) unspecified; in the latter case, either actual securities or certificates of deposit or mixed, shall be good delivery.

DELIVERY

800. All transactions are to be consummated upon the following regular delivery terms unless at the time each individual transaction takes place alternative terms are agreed upon and confirmed in writing:

(a) In the case of Government of Canada Treasury Bills regular delivery shall be for the next clearing day after the transaction takes place.

(b) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds (except Treasury Bills) having an unexpired term of three years or less to maturity (or to the earliest call date where a transaction is completed at a premium) regular delivery shall involve the stopping of accrued interest on the second clearing day after the transaction takes place.

(c) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years (where such a bond is traded at a premium the earliest call date shall be treated as the maturity date) and all provincial, municipal, corporation and other bonds or debentures, stock, or other certificates of indebtedness regular delivery shall involve the stopping of accrued interest, where applicable, on the third clearing day after the transaction takes place.

(d) Nothing herein contained shall in any way interfere with the common practice of dealing in new issues during the period of original distribution on an "accrued interest to delivery" basis with the exception that regular delivery Regulations will come into effect the appropriate number of clearing days prior to the new issue securities being first available for physical delivery.

Where a new issue delivery is made against payment outside of the points fixed for delivery of the issue, additional accrued interest shall be charged from the delivery date at the delivery point(s) of the new issue, according to the time normally required for delivery to the locality in which the delivery is made. The amount of additional accrued interest to be charged when the nearest delivery point is Toronto or Montreal is as follows:

(i) For deliveries in the Provinces of Ontario and Quebec, in Metropolitan Winnipeg, in Regina, Saskatoon, Edmonton, Calgary, Fredericton, Saint John and Halifax; additional accrued interest for one day.

(ii) For deliveries in Vancouver; additional accrued interest for two days.

(iii) For deliveries in the Provinces of Manitoba (except Metropolitan Winnipeg), Saskatchewan (except Regina and Saskatoon), Alberta (except Edmonton and Calgary), New Brunswick (except Fredericton and Saint John), Nova Scotia (except Halifax), Prince Edward Island and Newfoundland; additional accrued interest for the actual number of days taken for delivery of the bonds to the buyer, but in no event less than two days' additional accrued interest.

(iv) For deliveries in the Province of British Columbia (except Vancouver); additional accrued interest for the actual number of days taken for delivery of the bonds to the buyer, but in no event less than three days' additional accrued interest.

(e) Sellers and buyers are both obligated to mail or deliver contracts of confirmation to a transaction each to the other the same day or within a maximum of one working day after a transaction is made;

(f) Any agreement between dealers to the effect that all future business is to be consummated on terms other than regular delivery shall be considered as an infraction of both the spirit and the letter of these Regulations.

801. All transactions between dealers doing business in different municipalities to be completed on buyers' terms, i.e. delivery to be made free of banking and/or shipping charges to the buyer. Where drafts are drawn to arrive at their destination on other than a clearing day, the seller to have charges paid up to the next clearing day after the expected arrival of such draft. Under no circumstances will drafts be drawn to arrive at their destination, or payment demanded prior to the appropriate clearing day after a transaction takes place.

802. In the case of dealings between dealers in the same municipality, the seller's intention to deliver on a clearing day must be made known to the buyer by telephone prior to 11.30 a.m. and physical delivery must be completed before 3.30 p.m. that day.

Amended 23/9/68

803. For the purpose of this Regulation, good delivery between dealers shall consist of the following, providing it is acceptable to the Transfer Agent.

BONDS/DEBENTURES

With the exception of the initial drawdown of new issues, good delivery shall consist of bearer bonds only, unless the security dealt in is issued solely in registered form.

Interim certificates shall be considered good delivery as long as definitive certificates are not available. Once definitives are available, interims shall not be considered good delivery, unless by mutual agreement.

