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HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: HUGHES CLEAVER, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

BILL 334

An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada

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TUESDAY, APRIL 21, 1953
WEDNESDAY, APRIL 22, 1953
THURSDAY, APRIL 23, 1953

WITNESSES:

Mr. K. W. Taylor, Deputy Minister; Mr. G. L. Gullock, Chief of Superannuation Branch; Mr. D. H. W. Henry, Solicitor to the Treasury Board, and Mr. H. D. Clark, an officer of the Department, all of the Department of Finance; Mr. F. W. Whitehouse, President, The Civil Service Federation of Canada; Dr. H. A. Senn, President, The Professional Institute of the Public Service of Canada; Mr. J. C. Osborne, Barrister, representing certain employees of the Department of Mines and Technical Surveys; Mr. P. E. Palmer, Chief Topographical Engineer, Department of Mines and Technical Surveys; Mr. T. D. Anderson, General Secretary of The Canadian Legion, B.E.S.L.; Mr. W. H. Hewitt-White, Secretary, and Mr. A. B. Hamilton, President, both of the Department of Veterans Affairs Employees' National Association; Mr. V. Johnston, President, of the Civil Service Association of Ottawa; Brigadier J. L. Melville, Chairman, of the Canadian Pension Commission, and Mr. S. H. Radford, formerly on the staff of the Soldier Settlement Board.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Hughes Cleaver, Esq.

Vice-Chairman: C. A. D. Cannon, Esq.

and Messrs.

Adamson
Argue
Arsenault
Ashbourne
Balcom
Bennett
Blackmore
Brooks
Cameron
Cannon
Carroll
Cleaver
Crestohl
Dumas
Fleming
Fraser
Fulford
Fulton
Gibson
Gingras
Gour *(Russell)*
Harkness
Hees
Hellyer
Helme
Henry
Hunter
Jeffery
Laing
Leduc
Lesage
Low
Macdonnell *(Greenwood)*
Macnaughton
Maltais
McCusker
McIlraith
Nickle
Nowlan
Picard
Quelch
Richard *(Ottawa East)*
Riley
Smith *(Moose Mountain)*
Stewart *(Winnipeg North)*
Thatcher
Viau
Ward
Welbourn
White *(Hastings-Peterborough)*

R. J. GRATRIX,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

MONDAY, January 12, 1953.

Resolved,—That the following Members do compose the Standing Committee on Banking and Commerce:—

Messrs.

Adamson,
Argue,
Arsenault,
Ashbourne,
Balcom,
Bennett,
Blackmore,
Brooks,
Cameron,
Cannon,
Carroll,
Cleaver,
Crestohl,
Dumas,
Fleming,
Fournier (*Maisonneuve-Rosemont*),
Fraser,
Fulford,
Fulton,
Gibson,
Gingras,
Gour (*Russell*),
Harkness,
Hees,
Hellyer,
Helme,
Henry,
Hunter,
Jeffery,
Laing,
Leduc,
Low,
Macdonnell (*Greenwood*),
Macnaughton,
Maltais,
McCusker,
Nickle,
Nowlan,
Picard,
Quelch,
Richard (*Ottawa East*),
Riley,
Smith (*Moose Mountain*),
Smith (*York North*),
Stewart (*Winnipeg North*),
Thatcher,
Viau,
Ward,
Welbourn,
White (*Hastings-Peterborough*)—50.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon; with power to send for persons, papers and records.

Attest.

THURSDAY, January 22, 1953.

Ordered,—That the quorum of the said Committee be reduced from 15 to 10 Members, and that Standing Order 63 (1) (*d*) be suspended in relation thereto.

Ordered,—That the said Committee be granted permission to sit while the House is sitting.

Ordered,—That the said Committee be empowered to print from day to day such papers and evidence as may be ordered by the Committee, and that Standing Order 64 be suspended in relation thereto.

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WEDNESDAY, April 15, 1953.

Ordered,—That the name of Mr. Lesage be substituted for that of Mr. Fournier (*Maisonneuve-Rosemont*) on the said Committee.

THURSDAY, April 16, 1953.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

TUESDAY, April 21, 1953.

Ordered,—That the name of Mr. McIlraith be substituted for that of Mr. Smith (*York North*) on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORTS TO THE HOUSE

THURSDAY, January 22, 1953.

The Standing Committee on Banking and Commerce begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That the quorum be reduced from 15 members to 10, and that Standing Order 63 (1) (*d*) be suspended in relation thereto.

2. That permission be granted to sit while the House is sitting.

3. That it be empowered to print from day to day such papers and evidence as may be ordered by the Committee, and that Standing Order 64 be suspended in relation thereto.

All of which is respectfully submitted.

H. CLEAVER,
Chairman.

(Note: The 2nd, 3rd, 4th and 5th Reports were on Private Bills, in respect of which verbatim evidence was not recorded.)

FRIDAY, April 24, 1953.

The Standing Committee on Banking and Commerce begs leave to present the following as a

SIXTH REPORT

Your Committee has considered Bill No. 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada, and has agreed to report the said Bill with amendments.

With respect to Clauses 2, 7 and 35 of the said Bill, as the amendments proposed thereto would result in an increased charge upon the public, your Committee is of the opinion that it has no option, under the Rules of the House and the terms of its Order of Reference, but to report the said Clauses without amendment. Your Committee would, however, recommend that the Government consider the advisability of amending the said Clauses as follows:

1. Clause 2, paragraph (*p*), by deleting the words and figures "31st day of March, 1947" and substituting therefor the words and figures *"30th Day of September, 1947.*

2. Clause 7 by deleting paragraph (*b*) of subclause (2) and substituting therefor the following:

(*b*) any period of service in the Public Service is a part-time employee unless it is service that may be counted under clause (B) of subparagraph (i) of paragraph (*b*) of subsection (1) of clause 5.

3. Clause 35 by adding thereto the following subclause:

(8) Notwithstanding anything in this section, any person to whom subsection (5) applies may, in accordance with regulations of the Governor in Council,

(*a*) make any election, exercise any option or do any other act contemplated by this act as though that person were still employed in the Public Service, and

(*b*) elect to retain or receive, in lieu of any other benefit payable to or in respect of that person under this Act, any benefit that has been or might have been granted to him under the Superannuation Act upon ceasing to be employed in the Public Service and upon so electing he is entitled to that benefit less any amount thereof that has previously been paid to him.

A copy of the evidence adduced thereon is appended hereto.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, April 21, 1953.

The Standing Committee on Banking and Commerce met at 11.30 o'clock a.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Adamson, Argue, Ashbourne, Balcom, Cameron, Dumas, Fleming, Fraser, Fulford, Gour (*Russell*), Helme, Leduc, Lesage, Low, Macdonnell (*Greenwood*), Macnaughton, McIlraith, Nowlan, Quelch, Richard (*Ottawa East*), Smith (*Moose Mountain*), Viau, Ward, Welbourn.

In attendance: Mr. K. W. Taylor, Deputy Minister; Mr. G. L. Gullock and Mr. A. Gagnon, of the Superannuation Branch; Mr. D. H. W. Henry, Solicitor to the Treasury, and Mr. H. D. Clark, an officer of the Department, all of the Department of Finance; Mr. R. Humphrys, Chief Actuary, Department of Insurance, and Mr. D. S. Thorson, of the Department of Justice.

The Committee commenced consideration of Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

On motion of Mr. McIlraith:

Resolved,—That the Committee print, from day to day, 1,000 copies in English and 500 copies in French of its Minutes of Proceedings and Evidence in respect of Bill 334.

Mr. Taylor was called and read a statement in explanation of the said Bill.

At 12.30 o'clock p.m. the Committee adjourned to meet again at 8.30 o'clock p.m. this day.

EVENING SESSION

The Committee resumed at 8.30 o'clock p.m. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Adamson, Argue, Ashbourne, Balcom, Bennett, Brooks, Crestohl, Dumas, Fraser, Fulford, Gingras, Gour (*Russell*), Leduc, Lesage, Low, Macdonnell (*Greenwood*), McCusker, McIlraith, Quelch, Richard (*Ottawa East*), Stewart (*Winnipeg North*), Welbourn.

In attendance: Same as at the morning session.

The Committee resumed consideration of Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

The Committee completed a detailed study of the statement, in explanation of the said Bill, presented by Mr. Taylor at the morning session. Mr. Taylor, being assisted by Messrs. Clark, Gullock and Humphrys, was examined thereon.

At 9.55 o'clock p.m., the division bells having rung, the Committee adjourned to meet again at 3.30 o'clock p.m., Wednesday, April 22, 1953.

WEDNESDAY, April 22, 1953.

The Standing Committee on Banking and Commerce met at 3.30 o'clock p.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs, Adamson, Argue, Ashbourne, Bennett, Brooks, Cameron, Crestohl, Dumas, Fraser, Fulford, Harkness, Hellyer, Helme, Henry, Leduc, Lesage, McCusker, McIlraith, Quelch, Richard (*Ottawa East*), Ward.

In attendance: Mr. K. W. Taylor, Deputy Minister; Mr. G. L. Gullock and Mr. A. Gagnon, of the Superannuation Branch; Mr. D. H. W. Henry, Solicitor to the Treasury, and Mr. H. D. Clark, an officer of the Department, all of the Department of Finance; Mr. R. Humphrys, Chief Actuary, Department of Insurance; Mr. D. S. Thorson, of the Department of Justice; Mr. F. W. Whitehouse, President, The Civil Service Federation of Canada, and Dr. H. A. Senn, President, The Professional Institute of the Public Service of Canada.

The Committee resumed consideration of Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

Mr. Whitehouse called, made a statement on the said Bill, was questioned thereon and retired.

Dr. Senn called, presented a brief on the said Bill, was questioned thereon and retired.

At 4.20 o'clock p.m. the Committee adjourned to meet again at 8.30 o'clock p.m. this day.

EVENING SESSION

The Committee resumed at 8.30 o'clock p.m. Mr. Cleaver, Chairman, presided.

Members present: Messers. Ashbourne, Bennett, Brooks, Cannon, Dumas, Fleming, Fraser, Fulford, Fulton, Gour (*Russell*), Harkness, Hellyer, Jeffery, Lesage, McIlraith, McCusker, Quelch, Richard (*Ottawa East*).

In attendance: Mr. K. W. Taylor, Deputy Minister; Mr. G. L. Gullock and Mr. A. Gagnon, of the Superannuation Branch; Mr. D. H. W. Henry, Solicitor to the Treasury, and Mr. H. D. Clark, an officer of the Department, all of the Department of Finance; Mr. R. Humphrys, Chief Actuary, Department of Insurance; Mr. D. S. Thorson, of the Department of Justice; Mr. J. C. Osborne, Barrister, representing certain employees of the Department of Mines and Technical Surveys; Mr. P. E. Palmer, Chief Topographical Engineer, Department of Mines and Technical Surveys, Mr. E. S. Martindale, formerly of the Department of Mines and Technical Surveys; Mr. T. O. Anderson, General Secretary of The Canadian Legion, B.E.S.L.; Mr. W. Hewitt-White, Secretary, and Mr. A. B. Hamilton, President, both of the Department of Veterans Affairs Employees' National Association.

The Committee resumed consideration of Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

Mr. Osborne called, presented a brief on the said Bill, was questioned thereon and retired.

During the course of the examination of Mr. Osborne certain documents being referred to, they were ordered to be tabled and printed as an Appendix to this day's minutes of proceedings and evidence. (*See Appendix "A"*).

Mr. Anderson called, presented a Brief on the said Bill, was questioned thereon and retired.

Mr. Hewitt-White called, presented a Brief on the said Bill and was questioned thereon.

At 10.10 o'clock p.m., the examination of Mr. Hewitt-White still continuing, the Committee adjourned to meet again at 11.30 o'clock a.m., Thursday, April 23, 1953.

THURSDAY, April 23, 1953.

The Standing Committee on Banking and Commerce met at 11.30 a.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Argue, Ashbourne, Bennett, Brooks, Cameron, Carroll, Dumas, Fraser, Fulford, Gour (*Russell*), Hellyer, Helme, Henry, Hunter, Jeffery, Leduc, Lesage, Macdonnell (*Greenwood*), McCusker, McIlraith, Quelch, Richard (*Ottawa East*), Riley, Stewart (*Winnipeg North*).

In attendance: Mr. K. W. Taylor, Deputy Minister; Mr. G. L. Gullock and Mr. A. Gagnon, of the Superannuation Branch; Mr. D. H. W. Henry, Solicitor to the Treasury, and Mr. H. D. Clark, an officer of the Department, all of the Department of Finance; Mr. D. S. Thorson, of the Department of Justice; Mr. W. Hewitt-White, Secretary, and Mr. A. B. Hamilton, President, both of the Department of Veterans Affairs Employees' National Association; Mr. Victor Johnston, President, and Mr. W. M. Hall, of the Civil Service Association of Ottawa; Brigadier J. L. Melville, Chairman, of the Canadian Pension Commission; Mr. S. H. Radford; and Mr. A. Jamieson, of the Department of Veterans Affairs, formerly on the Staff of the Soldier Settlement Board.

The Committee resumed consideration of Bill No. 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

The examination of Mr. Hewitt-White was continued, during the course of which Mr. Radford was called, presented a statement, questioned and retired.

Mr. Hewitt-White was retired.

Brigadier Melville called, made a statement on the said Bill, was questioned thereon and retired. (NOTE: The witness filed a photostatic copy of a letter in connection with evidence given, and it is appended hereto as Appendix "B".)

Mr. Hamilton and Mr. Johnston were severally called, presented briefs on the said Bill, questioned thereon and retired.

At 12.55 o'clock p.m. the Committee adjourned to meet again at 3.30 o'clock p.m. this day.

AFTERNOON SESSION

The Committee resumed at 3.30 o'clock. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Brooks, Cameron, Cannon, Dumas, Fraser, Fulford, Gingras, Gour (*Russell*), Harkness, Hellyer, Henry, Jeffery, Leduc, Lesage, Macdonnell (*Greenwood*), Maltais, McCusker, McIlraith, Quelch, Richard (*Ottawa East*), Riley, Welbourn.

In attendance: Deputy Minister and officials of the Department of Finance.

The Committee resumed consideration of Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

Mr. Taylor made a further general statement on the said Bill and was questioned thereon.

The Committee then commenced a clause by clause consideration of the said Bill.

The Chairman informed the Committee that certain amendments were to be brought forward by the Official of the Department of Finance for consideration of the Committee, and that, as several of the amendments involved an increased charge upon the public, the Committee was not competent to make the amendments to the said Bill but would recommend such amendments to the consideration of the Government in its report to the House. Copies of the proposed amendments were distributed.

Clause 1 was considered and adopted.

On clause 2:

Mr. Lesage moved:

That paragraph (*a*) of clause 2 be amended by inserting after the words "veterans' hospital" therein the words *, as defined in the regulations,*.

After discussion, and the question having been put, the said amendment was adopted.

Mr. Lesage then laid before the Committee a proposed amendment, involving an additional charge upon the public, to paragraph (*p*) of clause 2 as follows:

That paragraph (*p*) of clause 2 be amended by deleting the words and figures "31st day of March, 1947" therein and inserting therefor the words and figures *30th day of September, 1947.*

The proposed amendment was considered and approved.

Clause 2, as amended, was considered and adopted.

Clauses 3 to 6 respectively were severally considered and adopted.

On clause 7:

Mr. Lesage laid before the Committee a proposed amendment, involving an additional charge upon the public, to paragraph (*b*) of subclause (2) of clause 7 as follows:

That paragraph (*b*) of subclause (2) of clause 7 be amended by deleting the said paragraph (*b*) and substituting therefor the following:

(*b*) any period of service in the Public Service as a part-time employee unless it is service that may be counted under clause (B) of subparagraph (i) of paragraph (*b*) of subsection (1) of section 5.

The proposed amendment was considered and approved.

Clause 7 was considered and adopted.

Clauses 8 and 9 were severally considered and adopted.

On Clause 10:

Mr. Lesage moved:

That clause 10 be amended by deleting subclause (3) thereof and substituting therefor the following:

(3) Upon the death of a contributor who, at the time of his death, was entitled under subsection (1) to an immediate annuity or a deferred annuity, the widow and children of the contributor are entitled to the following annual allowances, computed on the basis of the product obtained by multiplying the average annual salary of the contributor during the period applicable, as specified in subsection (1) of section 9 or elsewhere herein for the purposes of that subsection, by the number of years of pensionable service to the credit of the contributor at the time when he became so entitled, one one-hundredth of the product so obtained being referred to herein as the "basic allowance":

(*a*) in the case of the widow, an immediate annual allowance equal to the basic allowance; and

(*b*) in the case of each child, until the child reaches eighteen years of age, an immediate annual allowance equal to one-fifth of the basic allowance or, if there is no living widow of the contributor, two-fifths of the basic allowance;

but the total amount of the allowances paid under paragraph (*b*) shall not exceed four-fifths of the basic allowance or, if there is no living widow, eight-fifths of the basic allowance.