The following denominations constitute good delivery:

GOVERNMENT OF CANADA BONDS GOVERNMENT OF CANADA GUARANTEED BONDS	) $1,000 or $5,000 or multiples thereof
ALL OTHER BONDS AND DEBENTURES:	$1,000 and $500 (or larger pieces where mutually agreeable) provided no more than 10% of the delivery consists of $500 pieces.

Denominations other than those specified above constitute good delivery only if acceptable to the buyer.

Bonds and/or Debentures that are dealt with only in registered form shall be good delivery if:

1. Registered in the name of an individual, duly endorsed and with endorsement guaranteed by a member in good standing of the Association or a recognized stock exchange, or by a chartered bank or * qualified Canadian trust company.
2. Registered in the name of a Member of the Association or nominee of a Member of the Association and duly endorsed.
3. Registered in the name of a member of a recognized stock exchange and duly endorsed.
4. Registered in the name of a chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified Canadian trust company and duly endorsed.
5. In denominations as indicated above duly endorsed or with completed Power of Attorney to transfer attached. (One power of attorney for each certificate in question or an amalgamated power of attorney if acceptable to receiving broker or dealer.)

In all cases, endorsement guarantees acceptable to the relative Registrars and Transfer Agents must be procured by the seller and accompany delivery.

STOCKS

1. Certificates registered in the name of:

   (a) an individual, endorsed by the registered holder in exactly the same manner as registered and the endorsement guaranteed by a member in good standing of the Association or of a recognized stock exchange or by a chartered bank or qualified Canadian trust company.

   Where the endorsement does not exactly correspond to the registration shown on the face of the certificate, a certification by a member in good standing of the Association or of a recognized stock exchange that the two signatures are those of one and the same person or by a chartered bank or qualified Canadian trust company.

   a member in good standing of the Association or of a recognized stock exchange or a nominee of such member and duly endorsed.

   (c) a chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified Canadian trust company and duly endorsed.

   (d) any other manner providing it is properly endorsed and the endorsement is guaranteed by a member in good standing of the Association or of a recognized stock exchange or by a chartered bank or qualified Canadian trust company,
   and

2. Certificates in board lot denominations (or less) as required by the exchange on which the stock is traded. Unlisted stocks should also be in denominations similar to listed stocks in the same category and price range.

BOND, DEBENTURE AND STOCK CERTIFICATES NOT GOOD DELIVERY

(a) A mutilated or torn certificate or coupon unless acceptable to receiving broker or dealer.

(b) A certificate registered in the name of a firm or corporation that has made an assignment for the benefit of creditors or has been declared bankrupt.

(c) A certificate signed by a Trustee or Administrator and accompanied by sufficient evidence of authority to sign.

(d) A certificate with documents attached other than a registered bond of an issue available in registered form only, with completed Power of Attorney to transfer attached, (one Power of Attorney for each certificate or an amalgamated power of attorney if acceptable to receiving broker or dealer.)

(e) A certificate which has been altered or erased (other than by the Transfer Agent) whether or not such alteration or erasure has been guaranteed.

(f) A certificate on which the assignment and/or substitute attorney has been altered or erased.

(g) A certificate with the next maturing coupon or subsequent coupons detached unless where so traded or where a certified cheque (if for $1,000 or more) payable to the receiving dealer, dated no later than the date of delivery and for the amount of the coupon(s) missing, attached to the certificate in question.

(h) A bond or debenture, registered as to principal only, which after being transferred to Bearer, does not bear the stamp and signature of the Trustee.

(i) A registered bond, debenture or stock unless it bears a certificate that provincial tax has been paid where applicable.

(j) A certificate that has a stop transfer placed against it, the stop having been placed prior to delivery being made to the receiving dealer or broker.

*A qualified Canadian trust company is a trust company licensed to do business in Canada with a minimum paid up capital and surplus of $5,000,000.

804. Where dealings take place in bonds and/or debentures, available only in registered form:

(a) Dealings made from two days prior to a regular interest payment up to three days prior to the closing of the transfer books for the next interest payment, both days inclusive, shall be on an "and interest" basis. Unless delivery is completed to the buyer by twelve o'clock noon at a transfer point on the date of the closing of the transfer books for a regular interest payment, then the full amount of such interest payment shall be deducted by the seller after the calculation of interest on the regular delivery basis;

(b) Dealings made from two days prior to the closing of the transfer books up to and including three days prior to a regular interest payment shall be less interest from settlement date to the regular interest payment date.

805. Bonds and/or debentures that are dealt in only in registered form shall be good delivery if:

(a) Registered in the name of a Member.

(b) Registered in the name of a member of a recognized Canadian stock exchange.

(c) Registered in the name of the dealer or nominee of the bank with whom the transaction has been consummated.

In all cases, endorsement guarantees acceptable to the relative registrars and transfer agents must be procured by the seller and accompany delivery.

806. Where dealings take place in unlisted registered shares, the shares shall be traded, ex dividend, ex rights, or ex payments two full business days prior to the record date. Where dealings take place in such registered shares, which are not ex dividend, ex rights, or ex payments at the time the transaction occurs, the seller shall be responsible to the buyer for the payment of such dividends or payments, and delivery of such rights, as may be involved, on their due dates, if delivery is not completed prior to twelve o'clock noon at a transfer point on the date of the closing of the transfer books. Should the record date fall on a Saturday or other non-business day, for the purposes of this Regulation it shall be presumed to be effective the business day previous.

807. Where interest on a transaction involves an amount greater than that represented by the half-yearly coupon, interest is to be calculated on the basis of the full amount of the coupon less one or two days, as the case may be.

808. Sales or purchases of securities prior to notice of call in part but not in full and undelivered on date of such notice, shall be completed on the basis of the original transaction. (Date of notice means the date of the notice of call irrespective of the date of publication of such notice.) Called securities do not constitute good delivery unless the transaction is so designated at its inception.

809. Sales or purchases of securities prior to notice of call in full and undelivered at time of such notice shall be completed on the terms of the original transaction.

810. The seller shall, at all times, be required to pay, or certify that payment has been made of, all taxes relative to the transaction, sufficient to enable the buyer to have the securities transferred to his nominee without tax cost to him. This rule shall not apply as to provincial transfer taxes if the buyer, by choice, transfers the securities to a register outside his own Province, if there is a register within his Province.

BUY-INS

900. For the purpose of these Regulations:

(a) "Chairman" shall refer to the Chairman of the District in which the buyer's office is located.

(b) A "regular delivery transaction" shall be deemed to have taken place once the dealers involved have agreed on a price.

901. In the case of dealings between dealers in the same municipality should delivery not be advised by 11:30 a.m. on the sixth clearing day after a regular delivery transaction takes place, the buyer may at his option, give written notice to the seller and to the Chairman, on that day, or any subsequent clearing day, prior to 3:30 p.m., of his intention to buy in for cash on the second clearing day after the original notice. Such notice shall automatically renew itself from clearing day to clearing day from 11:30 a.m. until closing until the transaction is finally completed. If the buy-in is not executed on the second clearing day after the original notice, then the seller shall have the privilege of advising the buyer each subsequent day before 11:30 a.m. of his ability, and intention, to make either whole or partial delivery on that day.

902. Where transactions occur between dealers located in different municipalities, should physical delivery not have been received by the buyer at the expiration of six clearing days after the transaction takes place, on or after the sixth clearing day, the buyer may serve the seller with a buy-in by forwarding notice thereof over a public telegraph wire system, such notice to be timed at the sender's point not later than noon to be effective the third clearing day following and also advise the Chairman. If prior to 5 p.m., buyer's time the day following the wired notice, the seller has not advised the buyer by public telegraph wire that the securities covered by the buy-in have passed through his clearing and are in transit to the buyer, then the buyer may on the third clearing day following the wired notice, proceed to execute such buy-in. While such wired buy-ins shall automatically renew themselves from clearing day to clearing day, except with the consent of the buyer, the seller shall forfeit all right to complete delivery of other than such portion of the transaction which is in transit by the day following the receipt of a wired buy-in.