After discussion, and the question having been put, the said amendment was agreed to.

Clause 10, as amended, was adopted.

Clauses 11 and 12 were severally considered and adopted.

On clause 13:

Mr. Lesage moved:

That clause 13 be amended by deleting subclause (5) thereof and inserting therefore the following:

(5) Nothing in this section shall prejudice any right that a child of an earlier marriage of the contributor has to an allowance under section 10 or 11.

(6) In this Act, unless the context otherwise requires, "widow" includes "widower", but no person is entitled to an allowance under this Act by virtue of his being the widower of a contributor.

After discussion, and the question having been put, the said amendment was agreed to.

Clause 13, as amended, was considered and adopted.

Clauses 14 to 29 inclusive were severally considered and adopted.

On Clause 30:

Mr. Lesage moved:

That paragraph (*v*) of subclause (1) of clause 30 be amended by inserting after the word "specifying" the words , *notwithstanding subsection (3)*.

After discussion, and the question having been put, the said amendment was agreed to.

Clause 30, as amended, was considered and adopted.

Clauses 31 to 34 inclusive were severally considered and adopted.

On Clause 35:

Mr. Lesage moved:

That subclause (6) of clause 35 be deleted and the following substituted therefor:

(6) Where any benefit has been granted to a person under the *Superannuation Act* as a consequence of the death of any person described in subsection (4) or as a consequence of any person described in subsection (5) having ceased to be employed in the Public Service,

(*a*) if the benefit so granted was an allowance other than an allowance payable in a lump sum, whatever right or claim that person may have in respect thereof upon the coming into force of this Act is terminated, and any payment in respect thereof made to that person under the *Superannuation Act* shall be set off against any amount payable to or in respect of that person under this Act, and

(*b*) if the benefit so granted was a gratuity or an allowance payable in a lump sum, he is entitled to an annuity or annual allowance provided for by this Act only if, within ninety days after the coming into force of this Act, he pays into the Superannuation Account an amount equal to the gratuity or allowance so granted;

except that any such person to whom any annual allowance has been granted under the *Superannuation Act* by reason of the abolition of his office shall be deemed, for the purposes of this section, to have ceased to be employed in the Public Service prior to the 1st day of January, 1953.

After discussion, and the question having been put, the said amendment was agreed to.

Mr. Lesage then laid before the Committee a proposed amendment, involving an additional charge upon the public, to clause 35 as follows:

That clause 35 be further amended by adding thereto the following subclause:

(8) Notwithstanding anything in this section, any person to whom subsection (5) applies may, in accordance with regulations of the Governor in Council,

(*a*) make any election, exercise any option or do any other act contemplated by this Act as though that person were still employed in the Public Service, and

(*b*) elect to retain or receive, in lieu of any other benefit payable to or in respect of that person under this Act, any benefit that has been or might have been granted to him under the *Superannuation Act* upon ceasing to be employed in the Public Service and upon so electing he is entitled to that benefit less any amount thereof that has previously been paid to him.

After discussion the proposed amendment was approved.

Clause 35, as amended, was considered and adopted.

Clauses 36 to 38 inclusive were severally considered and adopted.

On Schedule A:

Mr. Lesage moved;

That Schedule A, Part 1, be amended by inserting therein the words *Atomic Energy Control Board,* and that Schedule A, Part IV, be amended by deleting the words "Atomic Energy Control Board".

After discussion, and the question having been put, the said amendments were agreed to.

Schedule A, as amended, was considered and adopted.

The Title was considered and adopted, and the Chairman ordered to report the Bill to the House with amendments.

At 4.45 o'clock p.m. the Committee commenced consideration of its report to the House, in camera.

At 6.00 o'clock p.m. the Committee adjourned to meet again at 8.30 o'clock p.m. this day.

EVENING SESSION

The Committee resumed, in camera, at 8.30 o'clock p.m. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Brooks, Cannon, Dumas, Fleming, Fraser, Fulford, Harkness, Hellyer, Leduc, Lesage, Macdonnell (*Greenwood*), McIlraith, Quelch, Richard (*Ottawa East*), Riley.

The Chairman submitted a draft report on Bill 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

After an extensive discussion of the draft report it was adopted unanimously.

At 10.00 o'clock p.m. the Committee adjourned to meet again at 11.30 o'clock a.m., Friday, April 24, 1953.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

APRIL 21, 1953

11.30 a.m.

The CHAIRMAN: Gentlemen, we have before us this morning Bill No. 334, An Act to Provide for the Superannuation of Persons Employed in the Public Service of Canada.

I thought it would be helpful to the committee if this meeting were treated as an organization meeting and we would have a general statement from the deputy minister, outlining in broad lines the terms of the Act. We would then adjourn until 3.30 this afternoon and continue in more detail, followed by the hearing of representatives of different societies, many of whom have expressed a wish for a hearing.

Mr. MACDONNELL: Might I raise one point, Mr. Chairman?

Mr. FRASER: What are the names of the societies which you mention?

The CHAIRMAN: The Professional Institute of the Public Service of Canada; The Civil Service Association of Ottawa; The Department of Veterans Affairs Employees National Association; a representative from the Department of Mines and Technical Surveys; the Canadian Legion; and one or two private individuals.

I thought we would have a general discussion after Mr. Taylor has made his presentation, as to whether you wish to hear any private individuals. My own feeling is that we should perhaps be content to hear representations by the organizations with fairly substantial membership.

Mr. MACDONNELL: Could I raise a question about that, Mr. Chairman? My difficulty is caused by the overlapping of committees. It so happens that the Defence Expenditures committee was called for this very moment, and I believe there is to be a meeting of the broadcasting committee this afternoon at 3.30. It so happens that Mr. Fleming and others are concerned in both of those committees. I realize that there are going to be a number of meetings of this committee and that it will be difficult to avoid any overlapping. But could you not do your very best to get hours which will suit everybody? The cure may be worse than the disease, but Mondays, Fridays, and Wednesdays too, are days when there are not so many meetings of committees. Tuesdays and Thursdays are full days.

Mr. RICHARD: I agree with you.

Mr. MACDONNELL: I do not know how far you can go, but today it is hitting a lot of people who want to be present, because this bill deals with a very, very important matter.

The CHAIRMAN: I understand that the Defence Expenditures committee is meeting this morning, and I realize that some members of our committee want to be there and do not want to miss the work which we have to do.

Mr. Taylor has been kind enough to have mimeographed copies made of the presentation which he will make this morning. Those copies will be distributed immediately so that any member who wants to go to the Defence Expenditures committee may go with a free conscience, taking a copy with him.

I had planned that we could perhaps meet at 3.30 this afternoon when the committee would start going into the question in a little more detail, and would also decide what witnesses we are going to hear. That means that we won't get very much work done today. But I thought it would be better not to rush it. Tomorrow, being Wednesday, we cannot meet in the morning, but we could perhaps have a meeting at 3.30 in the afternoon. If the committee approves what I have in mind, I would at 3.30 tomorrow afternoon have representatives from one or two of the largest organizations, who could come and make their representations.

Mr. MACDONNELL: Would it be possible to sound out the committee as to how many would prefer an evening meeting today to an afternoon meeting.

The CHAIRMAN: Yes.

Mr. FLEMING: There is to be a meeting of the broadcasting committee at 3.30 this afternoon. There are some members of this committee who are also members of the broadcasting committee. Having in mind the importance of the work which is before this committee, I think they would be very, very sorry indeed to miss our proceedings.

The CHAIRMAN: May we have a show of hands of those who can definitely meet tonight? I have asked Mr. Taylor and he says that he would meet the request of the committee to attend tonight. All those in favour of meeting tonight instead of this afternoon? That is pretty unanimous. We shall arrange it that way and those who want to leave will have copies to take with them of Mr. Taylor's presentation.

Mr. FULFORD: At what time shall we meet tonight?

The CHAIRMAN: The meeting will be at 8.30 tonight in this room.

Mr. FLEMING: Do you propose this morning to go beyond hearing Mr. Taylor's statement?

The CHAIRMAN: No.

Mr. FLEMING: Thank you very much.

The CHAIRMAN: Now we should have a motion as to printing. This matter is of considerable interest. May I have a motion?

Mr. LOW: What is the usual number?

The CHAIRMAN: 1,000 copies in English and 500 copies in French.

Mr. MCILRAITH: Some of the old records dealing with superannuation matters are out of print because there were not enough of them.

The CHAIRMAN: I am told that the Ottawa Civil Service Association and the Civil Service Federation of Canada have already ordered and are paying for substantial quantities for their members.

Mr. MCILRAITH: That will be in addition?

The CHAIRMAN: In addition, yes.

Mr. MCILRAITH: All right.

The CHAIRMAN: It is moved by Mr. McIlraith that we print 1,000 copies in English and 500 copies in French of our evidence. All those in favour will please signify?

Carried.

We have with us Mr. Taylor, the Deputy Minister of Finance. Will you please carry on now with your presentation, Mr. Taylor, and will you indicate the members of your staff who are here in attendance.

Mr. MACDONNELL: May we ask questions?

The CHAIRMAN: I thought it would be preferable to have the presentation without interruption, and then to follow with questions. The matter is of sufficient importance I intend to call the brief one paragraph at a time.

Mr. McILRAITH: Would the questioning take place this morning?

The CHAIRMAN: No.

Mr. Kenneth W. Taylor, Deputy Minister of Finance, called:

The WITNESS: Mr. Chairman, as you know, this bill covers important questions of policy and many technical points of law and legal drafting. It has grown out of a great deal of administrative experience both of our own plan and other plans. Underlying it are some rather complex actuarial computations and principles. No one person I think would be an expert in all these things, and for that reason I have asked several of our officials to be available to the committee to answer the more technical questions and to provide the more technical information.

First I have asked Mr. Gordon L. Gullock, whom many of you know. Mr. Gullock has administered the present Act for the past thirty years. He planned to retire from the public service on March 31, but very kindly agreed to remain in the service for a few more weeks in order to assist the minister and the committee in dealing with this bill. Mr. Gullock is sitting right behind me.

We also have Mr. Henry, and Mr. Thorson of the Department of Justice. Mr. Henry has had several years experience in providing legal opinions on the present Act, and Mr. Thorson has been intimately associated with him in the drafting of this present bill.

Mr. Hart Clark is also with me. He has been co-ordinating the work of a small committee or group of officials under the minister's direction for nearly three years in the preparation of this bill.

Mr. Humphrys is the actuary for the Department of Insurance. He has been responsible for almost all of the actuarial work underlying this bill.

And finally I have asked Mr. Gagnon to attend. As a result of a civil service competition, Mr. Gagnon is the successor designate to Mr. Gullock, and will be taking over his duties a Chief of the Superannuation Branch when Mr. Gullock retires.

I have had this statement prepared. It summarizes in reasonably non-technical language, the substance of the superannuation plan covered by this bill. Perhaps I might explain that this statement was actually prepared as a first draft of the text of a pamphlet which we propose to print for the information of all public servants in the federal service when this bill becomes law. The members of the committee will, I hope, excuse some of the terms therein which perhaps are more appropriate to such a pamphlet than to a statement to be made to a committee of the House. But that is the origin of this document.

The top page is just an abbreviated table of contents which is provided for ready reference.

The Bill which is now before parliament is designed to "provide for the superannuation of persons employed in the public service of Canada" and sets forth the contributions required of those persons, the types of service, both current and prior, which might be counted for superannuation benefits and the benefits available according to the circumstances which may arise. In the following pages a description is provided of the principal features of the pension plan which will be available to those persons should parliament approve the bill in its present form. Reference to the exact wording of the Act will be necessary for the detailed application and legal interpretation of it when the bill becomes law.

Coverage

Every full-time employee in the Public Service who was engaged in Canada and whose annual rate of salary is $900 or more will become a contributor to the pension fund, known as the Superannuation Account, after not more than one year of substantially continuous employment. As the name implies, the term "Public Service" covers more than the Civil Service proper and includes, for example, positions in or under the Senate, House of Commons, and the Library of Parliament as well as certain other portions of the public service which are listed in a schedule to the Act. On the other hand, where a person, such as a member of the R.C.M.P., is specifically covered by the provisions of some other federal government pension plan and continues in that employment until he retires, he will continue to contribute and have his ultimate benefits determined in accordance with the other plan. Others who previously had the choice of remaining under some existing plan rather than of coming under the Civil Service Superannuation Act and chose to remain there will continue under the other plan. That refers to those pre-1924 plans which some of the older civil servants prefer to remain under rather than to come under the 1924 Act.

Sessional employees will not become contributors but prevailing rate and seasonal employees will do so upon designation by the Governor in Council.

CONTRIBUTIONS AND PENSIONABLE SERVICE

Contributions for Current Service

The contributions for current service will be on the basis of 6% of salary for males and 5% for females. These contributions must be made so long as the contributor is employed but not after he has thirty-five years of pensionable service to his credit. It should be noted that even then the contributor is referred to as a "contributor" although he will no longer be required to contribute for his current service. The upper limit of salaries for both contibution and benefit puposes is $15,000. If their salary is over $15,000, they only pay as if they were getting $15,000.

On and after August 1, 1957, no further contributions will be made by anyone who has attained his sixty-fifth birthday. From then on, too, a person who has contributed to two or more federal government pension schemes, such as the R.C.M.P. one and this one, will stop contributing and adding on years of pensionable service for benefit purposes if the combined periods of pensionable service to his credit exceed thirty-five years.

Pensionable Service

The benefit formulæ which will be described later depend on the number of years of pensionable service to a contributor's credit. This pensionable service is divided into the two categories of non-elective, or service which is automatically credited, and elective, for which an election and contributions have to be made in accordance with certain requirements before it can be included in the pensionable service to a contributor's credit when he ceases to be employed.

A contributor will not, of course, have to elect to contribute for his current service and any prior service to his credit on the transition from the old to the new Acts will be carried forward. Thus all the varieties of pensionable service which contributors to the Superannuation Account under the Civil Service Superannuation Act have acquired from time to time in the past will be automatically picked up. Elections made to pay for prior service under the old Act will be valid under the new one and the contributions will be continued on the same basis as before. The portion of his prior service which would be covered by the transfer of a contributor's credits in the retirement fund also falls in the category of non-elective pensionable service.

Elections will be required principally for prior service in the public service not covered by the transfer of credits from the retirement fund, for periods of leave of absence without pay, for war service in World War I and World War II, and for prior "pensionable employment" with another employer. An election may also be made to count service for which the contributor failed to elect within the normal one year time limit on becoming a contributor to the Superannuation Account provided that a medical examination has been passed within thirty days prior to making this new election.

Contributions for Prior Pensionable Service

Contributions for prior pensionable service will be in line with the new contribution rates for current service except that those already contributing for this prior service, or those whose period of election to contribute for it under the Civil Service Superannuation Act has not expired, will contribute as they would have done under that Act. Thus contributions for service in the public service prior to the time when the employee becomes a contributor to the Superannuation Account will be on the basis of 6 per cent (5 per cent if a female) of the salary at the time it was earned together with simple interest at four per cent from the middle of the fiscal year in which it was earned provided that the election is made within a year of his becoming a contributor. The case of the re-employed contributor is covered later in the part dealing with re-employed persons.

Contributions in respect of war service will depend on whether or not the contributor was employed in the public service on a full-time basis immediately prior to his enlistment. If he was, and was at the same time a "civil servant" prior to World War I, or a contributor to the Superannuation Account prior to World War II and given leave of absence to enlist, the related war service is treated as non-elective service and no contributions are required. If he was so employed prior to his war service but does not satisfy these other conditions, contributions for each year of war service which he elects to count are 6 per cent (5 per cent if a female) of his immediate pre-war rate of salary together with four per cent simple interest from the year of war service involved provided that the election is made within a year of his becoming a contributor.

If the contributor does not satisfy any of these prewar employment requirements then the contributions are 12 per cent (10 per cent if a female) of his earliest postwar rate of salary as an employee in the public service together with interest on the basis described in the preceding sentence if the election is made within the time limit indicated there. War service is not restricted to "overseas" service and contributors under the Civil Service Superannuation Act who could not elect for this service because of that restriction will be able to elect to pay on the salary basis indicated provided that they do so within a year of becoming contributors under the new Act.