903. Any dealer who is bought in may demand evidence that a bona fide transaction has taken place involving physical delivery, and he shall have the right to deliver such part of his commitment as he is in a position to consummate to the nearest $1,000 par value, or stock Trading Unit as defined in Regulation 704, coincidental with the execution of the buy-in and as provided for in the preceding paragraphs.

The Chairman or his nominee shall have the authority to postpone the execution of a buy-in from day to day, and to combine buy-ins in the same security and to decide any dispute arising from the execution of the buy-in and his decision shall be final and binding.

904. When a buy-in has been completed the buyer shall submit to the seller a statement of account showing as credits the amount originally contracted for as payment for the securities, and as debits, the amount paid on buy-in, the cost of the buyer's wire and telephone charges relative to the buy-in and any bank or shipping charges incurred. Any credit balance remaining shall be paid to the seller by the buyer, and the seller shall be responsible for payment to the buyer of any remaining debit.

SERVICE CHARGE ON RIGHTS

1000. Whenever a Member renders services to a client in connection with the exercise of rights to subscribe for shares, there shall be charged by the Member and paid by the client, to cover the Member's estimated expenses, an amount equal to one-half the commission that would have been payable if the shares subscribed for had been bought on a recognized stock exchange at the subscription price; provided that such amount shall be reduced by any sum payable by the issuing company to the Member for obtaining the subscription. The Member in his discretion may waive the payment of a service charge by the client if the charge is less than $5.00.

1001. No part of any amount so paid to the Member by a client or by the issuing company shall be paid by the Member to any other person, firm or corporation resident in Canada other than to salesmen or customers' men in the employ of the Member.

Passed 23/9/68

1100 – CASH ACCOUNTS

Effective 1/12/68

1. Settlement of an individual transaction in a cash account shall be made by a customer by payment or delivery on the settlement date as provided in Regulation 800 unless otherwise provided for as specified in Sections 2, 3 and 4 of this Regulation.

2. Settlement shall be considered provided for where the customer is a Member of the Investment Dealers' Association of Canada or a member of a recognized Stock Exchange as defined.

3. Where delivery cannot be made to the customer on settlement date, settlement shall be considered provided for if:

(i) the customer is a financial institution as defined and has provided the Member with instructions for delivery;

(ii) the customer has provided the Member, on or before settlement date, with instructions for delivery or receipt against payment to a Bank, Trust Company or other financial institution;

(iii) the customer has provided the Member, on or before settlement date, with instructions for delivery or receipt against payment to a Member of the Investment Dealers' Association of Canada or of a recognized Stock Exchange. Written commitment to accept the instructions must be obtained from such Member, who before giving the commitment shall hold, and shall maintain, sufficient funds to margin or pay for securities to be delivered to him, or the securities required for him to make the delivery;

(iv) the customer has arranged with the Member, on or before settlement date, for payment in full, immediately upon receipt of the securities, in the office of the Member where settlement is to be made.

4. (i) Purchase transactions may be settled by offsetting sales of other securities, where such sales are made on or before settlement date;

(ii) No customer shall be permitted to make a practice of settling a cash account by the sale or repurchase of the same securities, made either before or after settlement date or by sales of other securities made subsequent to settlement date.

(iii) Without affecting the generality of subsection (ii) of this Section the following may be considered acceptable settlement;

(a) an isolated offsetting sale of the same or other securities if made prior to the date on which the security purchased first becomes available for delivery
or
(b) an isolated repurchase of the same security, if made on or before settlement date.

5. Cash account transactions shall be closed out by the sale or purchase of the related securities, whichever action is appropriate unless required margin is provided in full, or an extension of time for settlement has been granted as specified in subsection (iii) of this Section,

(i) where settlement, or provision for settlement as specified in this Regulation has not been made within 10 calendar days of the settlement date. (For the purpose of this subsection only, instructions or arrangements as specified in subsections (ii), (iii) and (iv) of Section 3, given or made after settlement date may be deemed provision for settlement), or

(ii) where provision for settlement has been made as specified in Section 3 and payment against delivery has been refused or delayed more than 3 business days after notice has been given that the security is available for delivery.

(iii) Times specified for settlement in subsections (i) and (ii) may be extended provided that:

(a) extension shall only be granted for valid cause, and customers shall not be permitted to make a practice of obtaining extensions;

(b) the granting of extensions shall be under the direct supervision of a partner or director who shall authorize all extensions in writing. Such authority may be delegated to other individuals approved by the Association, but responsibility shall reside with the partner or director;

(c) authorization for extensions shall be given on or before the date of expiry of the time limits specified, and shall be reviewed weekly; and

(d) a record shall be kept of all extensions granted, and the reasons therefor, which shall be kept available for the Association Examiner.

6. Where a cash account transaction has been:

(i) required to be sold out or bought in as specified in Section 5;

(ii) converted to a margin account in lieu of full settlement, on any date subsequent to settlement date;

(iii) covered by sales or repurchases other than as specified in Section 4;

(iv) settled by delivery or receipt against payment as specified in subsections (ii), (iii) and (iv) of Section 3, but the instructions from the customers have not regularly been provided to the Member on or before settlement date –

then, until any outstanding debit balances have been paid, or margin requirements met, and for a period of 90 days thereafter, any subsequent transactions shall be made subject to advance payment in full, receipt of securities to be sold, or provision of appropriate margin.

7. If settlement is not made as specified in Sections 1, 2 and 3 above, and an extension is granted in accordance with Section 5 (iii), interest must be charged from the settlement date or the date when delivery could first be made, whichever is the later, to date of payment, provided that when the interest would amount to less than $3.00, it may be waived at the discretion of the Member.

Such interest must be charged at a rate determined from time to time by the National Executive Committee.

CALCULATING PRICE ON A YIELD BASIS

1200. Except as herein provided, where a transaction results from the submission of a bid or offer on a yield basis without stipulation as to price or method of calculating the unexpired term by the buyer or seller at the time the bid or offer is submitted, the price shall be determined as follows:

(a) Bonds Having Unexpired Term up to and Including 10 Years

The unexpired term shall be deemed to be the exact period expressed in years and/or years and months and/or in years, months and days from the

regular delivery date to the maturity of a non-callable bond or a callable bond selling at a price lower than the call price, and to the first redemption date of a callable bond selling at the call price or at a premium over the call price. In calculating the price for the term so determined, one day shall be deemed to be 1/30th of one month.

(b) BONDS HAVING UNEXPIRED TERM OVER 10 YEARS

The unexpired term shall be deemed to be the period expressed in years and/or years and months from the month in which the regular delivery date occurs to the month and year of the maturity of a non-callable bond or a callable bond selling at a price lower than the call price, and to the first month and year that the bond is redeemable in the case of a callable bond selling at the call price or at a premium over the call price.

(c) PRICES

In all transactions between dealers and investors determined in accordance with the foregoing, the prices shall be extended to two decimal places only. If the third figure after the decimal point is 5 or more the second figure after the decimal point shall be increased by one.

(d) NEW ISSUES

This Regulation shall apply to dealing in new issues and the unexpired term shall be deemed to commence on the date to which accrued interest is charged to the investor.