The contributions for prior "pensionable employment" with another employer will also be on the 12 per cent (10 per cent) basis with interest as just described. Provision is made for the entry into agreements on a reciprocal basis with provincial and municipal governments as well as with those of other countries, with international organizations, with the Bank of Canada and Crown corporations, under which an employee might have no additional contributions to make to be credited with the pensionable service involved. This would depend on the terms of the various reciprocal agreements.

Where a contributor did not make his election when he had the chance and elects to contribute at a later date the contributions will be 6 per cent (5 per cent if a female) or 12 per cent (10 per cent) as the case may be of the rate of salary at the time the election is made together with interest from the year of the actual service.

Government Contributions

The Canadian government stands behind this superannuation scheme and thereby guarantees its solvency. In addition to allowing interest on a four per cent basis the government matches the payments by contributors for both current and prior pensionable service. In the cases where a Crown corporation is the direct employer, the corporation is called on to pay the matching contributions into the Superannuation Account. The government is also obliged to make special contributions at the time of any general salary increase.

ELECTIONS AND MANNER OF PAYMENT

Elections to contribute for prior service can only be made without a penalty during the first year in which a person is a contributor unless, of course, it is for a new type of prior service which was not previously open to him for election. Whenever it is made, the election may be for the whole or part of a period of prior service. If it is for only a part then that must be the most recent part and the cost will be the cost for the years in question on the appropriate basis.

These retroactive payments may be by a lump sum or by instalments over a period which could be shortened later by increasing the amount of the periodic payment. The instalments are calculated on an interest and mortality basis whereby the amount owing is paid off if death occurs before the instalments are completed, unless, of course, there has been a default in the payment of the instalments. Instalments are not limited to the period of future employment and the later ones could be deducted from the annuity when it becomes payable. Defaulted instalments are subject to recovery provisions.

BENEFITS

General

Benefits of one form or another will be available as a matter of right in respect of retirement because of age, disability, death and other reasons including dismissal because of misconduct. Depending on the circumstances the benefits take the form of annuities, immediate and deferred, as well as lump sum payments. They will be payable to the contributor or his widow and children or ultimately to his estate with the minimum benefit in any case being a return of contributions which is paid without including any interest.

Usually the annuity payments will be made monthly in arears but provision is made for less frequent payments, that is, you could arrange to have it paid quarterly if you have a small pension. Where the monthly payment to a contributor would be less than ten dollars he is given the option of the capitalized value of his own annuity in addition to any other option described in the following paragraphs.

The annual amount of an annuity payable to a contributor in the normal case is 2 per cent of the average salary over that period of ten consecutive years of service in which the contributor's salary was highest multiplied by the number of years of service up to a maximum of thirty-five. This would include salary earned during later years when he has stopped contributing only because he has already contributed for thirty-five years. This amount would be subject to reduction, for example, if contributions were still being made for prior pensionable service.

The formula for an annual allowance payable to the widow differs from that of the husband in that it is based on 1 per cent of the average salary used in his case instead of 2 per cent, but this will be more fully described in the paragraphs dealing with "Benefits to Widows and Children".

Contributors with Less Than Five Years of Pensionable Service

Once the new Act has been operating for a few years the only benefits available to a person with less than five years' service will be a return of his contributions if a contributor ceases to be employed with less than five years of pensionable service to his credit. These five years, however, would include any prior pensionable service for which a contributor had elected to pay, so that a person, for example, with two years of service as an actual contributor and three or more years of elected pensionable service to his credit would not be subject to this restricted form of benefit. In other words, he would have his five years and could get an annuity.

In the meantime, however, annuity benefits on retirement during these first five years of service will be available only to those who will be contributing to the Superannuation Account over the transitional period and so have an expectation of annuity benefits under the Civil Service Superannuation Act. Retirement taking place over the age of sixty or retirement because of disability at any age under these circumstances carries with it the option of an immediate annuity or a lump sum payment equal to one month's pay for each year of pensionable service or a return of contributions. If it is a case of dismissal because of misconduct, a return of contributions only is available but retirement for any other reason before the age of sixty carries with it the entitlement to the option of a deferred annuity commencing at the age of sixty or a return of contributions. The annuities here are determined by taking 2 per cent of the average salary over the full period of service and multiplying that amount by the numbers of years of service.

In the event of the death of a contributor with less than five years of pensionable service to his credit, the normal benefit in the future will be a return of contributions. During the next few years, however, annuity benefits will be available to the widow and children where the husband was contributing over the transitional period. The method of determining the amount of these annuities is described in the paragraphs dealing with "Benefits to Widows and Children".

Contributors with Five or More Years of Pensionable Service

Retirement over the age of sixty for any erason except misconduct carries with it the entitlement to an immediate annuity calculated in the normal way referred to earlier in the general benefit discussion. Where the contributor has only between five and ten years of service to his credit, the salary used in the formula is his average salary for those years.

In the case of retirement before the age of sixty because of disability the contributor has a choice of an immediate annuity calculated in the same way or an amount equal to one month's pay for each year of pensionable service up to ten or a return of contributions.

If, however, his early retirement is for some other reason than disability or misconduct, he can choose between a deferred annuity commencing at age sixty or a return of contributions. If he chooses the former he may, if the Treasury Board agrees, have his annuity begin as early as the age of fifty but on an actuarially reduced basis.

Where a person is dismissed for misconduct his case will go before the Treasury Board which may grant him the whole or a part of any benefit which he might otherwise have received for leaving at the same time. In any case, he will receive at least the return of his contributions without interest. That of course would be subject to the usual practice of recovery of debts which are due to the Crown. If he was dismissed due to embezzlement, you would have the right to recover the amount embezzled, and so on.

If anyone who has chosen a deferred annuity is disabled during the deferred period then his annuity becomes payable immediately. On the other

hand if a disabled person recovers, his annuity is suspended until in the normal course of events it would again become payable or, being re-employed, he becomes entitled to a new annuity based on the combined periods of service.

Benefits to Widows and Children

In the event of the death of a contributor who was entitled to receive annuity benefits or could have received them had he retired, his widow and children are entitled to annual allowances payable immediately.

As already indicated, the formula used in calculating the widow's allowance is the same as that described in the case of the husband except that it is 1 per cent of the average salary used in his annuity formula instead of 2 per cent. This formula is normally used regardless of the fact that the husband may have died while still employed,, during the deferred period after resigning before sixty, or while in receipt of an annuity either in full or on the actuarially reduced basis. A reduction would occur, however, for various reasons, for example, if he had been in default on contributions for service which would be taken into account in applying the benefit formula, or if the widow elected to pay the succession duties attributable to her allowance out of the Superannuation Account, or if the husband had been convicted of an indictable offence committed while he was employed in the Public Service. In addition an actuarial reduction would be made if the widow was younger than the husband by twenty years or more.

Allowances are payable to each child under eighteen years of age up to a total of four children on the basis of one-fifth of the widow's allowance. Where there is no widow surviving, allowances are payable to each orphaned child up to a total of four on the basis of two-fifths of the allowance that would have been payable to the widow. If the husband died within five years of marriage the allowance to the widow and children is subject to reduction "if the Treasury Board is not satisfied that anticipation of impending death was not a consideration affecting the agreement to marry". This reduction factor diminishes with time within that period.

A widow's allowance is suspended on her remarriage but would be resumed on her becoming a widow again so long as she had not in the meantime chosen to take a lump-sum settlement of the difference between her former husband's contribution and the benefits received, as she could have done once all their children were over the age of eighteen.

The general rule is that where marriage takes place after retirement there are no annuity benefits available to the widow on the husband's death. However if the husband in such a case is re-employed after the marriage and becomes a contributor again, his widow would have entitlement in the ordinary way. Similarly, in most cases, children born after the contributor's retirement would not have any entitlement to an annuity. One exception to the latter would arise in the case of a posthumous child of a contributor who died while still employed in the Public Service.

Residual Amounts

In any event, after all other possible benefits have been paid their total does not exceed the contributor's contributions, then the balance is payable to his estate or as authorized by the Treasury Board if the balance is less than $500.

RE-EMPLOYED PERSONS

If a person who is entitled to or has been granted an annuity or annual allowance is re-employed under circumstances such that he does not become a contributor again, he may receive his annuity in full in addition to his new

salary so long as the two together don't exceed his final rate of salary while previously employed. If there is an excess then the annuity is reduced by the amount of the excess.

On the other hand, if the re-employed person again becomes a contributor his annuity or allowance is terminated and a new one based on the combined periods of service will be his when he again retires. If he had previously contributed to the Superannuation Account and received no benefit of any kind that earlier service is reinstated at no cost. If he had received a lump sum benefit for a period of service throughout which he had contributed while previously employed he can count that period by repaying the lump sum together with interest.

SPECIAL CASES

The main body of the Act describes the superannuation provisions for the vast majority of those employed in the public service but a number of cases have special provisions attached because of the circumstances relating to the transfer of the employees concerned into or out of the public service. Several of these special provisions refer to former employees of other governments, such as those of the government of Newfoundland, where the employee's functions were taken over by the federal government from time to time while the Civil Service Superannuation Act was in operation. These cases were covered indirectly earlier when reference was made to the various types of pensionable services which may be carried forward.

Employees formerly subject to R.C.M.P. Act and Defence Services Pension Act

There is also provision for the transfer of superannuation credits when a person who has been subject to the R.C.M.P. Act or the Defence Services Pension Act becomes subject to this new Act. A person who transfers from service where he was subject to one of these other pension plans can transfer his pensionable service credits if they were fully paid for. If he was paying for any service as prior service he would continue to pay for it on the previous basis but if it were completely free he would have to pay for it on a 6% basis.

Where a pension has already been granted under one of these other Acts the pension rights may be retained and the contributor would then earn whatever pension he can on his service under this Act.

Alternatively he can elect to surrender his other pension and then he would get a pension based on the combined periods of service but in doing so he would have to pay for any completely free service under the other plan on a 6% basis. If he was still paying for some prior service those payments would be continued.

Parts II-IV of the Civil Service Superannuation Act

Those persons who were able to qualify under the requirements of Parts II or IV of the Civil Service Superannuation Act as of July 19, 1924, and hereby gained the privilege of having their benefits based on the average salary over their last five years of service are given the option of that or the average salary over the period of ten consecutive years of service in which the salary was highest. They can choose their last five years or their best ten years. The special privileges going back to 1898 of the use of the average salary over the last three years available to the persons to whom Part III applied is also protected in the interest of any benefits which may become payable to their widows.

If anyone in the Parts II and IV groups is re-employed he has the choice on subsequent retirement of one annuity, related to the highest ten-year average salary and the total service, or of two annuities, one on the five year average basis for the old service and one on the highest ten-year average basis for the new service.

MEDICAL EXAMINATION

Although medical examinations would continue to be required under the Civil Service Act as in the past, no medical examination will now be required before a person starts to contribute to the Superannuation Account for current service. With the exception of immediately prior civil service, a medical examination must be taken before a contributor can elect to contribute for prior service unless he has been a contributor under Part I of the Civil Service Superannuation Act or has had five years of substantially continuous service in the public service on the coming into force of the new Act.

If the election is for service for which the contributor had had no opportunity to elect before, he starts to contribute immediately but if he fails to pass the medical examination he acquires no annuity benefits until he has served five years from the time of the medical examination.

If, on the other hand, the proposed election is for service for which he could have elected before but failed to do so, then he cannot elect or contribute until he has passed a medical examination.

RETIREMENT FUND

The retirement fund will be continued for the benefit of those who are contributing to it when the new Act comes into force and do not immediately become contributors to the Superannuation Account as well as for those prevailing rate and seasonal employees with an annual rate of salary of $900 or more who are not designated as contributors to the Superannuation Account. The Governor in Council may, however, exempt persons individually or as a class from these contribution requirements. When a person who has been contributing to this fund becomes a contributor to the Superannuation Account the amount to his credit in the fund, that is, the retirement fund, will be automatically transferred to the account.

Contributions to this fund are at the rate of 5% of salary unless the employee concerned is also insured under the Unemployment Insurance Act in which case contributions are 4%. These contributions earn interest at the rate of four per cent per annum on the total amount to the employee's account on December 31 each year. When a person with a credit in the retirement fund ceases to be employed in the public service or is exempted from contributing to this fund and does not become a contributor to the Superannuation Account, any amount to his credit in the fund is payable to him or to his estate if he has died.

TRANSITIONAL PROVISIONS

The new Act will carry on as rights the benefits which were granted under the Civil Service Superannuation Act. Even though the new Act will not come into force immediately on being given Royal Assent the new benefit provisions will apply to contributors under Part I of the Civil Service Superannuation Act where the event which gave rise to the granting of the benefit

was on or after January 1, 1953. If the event occurred before that day the provisions of the Civil Service Superannuation Act will prevail. Payments will be made in the meantime on the basis of the present Act and any adjustments will be made retroactively in due course. Although abolition of office allowances as such will not be available under the new Act any abolitions that occur prior to the coming into force of the new Act will be open to the granting of an allowance just as has been done in the past under the Civil Service Superannuation Act.

The CHAIRMAN: Thank you, Mr. Taylor. Now I believe that we will save time for these very busy members of the civil service if we now releave them and ask them to return at 8.30 tonight.

I should like a discussion and a decision of the committee as to whom you want to have come and give evidence from these different organizations. Moreover, they should be warned as to when they will be required to attend.

Mr. RICHARD: Do I understand that first we will have Mr. Taylor?

The CHAIRMAN: This evening my plan is to go over the presentation which you have just heard a paragraph at a time.

Mr. RICHARD: It may take a few meetings to do that.

The CHAIRMAN: It will take at least this evening. And I would hope that when the members have an opportunity to read over this very able and intricate presentation, they will be able to answer a lot of the questions themselves. For example, as it was being read, I found myself making notes. I made a note on page 4 of a question which I really wanted to ask. But I found that question was answered on the very next page of the presentation. Therefore I would ask the members to study this very carefully and study the Act and get as many of the answers as they can for themselves in order to save the time of the committee and the time of the officials.

Mr. RICHARD: Then we will go on with Mr. Gullock, I suppose, and the other officials before we hear the organizations?

The CHAIRMAN: What I have in mind is this: And please put me right if I am wrong. I think that Mr. Taylor should be the principal witness. When questions are asked as to which he would like to refer to one or other of his officials, he will refer to them. But as to calling all those other officials individually, I had not planned to do that.

Mr. RICHARD: Very well.

Mr. LESAGE: I would like to refer the members of the committee to the statement which was made by the Hon. Mr. Abbott in the House on April 16. It is to be found at page 3942 of Hansard. I think some supplementary explanations may be found therein, and if Mr. Abbott's statement and Mr. Taylor's presentation are studied together, they may very well answer a lot of our questions.

The CHAIRMAN: Thank you, Mr. Taylor. We are now adjourned until 8.30 tonight.

EVENING SESSION

The CHAIRMAN: Gentlemen we have a quorum.

Referring to page 1 of Mr. Taylor's presentation, coverage, are there any questions on "coverage"? If not, are there any questions on "contributions for current service"—and I think it might me convenient to take contributions for current service and contributions for prior pensionable service together. Are there any questions?

Mr. BALCOM: Being new here I shall ask why it is 6 per cent for male and 5 per cent for female?

Mr. Kenneth W. Taylor, Deputy Minister of Finance, recalled:

The WITNESS: It is because the majority of females will have no dependents who would qualify for dependent benefits. There would be married women whose children could get benefits, but the husband of a married woman civil servant would not qualify for a pension on her death.

The CHAIRMAN: Are there any questions under "pensionable service"?

By Mr. Cameron:

Q. Will this improve the situation of a man who joined the service but gave his wrong age, was granted a pension and it was taken away from him on the grounds had they known his right age he would not have been pensionable at the time he joined the service?—A. There is no change in that. He will still have to produce a birth certificate some time or other.

Q. Does this Act improve the situation of the members of the Department of Soldiers Civil Re-establishment who feel they have been left out of the other Act?—A. I think the minister covered that on the second reading of the bill.

Q. They are in now?—A. The discussion had been whether they should be on a five-year average or a ten-year average. Had they been civil servants within the meaning of the Act prior to July 1924 they would have gone out on a five-year average rather than a ten-year average.

Q. That has been taken care of?—A. No.

Mr. BALCOM: Is this the place to discuss that point?

The WITNESS: Now or later on. It would really come later on. It is at the bottom of page 7.

The CHAIRMAN: I have several requests from associations wanting to speak on that point. Perhaps it might be well for the committee to reserve questions on that point until the delegations are here and then the one session will do it all.

Mr. MCCUSKER: No delegations will be here this evening?

The CHAIRMAN: No.

I thought we would do very well if we finished with the deputy minister this evening.

Are they any further questions on pensionable service?—If not, "government contributions".

Mr. FRASER: On pensionable service, with reference to the simple interest at 4 per cent, in a case where his contribution is for some reason or other returned to him is the interest also returned?

The WITNESS: No. Right through the Act it provides if any contributions are returned they are returned without interest.

Mr. QUELCH: At the top of page 3: "If the contributor does not satisfy any of these pre-war employment requirements then the contributions are 12 per cent". Is that not almost prohibitive?

The CHAIRMAN: I think we should leave that over until we have the delegations here, then we will go into that entire matter at that time.

"Government contributions": Any further questions on government contributions?

"Elections and manner of payment."

The WITNESS: On that point might I say that we have found in going over it very carefully that there is a small error in the drafting. The bill as it is now drawn would deprive a certain part time employees who under the present Act would have the right to elect on the basis of that part time service. The general policy and principle of this new bill is that we are not taking away any

rights of election which presently exist. In due course I am going to propose to the parliamentary assistant that a slight drafting amendment be made to section 7 subsection 2.

The CHAIRMAN: Which subparagraph?

The WITNESS: 7 (2) (b).

The CHAIRMAN: Mr. Lesage moves that 7 (2) (b) which you will find on page 10 of the bill be amended by striking out the paragraph as shown on the bill and substituting in lieu therefor the following:—I will read slowly— "any period of service in the Public service as a part-time employee unless it is service that may be counted under clause (b) of subparagraph (i) if paragraph (b) of subsection (1) of section 5." All those in favour please signify?

Carried.

The WITNESS: The purpose is to preserve the right of election certain civil servants now have under the existing Act.

The CHAIRMAN: Are there any further questions on elections and manner of payment?

What are the consequences, Mr. Taylor, of default in payment of instalments indicated by the election?

The WITNESS: If a person has elected and undertaken to pay on an instalment plan either over his life or ten years or any other period, if he defaults in such payments it would not upset the election. But when he came to draw benefits his pension would be reduced by the amount which he was in arrears.

Mr. MCCUSKER: Once he elects he cannot change?

The WITNESS: He can elect to vary the rate of payment. If I have elected to pay over ten years and I wish to change it to five years I can accelerate my payments.

Mr. LOW: Can he retard them?

The WITNESS: No.

The CHAIRMAN: He, automatically I take it, has a right to retard them if in his default the only consequence that happens is the liability?

The WITNESS: I might say if he is working in the government his instalments are paid by payroll deduction so he has no chance of default.

Mr. FULFORD: Supposing he wants to retard them can he have the amounts deducted by the government reduced?

The WITNESS: No. The regulations do not provide for that.

Mr. FRASER: Are you going to discuss the benefits under this present policy?

The CHAIRMAN: The benefits are on the next page.

Mr. LESAGE: Supposing a person could have elected under the old Act for pensionable service in a provincial government and failed to do so in the year after his appointment or his permanency would he be entitled to elect under this Act now?

The WITNESS: Yes. The provision under the present Act is he must elect within one year and the calculations are based upon his starting salary in the civil service. Under the bill he may now elect at any time but the calculations of the amount to be paid will be based upon his salary at the time of making his election. In other words, normally the salary will be higher and he therefore suffers a penalty by failure to elect within the year.

The CHAIRMAN: But there is no deadline date now on which he would lose his right to elect?

The WITNESS: No. And also if he does not elect within the year he must take a medical examination.

By the Chairman:

Q. Would you indicate a little in the way of details as to the medical examinations?—A. The medical examination would be one which satisfies the medical examiners that he is in good health in relation to his age. If he fails to pass the medical, he may not elect. But if he may come up for a second or more medicals at a later date.

Q. Who are the medical examiners?—A. The medical examiners are normally those of the Department of Health and Welfare, although if he was outside of Ottawa where there were no Health and Welfare doctors available, we would rely upon Health and Welfare to nominate the medical officers concerned.

Q. In the event of an unfavourable medical, is there any appeal to any other medical board?—A. It is not provided for by the Act.

Q. You say it is not provided for by the Act. But is there any provision in the regulations for it?—A. I think not, no.

By Mr. Fraser:

Q. Could he come back in six months time and have another?—A. Yes, he could come up as often as he likes. I do not suppose they would look favourably on his coming up every other day, but I believe he could come every six months, for instance.

Q. Would he be charged for it, or would that be done gratis?—A. Health and Welfare does the examining free of charge, I believe.

By Mr. McCusker:

Q. Is that statement correct that Health and Welfare will be responsible for appointing the physicians?—A. In Ottawa they are done by officers of the Department of Health and Welfare.

Q. What ones?—A. They have quite a large number. I know Doctor Ratz.

Q. Yes, Doctor Ratz has a very small detachment which looks after the health of those who are sick. The civil servants who are sick go there, and as they are checked out they are told to go and see their physicians. They may be given an X-ray examination. If that board is set up for the purpose for which you state, it will have to be enlarged?—A. At the present time the Civil Service Act requires that every person coming on to the civil service staff must have a medical examination. All I can say is that there are, I presume, scores of medical examinations being given every week.

By Mr. Brooks:

Q. Once he makes his election and has his medical examination, is there any subsequent medical examination after that?—A. I am sorry, I did not get your question.

Q. I said: Once he makes his election and has his medical examination, is there any subsequent medical examination after that at any time?—A. Not so far as this Act is concerned.

Q. That is what I meant.

Mr. McCusker: They will not have to report from year to year for a re-examination?

The Witness: If it came to the question of disability, there is the right of re-examination there.

Mr. Brooks: No matter what the physical condition is, so long as he is employed, he carries on?

The Witness: Yes. There is a regular health service which provides for general health supervision of civil servants, but that has nothing to do with this Act.

The CHAIRMAN: Are there any questions on "Elections, and manner of payment"?

Mr. MCILRAITH: In connection with those contributors, now under the existing legislation, he has an opportunity to elect. But when he elects and fails to take all the pensionable service which he could have elected to take the benefit of, can he come under this new bill and elect again and take the benefits of that additional service?

The WITNESS: Yes. They may extend their elections. But under the new rules it means that they must pay for it at their present salaries.

The CHAIRMAN: Must they have a medical?

The WITNESS: Yes.

By Mr. McCusker:

Q. I think we should get that clear. I understand that Dr. Ratz and his staff are merely to examine civil servants when they are taken on for employment; and that if a civil servant is ill on duty, he can go there and is examined, and he will be sent to his physician. He does not receive medical treatment there from Dr. Ratz and his staff. I am talking about what is occurring at the present time. He goes to Dr. Ratz if he is sick. In some departments they will say: "Go and see Dr. Ratz." And if he goes there, and sees Dr. Ratz, they will refer him to his family physician, whoever that family physician is.

The CHAIRMAN: For treatment?

Mr. MCCUSKER: For treatment, yes. And when that family physician says that the man is fit to go back on duty, he is again examined before he goes back on duty. We are not providing medical care for civil servants. I would like to have that made clear.

Mr. RICHARD: What about Dr. Douglas? Did he not do that work?

Mr. MCCUSKER: There is no one especially set up to do this work.

The CHAIRMAN: If there are no further questions under "Elections and manner of payments", are there any questions under "Benefits"?

By Mr. Fraser:

Q. Under "Benefits", why was 10 years picked for a man to take as his average salary? You have extended it over 10 years. Most of those civil servants have only had a raise in salary during the last 7 years. The Mounted Police are on a 1-year basis.—A. The 10 years goes back to 1924. Prior to that time it was on the last five years. But in 1924 it was made the last 10 years. The only change in this bill is to provide that it shall be the best consecutive 10 years rather than the last 10 years. In addition to salary increases there are the usual statutory increases year by year, and the average civil servant gets promotion into the higher classes as he develops in experience and skill.

By Mr. Brooks:

Q. Has there been any tendency for these men, under the 10-year period, to stay in the civil service longer in order to get the benefit of the higher salaries?

The CHAIRMAN: Would you mind asking the question as to whether they do get the benefits, and then ask if there is a tendency?

The WITNESS: Of course pensions normally become payable only upon retirement. That means normally, 65, although there is provision for retirement at the age of 60 at the option of either party.

By the Chairman:

Q. May I ask a question for the record. If an employee stays on after 65, does that in any way alter the benefits that he will receive in regard to pension? —A. At the present time, no. But in 1947 parliament amended the Act to provide that after 1957 a man's pension rights, on reaching his 65th birthday would be, so to speak, frozen. After he reaches his 65th year, even if he were kept on by special order in council, he would make no contribution. He would acquire no additional benefits for the time he served after his 65th birthday.

By Mr. Brooks:

Q. Suppose he could retire at the age of 60, but wishes to get the extra amount in salary, that is, from 60 to 65, the higher salary. Are there many of them staying on to get that?—A. I would think so. Your pension is founded on two things, your years of service and your rate of salary. One can readily envisage the case of a man who joined the service in the early twenties. By the time he is 58 he has had his 35 years of service, which is the maximum. He may be at the maximum of his class and with no expectation of promotion. He might stay on after he is 60, or he might just as well retire because by staying on he would not get any better pension when he retired 3, 4, or 5 years later.

By Mr. Fraser:

Q. Would not the civil servant have a better chance of getting a better pension if it was based on five years?—A. Oh yes. If it was based on the best or the last five years, certainly the pension would almost invariably, or in the great majority of cases, be a higher pension. But the whole basis of the fund is on a 10-year average and if you switch to a five-year average you would either have to increase the contribution from the civil servant or increase the contribution from the government, or run into a substantial deficit in the fund.

Q. May I ask you this question: Have there been representations from civil service organizations asking for an 8-year period?—A. Yes, sir. There have been representations from civil servants organizations asking for a five-year period and I understand for a three-year period. The advisory committee to the minister, which is a committee made up of officials and staff representatives, did formally recommend an 8-year average. I think the minister referred to that in his opening statement in the House and explained that the government had not been prepared to accept that reduction on the grounds it would upset the balance of revenue and expenditure.

Mr. LESAGE: I believe the minister said he would have to increase contributions.

By Mr. Richard:

Q. If the man was under five-year plan, and he was dismissed or let go, as by the Interior department in the 1930's, and re-employed later on, not within a short period, but within two years say, I understand that after that he comes within the 10-year plan, is that so?—A. That is true under the present Act. Under this bill he would, if he came back into government service, have the option of one annuity built up on the five-year average for his service up to the 1932-33 period, in addition to a second annuity based on his last 10 years of current service and put the two together.

Q. That is the case now. But if he was re-employed as after the 1932-33 period, is his second pension based on the 10 years instead of the 5 years. He receives two pensions, a pension for the first service, and a pension for the second service, isn't that so?—A. I will have to ask my advisor. I am told he gets two pensions.

Mr. RICHARD: That is what I think is unfair about the whole thing.

By Mr. McIlraith:

Q. Just to clear up that point Mr. Taylor. If one of this group was let out in the 1931-32 period he would be let out on the basis of using the five-year average for salaries and for computing pensions. Assuming they were re-employed in the 1940's under the Superannuation Act, is the whole period they are employed and their whole pension right based on the 10-year average, or partly on the 5-year period, and the five- and ten-year average under existing legislation?—A. Mr. Gullock assures me it is based first on the five year and the second period under the 10-year average rule.

Q. That is existing legislation?—A. Yes.

Q. And under this bill that will continue except there will be less than the 10-year period?—A. He can either have two pensions—at the present time he would either get the mixture of the 5 and the 10 or it would be based on 10 years at his option. He could have the better of the two deals. Mr. Gulloch tells me that those who went out under the abolition of office clause, in the case of the Department of Interior, would have a pension under the abolition of office clause. If they were re-employed that pension of course went into suspense while they were employed, and when they ceased to be employed it is my understanding that that pension is resumed plus a second pension for the second period of employment based on a 10-year average.

Q. Just one further point. The change now from the last 10 years of their employment to the best 10 years would make it possible for a man in the last few years of his service to accept a reduction in salary if it was otherwise desirable from his point of view.—A. That is the reason for doing it.

Q. Without damaging the superannuation?—A. I think it occurs in several departments but it happens more often perhaps in the post office where men are unable to do the more arduous duties and would like when they get into the middle or late fifties to be employed in a less arduous job which carries perhaps a lesser rate of pay.

Q. I want to be very clear on that, because I came into contact with several cases where they would have wished to take a smaller salary but simply could not afford it because of the effect on the superannuation rate.

By Mr. McCusker:

Q. In the case of the combined pensions of a man who has interrupted his service do the combined pensions total a greater amount than if that man had remained in service continuously?—A. I do not think it is possible.

By Mr. Richard:

Q. The same interior employees who were dismissed or whose positions were abolished and who were re-employed within a set time did benefit by the five-year period rate, and I want to make that clear.—A. It probably gets down to a definition of what you call continuity of employment. Strictly speaking if a person were laid off for one day, they have interrupted service, but it has always been interpreted as covering a reasonable period of time. In the case of sick leave, where if a man is re-employed within 60 days you can resume unused sick leave rights.

By Mr. McIlraith:

Q. In the Interior Department with respect to these employees in 1931 and 1932, was there not an extension of the period within which a man could be re-employed and still retain his 5-year rights?—A. Mr. Gullock was on the job, and perhaps he might answer.

Mr. GULLOCK: In these interior cases there were some who were assigned to various departments and they were given leave without pay from the interior department. Their positions were never really abolished.

The CHAIRMAN: And they would hold their contractual rights?

Mr. GULLOCK: They would hold their continuation of pensionable service.

Mr. MCILRAITH: What was the latest time of re-employment of any case of an interior department employee who came back and still retained his 5 years.

Mr. GULLOCK: I am afraid I cannot tell you.

Mr. MCILRAITH: Was there not a special order in council in 1935-36 covering the period of four or five years?

Mr. RICHARD: I think you will get that from the Civil Service Association.

Mr. BALCOM: Was there some employees who came under the same category.

Mr. MCILRAITH: That is a different point.

The CHAIRMAN: I am going to reserve that for when the delegations come here.

Mr. BROOKS: Is the committee hearing representations from the Canadian Legion.

The CHAIRMAN: I wonder if before we leave this point, I do not know much about superannuation, but I wonder if Mr. Gullock would care to indicate the thinking behind the reason why these older employees retained the special five-year privilege. Was it based on a contract or why?

Mr. GULLOCK: I do not think I would like to make any comment.

The CHAIRMAN: I wonder if Mr. Taylor could be permitted to answer that question.

The WITNESS: It was before my time, but I presume it was due to a kind of implied contractual relationship. They were really contracted grants, all these grants were ex gratia payments made at a time when all civil servants were on a five-year average. It was found that that was actuarially unsound in relation to covering contributions, and Parliament made a ten-year average for all new employees after that date.

Mr. MCILRAITH: It was the 1919 Retirement Act that was the base for all that?

Mr. LESAGE: I am told that the 1919 Act provided for a three-year period.

Mr. QUELCH: Mr. Chairman, I brought a case to the attention of the Minister of Finance a couple of months ago of a man who was eligible for the five-year period. He was on the permanent staff in 1922, and then I think early in 1924 he left the service for two years. Then he came back. He was allowed to pay up the contributions for that two-year period, which gave him the impression that he would still qualify for the five-year average, but the ruling now is that he is on a ten-year average, but at that time in 1924, when he came back, he was allowed to pay up his contributions for two years he was away. They put him on a ten-year average although he had been with the service for two years previous to the termination of the five-year average.

The CHAIRMAN: That was why I wanted that point clarified and I understand Mr. Taylor's answer to be that it was felt that those civil servants had certain contractual rights and with the termination of employment those contractual rights existed down to the termination of employment. After that they ceased to exist, so that re-employment, while the employee would be permitted to make contributions to the fund to build up his period of credit for the time he was away, would not reinstate the contractual relationship which he had lost. Is that right, Mr. Taylor?

The WITNESS: Perhaps I might read part of Mr. Abbott's speech which explains why this period of ten years was determined up.