1201. Regulation 1200 shall not apply to transactions in the following securities, all dealings in which shall be subject to negotiation of the dollar price:

(i) Government of Canada Bonds and Bonds guaranteed by Canada;

(ii) Short-term securities as noted hereunder:

(a) Securities which have an unexpired term of six months or less to maturity;

(b) Securities which have an unexpired term of six months or less to the call date and are selling at the call price or at a premium over the call price;

(c) Securities which have been called for redemption;

(iii) Securities callable on future dates at varying prices;

(iv) Securities callable at the option of the obligant where the call date is not stipulated and the securities are selling at a premium over the call price.

BOND QUOTATIONS

1300. Bond quotations being furnished to the press by any Member must be under the name of the Association.

UNDERWRITING BY MEMBERS' SALESMEN OR OTHER EMPLOYEES

1400. No salesman or other employee of a Member shall participate either directly or indirectly as an underwriter in an underwriting or as an optionee in an option on shares of any company incorporated or operating in Canada whether such shares are treasury shares or otherwise or acquire directly or indirectly a share interest by reason of being a vendor of properties or other assets sold, or to be sold to any company incorporated or operating in Canada, provided that nothing in this Regulation 1400 shall apply to options on shares of a company, the number of shareholders of which is limited by its charter or other constating document or by the statute under which it is incorporated to not more than fifty (not including employees of such company). This Regulation shall not apply to directors or partners of any Member.

HANDLING OF CLIENTS' FREE CREDIT BALANCES

1401. In Regulation 1402, "free credit balances" has the meaning specified in Regulation 100.

1402. After March 31, 1967 each Member which does not keep its clients' free credit balances in a bank account segregated from the other moneys from time to time received by such Member shall legibly make a notation on all statements of account sent to its clients in substantially the following form:

> Any free credit balances represent funds payable on demand which, although properly recorded in our books, are not segregated and may be used in the conduct of our business.

REGULATIONS

of

The District Executive Committees

November, 1968

434/68

MEMBERS WITH HEAD OFFICES IN THE ALBERTA DISTRICT

1500. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member having its principal or head office within the Alberta District shall also file in each year with the District Association Auditors of the Alberta District additional financial statements prepared as of a date six months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member may not change to another date without the written permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE ALBERTA DISTRICT

1501. A Member having its principal or head office outside the Alberta District but having a branch office or offices within the Alberta District shall file annually with the District Association Auditors of the Alberta District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES OUTSIDE THE ATLANTIC DISTRICT

1600. A Member having its principal or head office outside the Atlantic District but having a branch office or offices within the Atlantic District shall file annually with the District Association Auditors of the Atlantic District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES OUTSIDE THE MID-WESTERN DISTRICT

1700. A Member having its principal or head office outside the Mid-Western District but having a branch office or offices within the Mid-Western District shall file annually with the District Association Auditors of the Mid-Western District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES IN THE ONTARIO DISTRICT

1800. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member having its principal or head office within the Ontario District shall also file in each year with the District Association Auditors of the Ontario District additional financial statements prepared as of a date not earlier than five months and not later than eight months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member shall notify the said District Association Auditors the date the Member wishes to use for these additional financial statements and may not change to another date without the permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE ONTARIO DISTRICT

1801. A Member having its principal or head office outside the Ontario District but having a branch office or offices within the Ontario District shall file annually with the District Association Auditors of the Ontario District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES OUTSIDE THE QUEBEC DISTRICT

1900. A Member having its principal or head office outside the Quebec District but having a branch office or offices within the Quebec District shall file annually with the District Association Auditors of the Quebec District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-Law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES IN THE PACIFIC DISTRICT

2000. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member havings its principal or head office within the Pacific District shall also file in each year with the District Association Auditors of the Pacific District additional financial statements prepared as of a date not earlier than five months and not later than eight months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member shall notify the said District Association Auditors the date the Member wishes to use for these additional financial statements and may not change to another date without the permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE PACIFIC DISTRICT

2001. A Member having its principal or head office outside the Pacific District but having a branch office or offices within the Pacific District shall file annually with the District Association Auditors of the Pacific District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.