When the Civil Service Superannuation Act was passed in 1924 it was provided that those who were permanent civil servants within the meaning of the act on July 19, 1924, should be given the advantage of the average salary over the last five years of their service in the calculation of any allowances which might be granted to them. On the other hand any temporary employee on that date, or anyone else who subsequently became a permanent civil servant, was to be subject to a ten-year average salary provision instead of five years.

While ten years was determined in 1924 as a necessary factor for actuarial reasons in the benefit formula for future contributors, the five-year provision was put in primarily for the benefit of those who would be retiring shortly after 1924, after having gone through a recent period of low salaries which were supplemented by a cost of living bonus. The use of the five-year period instead of ten would be some compensation to that group, those who it was expected would be retiring very shortly after 1924.

The use of the five-year period instead of the ten-year period was deemed to be some compensation for that series of events.

Mr. RICHARD: Are those employees who were temporaries after 1924 and made contributions, and after 1924 when the new Act came into effect the five-year plan did not apply and the contractual relationship ended by statute?

The WITNESS: The only ones who got under the five-year average were those who were permanent civil servants prior to July 19, 1924.

The CHAIRMAN: If members want this evidence to go on the record, you will have to speak one at a time and not across the table.

By Mr. Brooks:

Q. What portion of the civil service would be under the five-year basis and under the ten-year basis?—A. I am sorry.

Q. What number would be under the different bases?—A. There must be a very small fraction of the present civil service who are under the five-year average now. That change was made almost 30 years ago. The period was changed, and in order to come under that an employee would have to have 30 years of continuous service and be still working in the civil service.

By Mr. Macdonnell:

Q. Mr. Taylor, I understood you to say something which I could not quite understand. You said, if I followed you, that it had been made a ten-year average instead of a five-year average because of the need of making the fund actuarially sound. Did you say that?—A. Yes.

Q. Well, that puzzled me because I thought of what is it that makes a fund actuarially sound. The conditions under which he has to work are set out and you have got to determine whether it is a ten-year period or a five-year period, and then have your contributions tailored to fit that.—A. I was not quite accurate on that, I agree. The point is that actuarial soundness, of course, depends on the rates of contributions and the variety of benefits, and we could have kept it actuarially sound on a five-year basis if you had changed the rates of contributions.

Q. Are these rates sacrosanct, so to speak?—A. No. We are making a small change in this bill. At the present time there are rates of five per cent, five and a half per cent and six per cent for different classes of male employees. We are now levelling it off to a straight six per cent for all male employees. The female employees have not been changed.

By Mr. Richard:

Q. Mr. Chairman, will there be any evidence given as to whether it will be possible to have the five-year period from the point of view of making the fund sound at these rates? There should be some evidence of this nature come later.—A. I will put it this way, that the actuarial report which was tabled in the House just a year and a half ago indicated that there was a deficit in the fund, of a very large amount. That deficit was due not so much to the rates of contribution being too low, or the benefits too high, but for three other reasons. One was the government had not been in the habit of matching the contributions which civil servants made for past service; secondly, every time there is a general increase in salaries, which raises the general average of people going out, you create a hole in the fund because the pensions are based on the last ten years' average, or now the best ten years, and not over the average salary for the whole period of their service.

Q. But under this Act that is corrected?—A. That is correct.

Q. What puzzles me is that under the old plan of five years it must have been figured that it was sound actuarially. Maybe you will give us information on that later?—A. The report also indicated that on the present scale of benefits and present life tables and all the mathematically related factors it would cost 12½ per cent for males and 10 per cent for females. On the general principle that the employer would pay half and the employee would pay half, the contributions were put at five per cent for females, therefore the government contributes five per cent, and the males ought to pay 6¼ per cent if they were to pay exactly half of the mathematical calculation made two years ago.

Q. Then the government would have to pay more to make it a five-year plan?—A. Yes.

By the Chairman:

Q. You refer to two features: one, the government had failed to put in amounts matching contributions of employees for past services. Is that practice still in force?—A. No, the government changed the practice a year ago.

Q. And you also mentioned the fact that the government had not been paying into the fund the amount made necessary to keep the fund actuarially sound which arises when a general increase in salaries occurs. Is that being properly taken care of now?—A. That, too, was taken care of last year and is provided for in this Act on a statutory basis.

Q. What special contributions has the government made in the last five years?—A. In the last three years it made contributions of $175 million: $75 million two years ago, $75 million last year, and $25 million this year, in addition to the normal annual contributions.

By Mr. Macdonnell:

Q. What was the deficiency when the government began to make these payments, and how much is it now?—A. It is now $189 million. $175 million has been paid in, so the total deficit on an actuarial basis was about $360 million. It was $189 million at the end of the fiscal year just closed.

Q. This subject is so big I want to refer to your plan for carrying it through, Mr. Chairman. I have a letter here, but I am not going to read it. A man was appointed in 1922 and he is subject to the disabilities we have heard about. Could we have a figure showing what is involved, because it does seem to me that there is a great hardship. The old D.S.C.R.—

The CHAIRMAN: We have agreed we are going to deal with the D.S.C.R. in that special feature where the employee is called upon to pay not only his own contribution but the government contribution. The committee decided not long ago we are going to deal with that at one special meeting and have the delegates here.

Mr. FRASER: In regards to ten year period I would like to ask a question.

The CHAIRMAN: If you do not mind, before we leave these two points I have another question I wanted to ask. Is the government now making a practice of immediately paying into the fund the amount which it should pay to match the employee's contribution for past service?

The WITNESS: Yes. It does it once a year.

The CHAIRMAN: And that is now established practice?

The WITNESS: Yes; and I might add the government is moreover crediting the fund with the full interest including the interest in this $189 million deficit.

Mr. CRESTOHL: Is that done as a result of the statutory provisions or done as an ex gratia provision by the government?

The WITNESS: It has been put in the estimates in each of the last three years and the principle is in the bill now before us.

The CHAIRMAN: At the time the last general increase of salaries occurred did the government pay into the fund the requisite amount to complete the fund?

The WITNESS: Yes sir. $23 million.

By Mr. Balcom:

Q. Has the government not keeping up their contribution influenced the decision to have the time extended to ten years instead of five? If that full amount had been paid up over the years— —A. As I understand it, the actuarial report says if you so to speak start from scratch it would cost 12½ per cent gross male payrolls and 10 per cent gross female payrolls to keep the fund in balance.

The CHAIRMAN: The present rate of payment really is a half per cent lower than it should be as to the composite payment of the employee and the government.

The WITNESS: The bill makes a mandatory requirement for a five year's re-examination and report on the actuarial basis and tabling in parliament.

By Mr. Fraser:

Q. How do you figure your average out then? It is a ten-year average on here and it was mentioned when you were talking about coming in from a provincial civil service that you start from the time of election and took their salary at that time. That would only be on a one year basis there. And then on the next page here on contribution it mentions the fact that a person who is in on only a five or ten year basis the formula is based on the average salary of that time so that a civil servant would get the advantage over the other one.—A. It is the case of a civil servant who leaves on account of age or disability having less than ten years service. A person could come into the government service at the age of 55 and retire at 63. He goes out on the basis of the average salary over the whole period of service which would be eight years in that case.

Mr. LESAGE: It is only 16 per cent he will get.

The WITNESS: The average of the eight years. He cannot have an average of ten.

Mr. FRASER: He might have come in for those eight years at a higher salary than a civil servant under other conditions.

The WITNESS: He would have to pay 6 per cent of his salary.

The CHAIRMAN: Any further questions under the heading of benefits?

Mr. Taylor, is it possible for a civil servant to receive more than 70 per cent of his average ten years' salary under the present Act?

The WITNESS: Under the present Act, no. Not under the Superannuation Act.

Mr. FRASER: Does he receive two-thirds?

The WITNESS: If he serves a maximum period of 35 years he gets 70 per cent of his average salary for his best ten years.

Mr. CRESTOHL: Under the heading of benefits to widows and children on page 6 your memorandum indicates that a widow's allowance is suspended on her remarriage but would be resumed on her becoming a widow again, and assuming she marries another civil servant would she be entitled to recover the widow's benefits twice?

The WITNESS: Yes, sir. She is entitled to both.

We did not think we should discriminate between a woman who remarries a civil servant or a bank manager or any other type of outside person who may get a pension. For example, if a civil servant's widow marries an employee of a bank—and most of the banks have pensions with benefits payable to their widows—she would get the banker's pension in addition to the civil service pension.

Mr. MACDONNELL: Are there many serious casualties among civil servants?

Mr. MCILRAITH: And bankers.

The WITNESS: Before we leave widows and children, I should inform the committee that Mr. Lesage will later be moving a clarifying amendment. The way the bill is drawn now it would imply that the children always get one fifth of the widow's pension. Now, members will recall that if a widow is more than twenty years younger than her husband her pension is reduced. But we do not propose to reduce the children's pension in that case. We just caught that in checking through and we want to bring an amendment to provide that the children will get the full pension that they would be normally entitled to notwithstanding the fact that the widow gets a smaller pension because she was more than twenty years younger than her husband.

Mr. RICHARD: Why is the number of children limited to four?

The WITNESS: Because that brings the total pension of widow and children to 90 per cent of the man's pension.

Mr. RICHARD: If the widow is deceased then what?

The WITNESS: Then the maximum is 80 per cent for the orphans. There can be four orphans. Roughly speaking the children get ten per cent, and an orphan gets 20 per cent of the man's pension.

Mr. MACDONNELL: If a widow had this pension and no children of the second marriage, would the children of the first marriage be entitled to share in that?

The WITNESS: No, I think it would have to be children of that marriage.

Mr. ADAMSON: Could he legally adopt the children and get that?

The WITNESS: Child is defined as a natural child, stepchild or adopted child.

Mr. ADAMSON: Then he could?

The WITNESS: It would be possible, yes.

By Mr. Fraser:

Q. It says here that the pension would be resumed on her becoming a widow. If she obtains a divorce, would that be the same thing?—A. No sir.

Q. You say it would not?—A. Not under this bill.

Mr. FULFORD: She would get alimony from her husband.

The CHAIRMAN: At the foot of page 5 you refer to an actuarial reduction which is made with respect to a widow who is 20 years or more younger than her husband. What is that actuarial reduction?

Mr. CLARK: Mr. Humphrys, the actuary, is the one who carries out those calculations.

The CHAIRMAN: Does it bring her pension down to 20 years, or does it reduce it below 20 years?

Mr. CLARK: The reduction commencing when the difference is more than 20 years.

The CHAIRMAN: To what period is it reduced?

Mr. CLARK: It would depend on how much more than 20 years she was the younger. If she was just 21 years younger, it would be a very small amount.

The CHAIRMAN: It would be a one year reduction?

Mr. CLARK: Yes.

The CHAIRMAN: Are there any questions on "Re-employed persons"?

The WITNESS: Before we leave widows and children, I am told there is some ambiguity in the present draft which we would like to clear up. We would like to make it clear that the widower of a married woman employee is not entitled to a pension on her death.

The CHAIRMAN: You answered that.

The WITNESS: But our lawyer tells me there is some ambiguity there and we will be bringing forward an amendment to cover that point.

The CHAIRMAN: Right. Are there any further questions on "Re-employed persons"? If not, then are there any questions on "Special cases"?

By Mr. Ashbourne:

Q. I presume this covers section 21, and the transfer of pensionable Newfoundland employees. I want to know if Mr. Taylor would care to comment on the position of Newfoundland civil servants under the new Act as at present, or whether he would perhaps like to have it stand until later?—A. It is my understanding that the Act was extended to take in the Newfoundland civil servants who were performing functions which were taken over by the federal government. I am not aware of any significant complaints from civil servants in Newfoundland. I have, in another capacity, heard certain comments in relation to railway pensions, but that had nothing to do with this Act, of course. So far as our pension is concerned, I am not aware of any representations of substance. There have been inquiries for information, but no representations of substance with regard to the treatment of civil servants of the former government of Newfoundland who were taken over by the federal government, when the federal government took over their functions.

Q. I have received none myself, but at the present time have received quite a bit of correspondence from trade unions such as the Commercial Telegraphers Union and the International Brotherhood of Electrical Workers, and local unions in regard to the situation which you intimated. Reference was made to the railway and also to the postal telegraph employees and I was wondering whether or not on account of the present mail service between St. John's and Ottawa, and also on account of the present fog down there this matter might stand, just in case there were any representations to be made to the committee.

The CHAIRMAN: We are working on a very tight timetable, Mr. Ashbourne. Our next very important assignment is the co-operative bill and I understand that there is an application for incorporation under that bill after we pass it. So you can understand that if it is humanly possible we must clear this bill up by Thursday night.

Mr. ASHBOURNE: Could not this section stand until a later meeting in the week, if we have another bill?

Mr. LESAGE: We are not passing the sections. We are just studying the Act.

The CHAIRMAN: I do not want any misapprehension. It is my hope that by Thursday night we will have cleared the bill and reported it to the House. Now, if you fear and have good ground for fearing that some serious representations will be made by Newfoundland, if you could indicate to the committee what they are, of course we could look them over.

Mr. ASHBOURNE: I would like to say that I do not anticipate any myself but still, on the other hand, we realize that the first reading of this bill was on April 10, and by the time it got down to Newfoundland, with the fog down there and the mail service, naturally there may be some representations which they possibly might like to make to the committee.

The CHAIRMAN: Are the employees in Newfoundland treated in any different fashion than the other employees in Canada?

The WITNESS: No sir. Once they come under the Act, they are in the same position.

Mr. ASHBOURNE: I see one section which does not apply to them. Subsection 7 of section 21, and subsection 3 of section 8 do not apply with respect to those Newfoundland employees. I just want to assure the committee that it is mainly on account of the dissatisfaction in Newfoundland, owing to the delay in satisfactorily coming to some conclusions with regard to the pensions of the railway and postal telegraph officials there; and I want to voice this or make this protest so to speak, or express my opinion here with the committee because I have had some correspondence with those people and certainly there have been representations made to the minister.

The CHAIRMAN: How would it be if, when we come to section 21 of the bill, which I hope will be on Thursday morning, that you would then make your representations on section 21 and then in the light of what is said, this committee will decide what should be done.

Mr. ASHBOURNE: That is just what I have been asking for.

The CHAIRMAN: Fine.

Mr. ADAMSON: Let me warn you, Mr. Chairman, that there has just been another bill referred to this committee, one dealing with trade marks.

The CHAIRMAN: I knew that was coming, and I had it in mind. Thank you, Mr. Adamson.

By Mr. Richard:

Q. I wonder if you could give some consideration to this case: There was a number of permanent employees, about 24, and in 1929 they were loaned to the British Pension Commission. I understand they remained there for 7 years and that up to now they have been denied the right to contribute for those 7 years, although they were taken back into the service as permanent employees. Of course it is a very real case of hardship. There are not very many left. There are only about 7 or 8. I wonder if in a special case that situation could not be dealt with?—A. Mr. Gullock is not familiar with the case at all.

Q. A number of employees were loaned for a period of years, after 1929, to the British Pensions Commission.

The CHAIRMAN: Where are they now?

Mr. RICHARD: They are now in the service.

Mr. McILRAITH: They were contributors under the Superannuation Act for their whole period of employment except when they were loaned to the British Pension Commission, but they have not been allowed to take up those 7 years?

The WITNESS: Generally speaking, if they are on leave of absence without pay—for instance, we lend people to the United Nations—this Act provides that they can pick up those years, but they have to pay double for it.

By Mr. Richard:

Q. This Act would help them to pick up those 7 years?—A. But if they had resigned—leave of absence may be a rather loose way of putting it—I do not know what the arrangements were.

Q. They were on leave of absence nominally. The whole thing was: That there was a pension fund for the British employees of the British Pensions Commission, but it did not apply to the Canadian employees. The Government of Canada requested those permanent employees of the service to go over to the British Pensions Commission. This matter has stood for all those years, and I cannot understand why it would not come under "Special cases".

The CHAIRMAN: I wonder if Mr. Gullock would like to look into that case.

The WITNESS: Yes, perhaps Mr. Gullock would look into the case.

By Mr. McIlraith:

Q. I am not sure whether this is the place to discuss this question, but is there any provision or authority under the Act for permitting employees to count as prior pensionable service, services in a university as professor and so on? Is there any authority for such an arrangement being made with the universities?—A. Yes, if they come from any employment in any university.

Q. Yes?—A. Where there is an approved pension plan, of which those men were members.

Q. Yes?—A. Then, upon coming into the civil service, they may elect to pay up for that period of service. The fund of course has to get 12 per cent, and they will use whatever they get back from the university fund to pay part of this service, and they can elect to pay for any additional part of their university service. They can count service with any employer who had an approved pension scheme.

By the Chairman:

Q. An approved scheme under the Act?—A. It is approved under this Act and approved once for all.

By Mr. McIlraith:

Q. Carrying that one step farther, what about scientific personnel in the federal government employ and under the Superannuation Act who go to the universities. What about them. How do they transfer their rights to an approved scheme?—A. This Act does not provide for any reciprocal agreement with employers other than governments and Crown agencies. In the case of a scientific person in the federal employ, let us say he has 10 or 12 years' service and then he goes to university. When he leaves here he has two options, one is to take his contributions back, and the other and invariably more favourable step is to leave them with the government and take a deferred pension at 60. Normally if he goes to the university at say 40 years of age, he starts to build up a pension under the university pension scheme, and at the age of 60 or 65 he will be receiving both the federal pension and on top of that a university pension which he has earned there. The difference between that and the provincial government is that if we have a reciprocal agreement

we will arrange it so that he only gets one pension. We will pay to the province or the province will pay to us if there is a reciprocal agreement between the two bodies.

Q. I just want to clarify this in my own mind.—A. The main value for the man leaving the government service and going to a university is that he can always elect for a deferred pension at the age of 60.

Q. But with the provincial government there is a reciprocal arrangement which applies both to the rights acquired under the provincial fund if it is an approved fund, and any other rights, does it?—A. This bill provides for the negotiation of such reciprocal agreements.

Q. That is what I want to get clear. Is the negotiation right for this reciprocal agreement the same in the case of universities as it is in the case of provincial governments?—A. We have given a good deal of thought as to how far we can go in negotiating reciprocal agreements of this sort, and we felt, at an official level, and the minister agreed, that it was awfully difficult to go beyond provincial organizations, international organizations and agencies of the Crown.

Q. I wanted to get the position of the universities quite clear, because we have this problem with our scientific personnel and I wondered what the difference was as between the authority for a reciprocal agreement with the provinces and with the universities.—A. I presume all the provincial universities are separate corporate bodies and there might be a way of doing it with the provinces but not with McGill or Queen's.

Q. I was thinking of universities other than provincial institutions.—A. It is difficult to draw the line. There are all sorts of good pension schemes, but you cannot draw a line as you go down through the field of private employers.

Q. What is the authority section?—A. Section 28, sir.

Q. There was obscurity in my mind as to the authority to enter into agreements. But I want to make it clear that I think it is an excellent scheme, but I am troubled as to whether the language is wide enough there to give you the authority you might want with respect to universities, because we always have a problem arising with scientific personnel. Perhaps I could leave it at this stage without questioning further, and you could ask some of the men concerned with the legal side to take a look at the point and see if they can go into it.—A. I am quite sure that the bill as it is drawn would not permit reciprocal agreements, certainly with private universities. The minister could not, under this section, negotiate an agreement with Queen's University or McGill or with any other private university.

Q. Would it be fair to ask you to come have a look at that problem for the next day or two bearing in mind the problem of scientific personnel in one or two of the departments.

By the Chairman:

Q. I notice, Mr. Taylor, under 2-H pensionable employment is defined as "any employment in respect of which there was an established superannuation or pension fund or plan approved by the Treasury Board". Is there an official list of the plans approved by the Treasury Board. Or is that a list that changes from time to time.—A. There is no list. It originates by particular applications. A man comes to us from the A.B.C. corporation or the X.Y.Z. bank and we examine the case and if we find the pension plan in that organization is satisfactory that plan is then approved, and unless there is some change in the pension plan any other employee who has had service under that plan would receive the same treatment without going back to re-approve the plan.

The CHAIRMAN: Are there any further questions on special cases? Employees formerly subject to R.C.M.P. Act and Defence Services Pension Act.

By Mr. Fraser:

Q. Under the R.C.M.P. if it came into this, they would be on a yearly basis. Their salaries would be based the same as it is now an a yearly basis?—A. You mean pensions?

Q. Yes, it would be based on a one-year period?—A. No, on a 10-year average as in the civil service.

Q. If they came in here, it would be 10 years.—A. Yes.

Q. They would not be classed as they were?—A. In the R.C.M.P. you go out on the final year's salary?

Q. Is it 6 years?—A. No, the Act changed three years ago, and it is now 6 years.

The CHAIRMAN: We are now on the paragraph, Parts II and IV of the Civil Service Superannuation Act. I would think, Mr. Taylor, it would be helpful to the committee if you would indicate the difference in benefits with respect to each of the four parts of the Act.

The WITNESS: I have a written note on that here. I will read it:

> Part II of the C.S.S.A. gave persons to whom it applied (i.e. those who had been subject to Part II of the Civil Service Superannuation and Retirement Act and elected to become contributors under the C.S.S.A.) all the benefits of a contributor to Part I and permitted them to count the periods during which they had contributed to the Retirement Fund under the old Civil Service Superannuation and Retirement Act as service for benefit purposes. If there were periods such as those of service in a temporary capacity where no contributions were made, half of that service only could be counted free or the whole could be paid for in the usual way. Benefits were calculated on the average salary over the last five years for those who elected to come under the C.S.S.A. between 1924 and 1927 but the ten year average applies to those who elected to come under in 1944-45.

That is, there were two openings for election. If they elected in the early period, they came under the five-year plan, but there were some who did not elect. They were given a new chance to elect in 1944-45, but they were told if they elected they would come under the ten-year average.

> Part III of the C.S.S.A. gave persons to whom it applied (i.e. those who as permanent employees in 1898 subsequently became subject to Part I of the Civil Service Superannuation and Retirement Act and elected between 1924 and 1927 to become contributors under the C.S.S.A.) all the benefits of a contributor to Part I and permitted them to count the periods during which they had contributed to the earlier Superannuation Account under the old Civil Service Superannuation and Retirement Act as service for benefit purposes. If there were periods such as those of service in a temporary capacity where no contributions were made, half of that service only could be counted free or the whole could be paid for in the usual way. Benefits were calculated on the average salary over the last three years or ten years whichever gives the greater benefit.
>
> The old Civil Superannuation and Retirement Act did not cover all permanent employees so when the C.S.S.A. came into force Part IV was included to take care of those persons just as Parts II and III took care of the other permanents. It gave the persons to whom it applied all the benefits of a contributor to Part I. Half of the prior service could be counted for benefit purposes without contribution or contributions could be made for the whole. Benefits are calculated on the average salary over the last five years. Those civil servants to whom Part V applied came under the operative provisions of Part IV.

Now, broadly speaking, those several parts of the 1924 Act were designed to take care of different classes of employees who had come in under different Acts from the period back to 1898—and I confess I am not old enough to remember all that went on in those days—but the various sections were applied to certain classes of civil servants who did or did not elect under various Acts going back to 1898, and so on. There are, of course, still a few employees—we have employees who have been with us for 45 years or more—who are affected by those Acts.

Mr. BALCOM: Mr. Chairman, will it be proper to ask my question now? I am referring to a group of employees of the D.V.A. who prior to 1924—

The CHAIRMAN: We agreed to leave that over to when we will have all the delegations here on that point.

Mr. BALCOM: Then you are not going to deal with that point now?

The CHAIRMAN: I thought we would take the entire meeting on Wednesday evening for that one point. Tomorrow night at 8.30 we will have the Legion and the D.S.C.R. and everyone interested in that point here, and it will only have to be done once.

Mr. QUELCH: Will that cover civil servants who were contributing to the Retirement Fund, having entered the service about 1912 and who elected, say, about ten years ago to come into the general Superannuation Fund, and all the money which was accumulated to their credit was transferred to that fund and they came under the ten-year average basis instead of the five-year average basis?

The CHAIRMAN: You can ask questions on that, now, Mr. Quelch. We were on that two or three times tonight and it has been pretty well indicated that if their contract was terminated they lost their five-year privilege, but only with respect to their future employment.

Mr. QUELCH: But there is no termination here.

The WITNESS: As I recall it, the old Act was called the Civil Service Superannuation and Retirement Act. That was prior to 1924 and there was a scheme there where you could go under the retirement section rather than the superannuation section. In 1924 these persons could elect to come under the new Act, and a considerable number did not. In 1927 they were given a new option and a great many did, and if they did, they came under the five-year average. Then the election period closed down. There was a good deal of discussion during the next 15 to 18 years, many claiming that had they known of the benefits they would have elected; various people claimed they did not understand the benefits, so in 1944-45 the period of election was reopened, but only on the basis of coming in under the ten-year average like all the other civil servants.

The CHAIRMAN: Any further questions on Mr. Taylor's presentation?

Mr. RICHARD: You mean under the whole thing?

The CHAIRMAN: I mean under his presentation which we had this morning, Mr. Taylor's general presentation. As we come to certain sections of the Act, of course, we will deal with them.

By Mr. Richard:

Q. Under the Retirement Fund, I think Mr. Taylor could indicate to me whether I am clear about this, that prevailing rates employees will be entitled to come into the fund when designated by order in council. Is that right?—A. Yes. That power remains with the Governor in Council. The minister said in the second reading speech that he had instructed us to give careful thought to various possible schemes for providing for some measure of pension or retirement privileges for prevailing rates people on a much broader front.

You will recall that prevailing rates employees are mostly what we call trades people, whose rates of pay are based upon the prevailing rates of wages for that trade or skill in the community in which they are employed. They are not on a stated annual salary.

Q. I think for the purpose of their pay it is an annual lump sum divided into months. The monthly rate is figured on an annual basis and they are paid monthly.—A. In many cases, of course, they are paid on an hourly basis.

Q. Yes, but that hourly basis is for the year. It is lumped into so many days and they are paid monthly on that basis.—A. The minister has said he has asked his officials to go into this whole question and see whether it is possible to devise some scheme which matches prevailing practices in private industry in the same trades and skills. That is one line to pursue. There are various other possibilities or ways or means of trying to devise schemes which will fit the substance and the logic of the prevailing rates pattern.

Q. But I thought it was clear enough that there would be some action to be taken in that regard under the Superannuation Act?—A. I think I am justified in saying that as far as I am aware there is no present intention to use the power of the Governor in Council to blanket in all prevailing rates people, or even the majority of them.

Q. It could be done by the Governor in Council under the Act?—A. As far as I know there is no present intention of doing that. People who have long service are recommended and may be designated by the Governor in Council, and there are a few thousands who have been so designated.

Q. Is not this Act going to provide for that?—A. The minister said it was not intended to use this Act under its present form to change substantially the treatment of prevailing rates people.

Q. They will have no pension scheme, then?

Mr. McILRAITH: You have the authority now. A change was made in 1944 removing that limitation to the stated annual salary. It permitted you to bring them in on designation by an order in council. I think I am right in that. Now that right is continued now, so it is a matter of the government having authority to do it. It is a matter, if you like, of getting them to do it, but the legal authority is there. Now, as I understand it, after they are employed continuously—

The WITNESS: This bill makes no change in the present law or the present practice.

Mr. RICHARD: All we need is pressure!

The CHAIRMAN: If we have reached the end of that.

The WITNESS: If I may say so, Mr. Chairman, there are two other small verbal amendments: to section 30 (v) and section 35.

The CHAIRMAN: Could we have mimeographed copies and deal with those amendments when we come to the particular section?

The WITNESS: And in Schedule A, we inadvertently put the Atomic Energy Control Board under Part IV, whereas it should be under Part I.

The CHAIRMAN: Now, this is the time-table that is suggested: Wednesday afternoon Mr. Whitehouse of the Civil Service Federation of Canada will be here and make his presentation; Dr. H. A. Senn of the Professional Institute of the Public Service of Canada will also be here; and we would hope to conclude their presentations in one sitting.

Mr. McILRAITH: What about the Civil Service Association; are they presenting a brief?

The CHAIRMAN: I will come to them in a minute. On Wednesday evening we will hear the D.V.A. and the Legion and others interested in making special

representations as to that problem, and we would hope to clear up that matter in one meeting. On Thursday morning the Ottawa Civil Service will attend and I hope to finish with them in one meeting.

Mr. McILRAITH: Could we have the Civil Service Association on Wednesday afternoon along with the Professional Institute and the Civil Service Federation?

The CHAIRMAN: We can see how things turn out. That will leave Thursday afternoon and Thursday evening for consideration of the bill; and if members have read the bill I think they will agree with me that it is so intricate that consideration of it, clause by clause, is almost out of the question. We will simply call any clause which a member wants called. Subject to Mr. Ashbourne's representations we will hope to have the bill ready to be reported by Thursday night. Mr. Ashbourne, if anything serious comes up and you want the final report held up, all right.

Mr. ASHBOURNE: I will not ask that.

EVIDENCE

April 22, 1953.
3.30 p.m.

The CHAIRMAN: Gentlemen, we now have a quorum.

We have with us today Mr. F. W. Whitehouse, president of the Civil Service Federation of Canada, and Dr. H. A. Senn, president of the Professional Institute of the Public Service of Canada.

Mr. F. W. Whitehouse, President of the Civil Service Federation of Canada, called:

The WITNESS: First of all, Mr. Chairman, I would like to thank you gentlemen on behalf of the organization I represent, the Civil Service Federation of Canada, and I would like to add to that that I have been given the authority to speak for the Amalgamated Civil Servants of Canada also. The Federation and the Amalgamated have a membership in every department of the government service, and I can say quite truthfully they represent the great majority of organized civil servants in the country today.

I want to be as brief as I can, Mr. Chairman, because I know that you have several other people to listen to, and we are very anxious that this bill come before the House and we hope it will receive its third reading and be put into effect during the present session of parliament.

We have been waiting quite a good many years for the things this new bill contains, and I would like to say here that we appreciate very sincerely the recommended amendments to the Superannuation Act and we know that this will be of great benefit to many thousands of civil servants in this country.

There as just two points, Mr. Chairman, that I would like to speak on. One is the part of the Act which states at the present time that superannuation shall be based on the last ten years of service. For years now we have been receiving requests and representations which have been passed by the conventions in many parts of the country asking that superannuation be based on the last five years of service rather than the last ten years as at present. We know that the new bill does not grant us this request which we have asked for so many times. We know that the new bill contains part of the Act which states that superannuation shall be based on the best ten years of service and we submit, Mr. Chairman and gentlemen, that that is granting very little to the average civil servant. It is true it benefits some civil servants who have been moving around during their work into a position perhaps later in life where their salary is lower than they have been receiving for the greater number of years. And there is the classic example would be an employee of the railway mail service whose work is arduous and after twenty or twenty-five years perhaps he has to be transferred to a position in the post office proper at a lower rate of salary. If the best ten years of service goes into effect it would naturally benefit such civil servants, but in the great majority of cases, the best ten years does not benefit the great percentage of the civil servants because the last ten years of service will be the best ten years of service in the great majority of cases. We would like this committee to give consideration to our request that superannuation be based on the last five years of service rather than the last ten years of service. We would point out that prior to the present Superannuation Act coming into being in 1924 people who were

contributing then to the retirement fund and previous superannuation plan prior to that, their superanuation is based on the last five years of service and that is still in effect, so that you have, shall we say, an anomaly there in that a certain portion of the service has its superannuation based on the last five years while another portion of the service has it based on the last ten years and many people in the service have contended that all should be treated alike. I am just passing that on to you, sir, for what it is worth and as to what our people across the country feel in that regard. I do not think I can add any more to it than what I have said. It is simply that we would like superannuation based on the last five years rather than the last ten years.

The other point, sir, which I would like to discuss briefly if I may is the case of the superannuated civil servants. We have quite a number of them across the country and it has been my privilege, as the president of the federation and the secretary treasurer of the Canadian postal employees, to cover the country from coast to coast several times, and I remember quite well meeting these groups in various parts of the country and seeing the sad plight they were in; civil servants who have given practically the best part of their life in the civil service who expected when they retired they would receive an adequate allowance—not to live in luxury, but to at least obtain the necessities of life. I have seen at firsthand that these civil servants are not able to obtain the bare necessities of life simply because the value of the dollar today is fifty per cent of what it was when they were contributing to the civil service plan, and you do not have to have much imagination to see that these people have suffered greatly.

Now, we have presented quite a lot of representations on this question. We know that the attitude of the government at present, particularly that of the Minister of Finance, is that superannuated civil servants are getting exactly what they paid for which is quite true, and he cited an example of an insurance policy you purchase from which you expect to get something in twenty years and you get exactly what you pay for. Again we agree. But, I point out to you that this condition has been assessed in other countries and that the U.K., Australia, New Zealand and the United States of America and some parts of Canada—private enterprise—have recognized the hardships on their former employees and have definitely done something about it and we would like to think that the Canadian government is just as generous and still as interested in its former employees as the government of other countries. I could read to you certain items of correspondence I have here to corroborate what I have stated. The federation is very interested in this question and we have been working on it for many years now. Here is a letter of November 3, 1950, from the State of Ohio Public Employees Retirement System who indicate that their state legislature in 1947 granted an increase in the monthly allowance payable to those former public employees who had retired under the provisions of our Act.

The increase was effective June 5, 1947, by the authorization of Section 486-59a of the General Code of Ohio.

The increase was based on a factor which provided for an increase of one dollar per month for each year of service up to a maximum of twenty-five dollars, or twent-five years. The increase was financed by an additional appropriation for the purpose by the State legislature.

And then from the United States Civil Service Commission under date of November 6th, 1950:

> I quite appreciate the concern expressed in your letter of October 31, regarding the need for increased annuities to meet the high cost of living.
>
> In most retirement systems, annuities are based in large part on length of service and salary. To those individuals who retired when

> salaries were relatively low, the resultant annuity does not begin to permit the individual to do more than have a bare existence. This problem has been met in part by admendments to the Civil Service Retirement Act. In April 1948, our Retirement Act was almost completely overhauled. As a gesture toward meeting higher living costs, at that time our Act was amended to provide that those individuals then on the rolls (approximately 125,000) would have their annuities increased by 25 per cent or $300, whichever was the lesser. This formula was not directly related to any statistical percentage of cost of living but finally was decided upon because it was politically acceptable. During the next session of the United States Congress, I anticipate the employee organizations will sponsor legislation to provide for an additional, similar increase in annuity because of increasing living costs.

That was November 6th, 1950, and in July 1952 Congress again increased the annuities to their retired civil servants of the U.S.A. by approximately $325 per year, but that no annuity shall be increased to an amount in excess of $2,160. So that you can see, Mr. Chairman and gentlemen, that the retired public employees of other countries and in some instances in Canada have been taken care of by a supplement to their pension which they would be entitled to by the contribution they had made over the years. And the same conditions existed in these countries where you could say they were entitled to receive what they paid for, but the government recognized they were in economic conditions which they could not foresee and they felt something further should be done for these retired public servants of the civil service, and I hope that your committee will consider this submission favourably and perhaps sympathetically in your report to the House of Commons as it will be of benefit to the retired civil servants.

In closing I just want to add this. As I stated at the outset we were hesitant in coming before this committee to place anything for further consideration because we have been waiting quite some time for these amendments to the Act and I know the whole civil service across this country are waiting anxiously for the final announcement from parliament that these amendments are going into effect, and nothing we are doing is done to try and retard the amendments to the Act, and we would sincerely hope that the committee will keep that in mind and do nothing that will delay these amendments to the Superannuation Act.

I thank you very much, sir, on behalf of the organized civil servants across the country whom I have the privilege of representing.

The CHAIRMAN: Some members of the committee may now wish to ask you some questions.

By Mr. Cameron:

Q. Could you give me the names of those in Canada who have done something about the retired civil servants? You did not mention any government.—A. I understand two provincial governments.

Q. Which ones?—A. Saskatchewan I think is one. I am not definitely sure about the other one. There are two provinces and I could get that information for you. The General Electric did something for their people too, and the Canadian Pacific Railway had it under consideration but while they were sympathetic they did not do anything for their employees.

By Mr. Richard:

Q. Would you tell us on what basis they operated? Was it a flat percentage?—A. Yes. It was a flat percentage. For instance, General Electric has 7,000 retired employees who also have pensions and General Electric voluntarily increased pension payments by about $24 to $49 a month.

I would like to add that we realize that all superannuated civil servants are not suffering as much as others. It is the people who are what we call the rank and file, among the low paid salary brackets, that are suffering the most. But people who were fortunate enough to be in the higher brackets are not suffering enough and are in our opinion receiving adequate pensions.

Q. Where would you draw the line?—A. At a salary of about $2,400.

By Mr. McCusker:

Q. Does Mr. Whitehouse suggest the extra gratuity should come from the present fund or where does he suggest it should come from?—A. I do not know how it could come from the present fund. It would have to be something supplementary, say a gesture on the part of the government to help these people. We have had a lot of objection to taking anything from the fund that is supposed to be there to take care of superannuation and, unless the contribution to the fund were raised to take care of any further drain on it you could not pay any increase. It would have to be more in the nature of a grant or supplement with the idea of doing away with it if the economic conditions of the country changed. Mr. Abbott has told me many times since the legislation has come in that people may receive old age pensions at age 70 without a means test. That is true but we submit a great many retired civil servants can starve to death between 65 and 70 and I think something should be done in between the normal retiring age of 65 and 70.

By Mr. Brooks:

Q. What is the range between the minimum and maximum amount the retired civil servant is receiving?

Mr. TAYLOR: I have not worked that out.

By Mr. McCusker:

Q. I was wondering if Mr. Whitehouse suggested extra contributions should be made to meet this extra gratuity?—A. I think I would like to stand up to answer that question. It is a pretty hot one I do not mind telling you. And I would like to add this: All of us who try to be leaders of the organized civil servants are forever telling them if they want greater benefits from the fund they should be prepared to contribute more to it. Unfortunately we have not got very far with their education in that respect yet. They are always asking for something and if you try to get them to give a little too it is another story. Human nature being what it is, in spite of the fact that those people all know eventually if they live they are going to be in the same spot as the retired civil servants are today, you wonder if they would be prepared to raise the contribution to make it possible for the retired civil servants to receive something now as well as increasing their pension when they retire from the Civil Service. That is something I would not like to stick my neck out about and say they would be prepared to do it.

The CHAIRMAN: Briefly the answer is "no".

By Mr. McCusker:

Q. If it is not the intention, Mr. Whitehouse, that we consider the already retired civil servants being assisted out of this fund, should we then discuss them in this place? Do they come under the present bill we are discussing? Are we not running a risk of delaying action on this?—A. Quite frankly yes, and I hesitate to bring this before the committee, but as I have said I met these people all over the country and I helped them to form an association of their own and they do have a good organization now and I promised them I would

say a word for them before this committee. I appreciate this perhaps is not the committee and that we could not expect to get anything out of the fund for these people, but we did hope the government would try to do something independently for these people.

Mr. McCUSKER: I did not wish to indicate lack of sympathy for these people.

By Mr. Brooks:

Q. Mr. Whitehouse said some of these people might die between 65 and 70 from not having sufficient pension. What is the range between the minimum and maximum?—A. I do not remember saying that some of these people might die.

Q. I remember you saying something along that line. There is no question about that.—A. I hope the newspapers will quote me correctly on that. As I said, sir, it is difficult to figure out because the salary scales differ and the superannuation is based on the salary received over the years. We have a number of superannuated civil servants who are receiving as low as $25 or $30 a month, but that is due to the fact that they did not have sufficient service to bring their pension up.

Mr. McILRAITH: It might be too small a salary and a short term of employment.

Mr. LESAGE: It has to be a short term if it is only $25 a month.

By Mr. Fraser:

Q. Mr. Whitehouse has asked for a five year basis for the superannuation instead of ten. Now, this is owing to the fact that increases of salaries have only come into effect, is it, during the last six or seven years?—A. Since 1944 we have received six or seven salary increases.

Q. And naturally the people who are going out of the service in the very near future would like to have the superannuation based on these years. They are the ones going out in the next few years?—A. Yes. The superannuation would naturally be larger for all people if it was on the last five years' average.

Mr. FRASER: To what extent would if affect the fund?

The WITNESS: Those are figures I have not got.

Mr. LESAGE: Would Mr. Taylor have those figures?

Mr. TAYLOR: We asked for them last night and a memorandum is being prepared on that subject.

By Mr. McIlraith:

Q. In the first point you raised I noticed you referred to the last five years. Do you prefer the last five years to the best five years?—A. It was the five year average rather than the ten year. The present superannuation as you no doubt know is based on the average salary for the past ten years. We would like that based on five years.

Q. I understand you prefer five years instead of ten, but I notice you used the term over the last five years and I was wondering what your preference was as between the last five and the best five?—A. I would prefer the best five.

Mr. FRASER: Naturally.

Mr. McILRAITH: The point is that the best term as opposed to the last term does permit some of these employees in some departments to take lower salaried jobs and the change is of some advantage to them.

By Mr. Ashbourne:

Q. Mr. Chairman, am I right in that from some of Mr. Whitehouse's remarks I understood that he said there were some whose superannuation was based on a five year average now?—A. That is right, sir.

Q. Can he tell us what ratio that bears to those on the ten year average? —A. I cannot answer that figure either, except to state that five years are in the minority and eventually will pass out of the picture. They are people who were in the service prior to 1924 and it was based on the last five years at that time and they retained that privilege. All people coming under the Act since 1924 have been on a ten year average.

The CHAIRMAN: Would they represent 10 per cent?

The WITNESS: Approximately, I would say.

Mr. HELLYER: Am I safe in assuming you believe generally speaking this is a good bill?

The WITNESS: Yes. You are quite safe in assuming that.

The CHAIRMAN: Are there any further questions?

By the Chairman:

Q. If I may, then, Mr. Whitehouse did I understand you correctly that you feel it would be of substantial benefit to a large number of employees to have the five year rather than the ten year average?—A. That is right, sir.

Q. And you are of course aware that the government has made special civil service pension contributions within the last three years of $175 million?— A. Yes, I am fully aware of that.

Q. You are aware notwithstanding those contributions the fund is still in the red $189 million?—A. Yes, sir.

Q. So it rather necessarily follows that if the fund is to be kept anything like actuarially sound and if these substantial additional benefits are to be awarded there must be an increase in the annual contribution to the fund?— A. Of course you will remember too that one of the amendments to the Act states that the contribution in future will be 6 per cent for all instead of 5 per cent, 5½ per cent and 6 per cent.

Q. And I am also aware—I believe we were told last evening—that the contribution should be 6¼ per cent if the fund is to be kept in balance.—A. I have no argument with adequate contributions to get the benefit we desire, and I have told my people that repeatedly all over the country.

Q. It is that morally you felt bound to explain a point of view which may not be your own.

By Mr. Hellyer:

Q. Does your organization have any views with respect to people being allowed to work between the ages of 65 and 70 if physically fit and wishing to do so?—A. We have definite views on that, or have had up to the present.

Q. What are those views?—A. Our views are, and we have made a lot of representations on that, that we feel a civil servant should be compelled to retire at age 65. We have many reasons for that and I could cite a case in point I am working on at the present time. I will not name the city. There may be a gentleman present who happens to know this particular situation; as a matter of fact I know he is present. The postmaster was successful in obtaining an extension in service. We do agree in some instances these extensions should be granted in the interests of the service, naturally. And we find too in some cases that financial difficulties warrant perhaps a year's extension, but where we find a case that the individual is not financially embarrassed and actually is independent financially—independent of what he earns in his own vocation—and that we have people who are quite prepared and able to fill the

position, in that case there certainly should not be an extension granted to such people. We have unequivocally asked that it be compulsory at age 65, and we are a little alarmed at the many extensions that are being granted at the present time. We feel that the people should be retired at age 65. We are fully aware of the economic conditions and the difficulty of recruiting people to the various branches of the government service, and in the interest of the service it may be necessary to grant extensions. There is one point our people have always brought forward in objection to extensions particularly in supervisory positions because you will appreciate there are always people ambitious who feel they are entitled to promotions and when someone in a supervisory position has been granted an extension naturally it holds up promotions all down the line.

By the Chairman:

Q. In regard to the second part of your presentation, did I understand you correctly to suggest that in the U.K. the civil servants there received more generous retirement allowance than in Canada?—A. I can only cite the U.K. Pension Increase Act.

Q. Can you tell us what the pension was before it was increased?—A. I can if I may read this:

> The United Kingdom's Pension's Increase Act was operative from January 1, 1944 and amended in 1947 to provide larger increases to pensions in the lower levels. These pensions are non-contributory and a married man at the equivalent of a little over $400 at the present rate of exchange received an increase of 40 per cent, while a single person receives a 30 per cent increase. At the equivalent of something over $800 the increases are 30 per cent and 25 per cent, respectively, while at somewhat over $1,600 the increases are 12 per cent in each case. At about $2,400 equivalent the increases are equal at 7½ per cent and at about $3,000 the increase is 5 per cent.

Q. If I heard you correctly—you read rather rapidly—their superannuation payments are still well below Canada's?—A. Yes.

Mr. BROOKS: Is not the cost of living below Canada's too?

The WITNESS: We will say it is, but to be quite honest—

By Mr. Quelch:

Q. Did not Mr. Whitehouse say they are non-contributory?—A. Yes.

Q. Then the level might be similar to ours if they contributed to some other fund?—A. That seems to be a logical assumption.

The CHAIRMAN: They are not making any contributions.

Mr. QUELCH: In addition they could make contributions to some other fund in addition to the non-contributing fund and that might make their rate of pension similar to the Canadian rate.

The CHAIRMAN: Are there any further questions of Mr. Whitehouse? If not shall we call Dr. Senn.

Dr. H. A. Senn, President, The Professional Institute of the Public Service of Canada, called:

The WITNESS: Mr. Chairman and gentlemen, before I read to you the brief from the Professional Institute of the Public Service of Canada that you already have in your hands I would like to say just one or two words. The Professional Institute is pleased to have this opportunity to present its views on Bill 334 to this committee. The institute is an organization of professional

men and women in the public service extending through all government departments and with members in all parts of Canada and indeed in almost all parts of the world where Canada has trade or diplomatic representation. We are very much aware that superannuation is an intensely human kind of problem and every individual tends to look at it from his own peculiar standpoint—I think that was apparent in the discussion you have heard already this afternoon.

The Professional Institute of the Public Service of Canada, as a recognized representative of the professional public servants, is keenly interested in the provisions of Bill 334, particularly insofar as they reflect the recommendations made to Government by the Institute on a number of occasions in the past for amendment of the Civil Service Superannuation Act.

The Institute notes with approval that Bill 334 in many respects fulfils these recommendations. It is particularly gratifying to note that under the Bill, the payment of superannuation benefits is to be a matter of right rather than of privilege, as formerly; that coverage is to be extended to a great number of public servants, many of them professional, who were previously excluded; that restrictions on the theatre of war service have been removed; that provision is made to permit the uniform transferability of service credits from the Defence Services; and that it is now possible to contribute for any prior pensionable service or employment.

The Institute is also pleased to note that provision is to be made for the payment, out of the Superannuation Account, of such portions of succession duties as are attributable to Superannuation benefits.

While noting these improvements with approval, the Institute regrets that in the provisions of the Bill, the Government has not seen fit to remedy or alleviate a number of undesirable features of the old Civil Service Superannuation Act, concerning which the Institute has made strong representations to the Government in the past.

The Institute notes that it has not been found possible to incorporate in the revised Bill the strong recommendation made by the Institute and other organizations that the superannuation benefits be determined on the basis of the average salary for the last five years of pensionable employment, and urges that further consideration be given to reducing below ten years the period used in determining the amount of such benefits.

The Institute notes with approval that in the reciprocal transfer agreements proposed under the revised Bill, the Government has endeavoured to reduce the obstacles in the way of mobility of staff between the Public Service and other government services or international organizations designated by the Governor in Council.

If I might interpolate, we as professional men and women feel this is a very important step forward and that we can have a better public service in Canada if we have every opportunity for the exchange of workers between provincial governments universities, and in some cases private industry, and the government service.

As a recognized representative of the professional public servants, the Institute suggests that consideration be given to extending these reciprocal arrangements to cover recognized pension funds for university faculty members.

The Institute notes that the revised Bill requires the individual who increase the rate of contribution for employees who entered the Public Service prior to 1939 from 5 percent to 6 percent. This provision of the revised Bill will impose an appreciable increase in the contributions paid by a group of older and experienced public servants, who since the revision of the Superannuation Act in 1947 have held the firm belief that they would not be called upon to pay this extra amount.

The Institute notes that the revised Bill requires the individual who immediately prior to his enlistment in the forces was not employed in the Public Service on a full-time basis, and who wishes to include previous war service as pensionable service, must contribute at a 12 percent rate for the period of such war service, with interest at 4 percent. This results in an extremely heavy burden, particularly in the case of World War I service. The Institute supports the veterans' organizations in urging that the hardship which continues to be imposed on these individuals under the provisions of the revised Bill be alleviated by requiring that their payments for previous war service be limited to 6 percent of the salaries initially earned by them subsequent to their war service.

The Institute notes with regret that the provisions of the Bill do not meet the representations made by the former employees of the Department of Soldiers Civil Re-establishment and the Soldier Settlement Board that their superannuation benefits be based on the average salary earned during the last five years of pensionable service.

Now, one final point that we have deliberately left at the end of the brief because we feel primarily it does not directly concern the bill before you, but is still a matter of extreme importance to superannuated civil servants.

The Institute regrets that at this time no provision has been made to supplement the payments to superannuated public servants or their dependents in recognition of the effect of greatly increased living costs in drastically reducing the real value of the payments authorized for these individuals. The provisions under the Superannuation Bill for increased pensions for dependent children provide a small measure of relief, but they do not reduce the hardship to which the majority of superannuated public servants and their dependents are now subject. The Institute therefore strongly recommends that this matter be reconsidered at an early date with a view to introducing legislation to alleviate this situation.

I would like to say just one more word while I am on my feet if I may.

In general we in the Professional Institute feel that this is an extremely fine piece of legislation. We think that it is going to mean a great deal not only to our professional people in the service but to the great majority of members of the public service of Canada. We feel in that respect that the government should be congratulated on presenting such a measure and we earnestly hope that every opportunity will be taken to see that this bill is enacted as rapidly as possible.

We have registered our disagreement here and our objection to certain points in the bill, but we certainly do not wish to quibble in any way about some of these points when we feel that the whole matter is of such great importance to all the civil servants of Canada.

The CHAIRMAN: Are there any questions?

Well, gentlemen, we have completed the work allotted in our program for the committee at this afternoon's meeting. We will meet at 8.30 tonight.

Mr. FRASER: Are any questions going to be asked?

The CHAIRMAN: I have asked that.

By Mr. Fraser:

Q. Dr. Senn is asking the same as Mr. Whitehouse asked that the average salary for the last five years be used as a basis instead of ten years. Now, do you think that will help a great number of those in your organization?—A. I do not think there is any question of that. It applies very particularly to professional people because in many instances a man may work along as a research man at a medium level of salary—

Q. More like an intern in a hospital.—A. It is a little more than that.

Q. I know it is.—A. My point is that when he comes to perhaps age 55 or age 60 it is only then that the senior position in his particular unit opens up and he then receives a very much larger increase in salary and of course of responsibility as well.

The CHAIRMAN: It is only then of course that he starts making contributions comparable.

The WITNESS: Quite true.

Mr. FRASER: But even while on the lower salary he is making a contribution.

The CHAIRMAN: Contributions, but not comparable contributions.

Mr. FRASER: It might be lower, but at the same time—

The CHAIRMAN: If you were an actuary I think you would feel a little differently about it.

By Mr. Fulford:

Q. How many members are there in the Professional Institute of the Public Service of Canada?—A. Just about 3,000 sir.

Q. They are among the legal, medical and other professions. Could you give me a breakdown?—A. We have about 40 odd professional groups—chemists, geologists, medical doctors, lawyers. We cover the whole range of the professions and we include administrators who are administering scientific personnel. Our membership is the great bulk of the research people of the federal service as well as the bulk of the people who are doing technical and what we would ordinarily regard as professional work. We have very rigid membership entrance requirements based largely on university graduation, but also on the fact that the people involved must be doing what we consider to be technical or professional work.

Mr. FRASER: Would economists and actuaries be included?

The WITNESS: Yes, definitely.

The CHAIRMAN: Shall we adjourn until 8.30?

Mr. BROOKS: I was going to ask about this 12 per cent for veterans of the First Great War.

The CHAIRMAN: We are going to deal with that this evening.

(*The committee adjourned.*)

EVENING SESSION

The committee resumed at 8.30 p.m.

The CHAIRMAN: Gentlemen, we have with us tonight representatives from four different special groups. I asked the clerk of our committee to indicate to me as to what order he felt they should appear, and he suggests that we first call Mr. J. C. Osborne, of the Gowling, MacTavish firm, who is representing former employees of the Department of Mines and Technical Services, after which we will call Mr. T. D. Anderson, secretary of the Canadian Legion, and then Mr. W. Hewitt White, secretary of the Department of Veterans Affairs Employees' National Association, and finally Mr. A. B. Hamilton, president, Department of Veterans Affairs Employees' National Association.

Mr. Osborne.

Mr. J. C. Osborne, Barrister, representing former employees of the Department of Mines and Technical Surveys, called:

The WITNESS: Mr. Chairman and gentlemen. I think that I can make my submission to the committee very short, and I will naturally endeavour to do so. I represent a group of civil servants who are now, or have been in the past, associated with the department which is now known as Mines and Technical Surveys. We are concerned because the civil servants that I represent are treated as being entitled to the benefits of Part I of the present Superannuation Act, and not to the benefits of Part II of that Act. That means that their superannuation will be calculated on the ten-year average, the average salary during the last ten years of their employment, in place of the average salary during the last five years of their employment, a matter obviously of some considerable concern to them. I have prepared, and there has been distributed to members, a very short brief, and with your permission I would like to read from it, because I think that it puts it as succinctly as possible.

Certain problems have arisen with respect to the superannuation status of a group of civil servants.

The group in question includes some nine individuals who are at present employees of the government and some fifty-seven former employees. Of the former employees, fifteen have been superannuated or have died since 1948 and the remainder were superannuated or had died prior to that date.

I think in preparing this brief that I should have mentioned that of the total numbers I have given there were some resignations. I would also like to say now that we would not like to be held too closely to the figures I have just indicated. They are the best ones we have available and for present purposes serve to illustrate the problem.

The present employees of the government are experienced field officers, many of whom had completed from ten to fifteen years of service in responsible charge of survey parties prior to the year 1921.

And now comes the history of the problem. In that year, the group was composed of Dominion Land Surveyors in the Outside Service employed in the Topographical Service Branch of the former Department of the Interior.

Under the authority of P.C. Order 2958 dated as of October 16, 1920, certain blanketing-in orders were passed which had the effect of making the members of the group permanent civil servants. The effective date of permanency in every case was April 1, 1921 and the blanketing-in orders directed that the Civil Service Commission and the department place the employees so made permanent in their appropriate civil service classifications, effective from April 1, 1921. For convenience of reference, it may be mentioned that the blanketing-in orders are designated as P.C. Orders 4045 dated as of October 31, 1921, 208/1426 dated as of July 8, 1922 and 22/2000 dated as of September 25, 1922.

If I may interject a word of explanation as I proceed. Had those Privy Council orders been followed in the terms in which they were stated, there would have been no difficulty because the group that I represent would then have become permanent civil servants as of April 1, 1921, but that actually was not the case.

At the time, the Civil Service Commission and the department were engaged in a reorganization of the Survey units of the department and in a reclassification of positions with the result that there was a long delay during which no action was taken on the special direction of the blanketing-in orders in council.

In the meantime, the salaries of these employees were continued at the daily rates of $7.00 or $9.00 per day which they had received prior to April 1, 1921. From that date, they were placed on the Retirement Fund, given annual and sick leave privileges and permitted to take out civil service insurance.

Now, as you will appreciate, gentlemen, the question is ultimately going to turn upon whether the gentlemen in question were or were not civil servants as of the critical date, namely, July 19, 1924. The factual position was that after the Privy Council order of October 16, 1921, had been passed my clients remained on their daily rates of pay. The present Superannuation Act defines a civil servant as a person who is on a stated annual salary, so that it is a matter of importance that they remained, due to these orgnizational difficulties, on their daily rates of pay of $7 or $9, as the case may be, per day.

The reorganization of the Survey units of the department was completed by P.C. Order 52/517 dated as of April 6, 1925, effective as from April 1, 1924. The employees' Certificates of Reclassification issued under P.C. Order 52/517 were effective from the latter date at stated annual rates and those who received salary increases on such certificates were paid the increases from April 1, 1924. So that what took place on April 6, 1925, when P.C. 52/517 was passed is that a reclassification was finally effected and the P.C. order was retroactively dated so that it would have effect as of April 1, 1924. As and from that date, April 1, 1924, certain benefits and privileges were given to the group in question, namely from that date they were on stated annual rates and those who received salary increases on such certificates were paid the increases from April 1, 1924.

I now turn to an examination of Parts I and II of the present superannuation Act.

Part I of the Civil Service Superannuation Act applies to every person who becomes a civil servant after July 19, 1924 and to such civil servants as might elect under the provisions of the other Parts of the Act to become contributors. In the case of a person who becomes a civil servant after July 19, 1924, the superannuation allowance is computed on the basis of the average salary received by the contributor during the last *ten* years of his service.

Part II of the Civil Service Superannuation Act applies to civil servants—and those words are critical—who, on July 19, 1924, were subject to the provisions of the Retirement Act. It is specifically provided that any such civil servant might elect to become a contributor under the Civil Service Superannuation Act and should thereupon be entitled to have transferred to the fund created under that Act the amount standing to his credit in the Retirement Fund. From the date of the election, he would be subject to the provisions of and entitled to all of the benefits and privileges under Part I of the Act "provided, however, that in computing the superannuation allowance of any such contributor, the average salary shall be based upon the salary received by the contributor during the last *five* years of his service".

I again remind you that the critical words are "civil servants as of July 19, 1924".

It will be apparent that a substantial advantage is extended to a civil servant coming within the provisions of Part II of the Superannuation Act and the reason for the advantage can be readily appreciated.

My information is that it made relatively little difference to those who retired on or before about 1948. The economic facts of the matter were that from the passing of the superannuation Act in 1924 there was, first of all, a period of depression when salaries in general were not increased. That was followed by a period of war, when salaries were frozen, and it was in 1945 that salaries were increased and in many instances increased quite sharply, so that those who took superannuation subsequent to 1945, and particularly subsequent

to 1948, found it to be a matter of importance to them to have their superannuation calculated on the last five years of their service rather than averaging it out over the last ten years of their service.

It will be borne in mind that Part I of the Act applies automatically to every person who becomes a civil servant after July 19, 1924. No question of election arises with reference to such a person. However, when the Civil Service Superannuation Act came into force, there were persons in existence who were already contributors to the Retirement Fund and a special procedure was devised to deal with their situation. Part II of the Civil Service Superannuation Act fully recognized the right of a contributor to the Retirement Fund to exercise control over his accumulated credits. Before such credits could be transferred to the Superannuation Fund, his election was required and, once given, operated as a waiver of "his right to any payment or benefit under the provisions of the Retirement Act." It is reasonable to suggest that when the Civil Service Superannuation Act was passed, it was regarded as a more effective instrument for the public service than the earlier legislation and special benefits were provided to induce contributors to the Retirement Fund to elect to come under the new Act.

So the situation was this: If I became a civil servant after July 19, 1924, Part I of the Act automatically applied to me. There was no question of election. If on the other hand I was a contributor to the Retirement Fund, I was required to elect to transfer my credits from that fund into a new fund under the Superannuation Act. It is apparent on the face of the legislation itself that it was the desire of those concerned that people should transfer from the earlier to the later fund, and an inducement was held out, namely, that the superannuation of people electing to transfer would be calculated on the five-year average.

Ever since 1921, the civil servants in question were contributors to the Retirement Fund and substantial credits had been accumulated by them at compound interest. They were required to elect whether they wished to come under the Civil Service Superannuation Act or continue under the Retirement Fund. All but two of them elected the first alternative. This action was taken in good faith and in the belief that they were entitled to all of the benefits conferred by Part II of the Act.

That was an election under Part II of the Act to transfer from one fund to the other, and it appeared that it gave them an advantage at the time. There was in fact an inducement for their transferring.

Now, it will be observed that the requirement of election is wholly inconsistent with the view that the civil servants with whom we are concerned fall within the automatic provisions of Part I of the Act and it will be further observed that the election was necessary to effect a transfer of the accumulated credits from one Fund to the other and to extinguish existing rights under the earlier legislation.

That is really a reproduction of what I said extemporaneously. If they were simply civil servants who became such after 1924, no election was required. But the fact is that they were required to make an election, and with the exception of the two individuals whom I mentioned, they did make that election.

Moreover, the real situation may be tested against the isolated cases of two individuals. They took no action in the matter of election during the three years from July 19, 1924, when such election was permitted under Section 16, Part II of the Act, and were continued on the Retirement Fund. They had their choice, and they did not elect to come under the new legislation as were all civil servants who were contributors to that Fund and did not elect within the prescribed period to come under the Civil Service Superannuation

Act. They were, therefore, treated in all respects as if they had been eligible to elect under Part II, and the other employees of the group have also been so treated except in the matter of superannuation benefits which have been paid to those who have already been superannuated on the basis provided for in Part I and not on the preferred basis provided for in Part II.

This is very interesting in that regard. Moreover, when Section 17A was inserted in the Act in the amendments of 1945 and permission was again given thereunder to civil servants on the Retirement Fund to elect, within one year, to come under the Act, the two individuals already mentioned both so elected and their elections were accepted. Neither of these members of the group has, therefore, been dealt with on the basis that they automatically came under Part I of the Act in line with the consideration accorded by the Superannuation Branch to the majority of the group who did elect in 1925 to come under the Act.

At this point, it will be convenient to recapitulate the critical facts. The blanketing-in orders mentioned above directed that the employees in question be made permanent in their appropriate civil service classifications effective as from April 1, 1921. That was the first direction, and it said they were to be made permanent civil servants as of April 1, 1921.

From and after April 1, 1921, they were placed on the Retirement Fund and given certain other privileges. P.C. Order 52/517 was made retroactive as from April 1, 1924 and the Certificates of Reclassification issued pursuant thereto were effective from that date. Finally, the employees were required to elect as provided for in Part II of the Civil Service Superannuation Act and this can only be taken as an acknowledgment that they were entitled to the special benefits conferred by that Part.

Notwithstanding all of these facts, the Superannuation Branch subsequently ruled that the civil servants with whom we are concerned automatically came under Part I of the Civil Service Superannuation Act with the result that their superannuation allowance would be based on the last ten years of their service. Apparently, the view was taken that their position was reclassified from a daily rate of pay to a stated annual salary after July 19, 1924 and in this connection no weight was given to the retroactive character of the action that has been taken.

I hope, gentlemen, that the brief makes the point as clear as I would like to have it before you. Our submission is that on the face of all these dealings, the intent was to deal with this group of old employees in such a way that they would get the benefit of Part II of the Superannuation Act. They did in fact get certain benefits by way of salary increases and insurance from that date, but when the time came to complete the reorganization of the department, they were reclassified under the authority of a Privy Council order which was in fact passed in 1925. The precaution was taken—and for a very definite and deliberate purpose, the precaution was taken of making that order in council retroactive as of April 1, 1924. I submit respectfully that it was done for no other purpose than to accomplish what was long thought to have been accomplished, namely, to confer all the benefits of Part II on those particular individuals.

What happened was that the Superannuation Branch ruled that notwithstanding the retroactive character of the order in council of 1925, that as a matter of fact the gentlemen whom I represent were not civil servants at all as of July 19, 1925, because they were then on daily rates of pay. It was ruled by the Superannuation Branch, and that ruling was confirmed by the Department of Justice, that whatever retroactive character the order in council in question may have had, it did not have the capacity to make them civil servants as required by the Act on the critical day, namely, July 19, 1924.

This problem has been drawn to the attention of the appropriate officials of the Treasury Board and the ruling given by the Superannuation Branch has been confirmed by an opinion of the Department of Justice.

We take the liberty of appearing before the committee tonight because we feel very strongly that the history placed before you shows that everyone who was concerned in 1921 to 1925 was of one mind, that these gentlemen in question should be given the benefits of Part II and their superannuation calculated when the appropriate time came on the basis of a five year average.

We are told that the present Superannuation Act must be interpreted in such a way as to withdraw that benefit from them, and to leave them under Part I. We have to accept that position but we would like now to ask the committee to accept as a principle the proposition that the legislation which is now before you should include in whatever way is deemed proper by the departmental officials, a provision which will ensure that the group in question is given the benefits of Part II of the Superannuation Act.

Now, I do not think it would be proper for me to suggest what that amendment might be. I suggest it would not be a difficult one to draft. Presumably it would be inserted in Section 24 which is the section which deals primarily with Parts II, III, and IV; and I think that perhaps all I should do is to ask for the acceptance of the proposition that I am advancing.

I should like to say that it is difficult for us to believe that where the intent was so clear, there should be an objection to the insertion of a provision which would overcome the technical ruling that has been given on the present Superannuation Act. I do not think that we would be here if we did not have a history in the files of the appropriate department which we are prepared to stand upon and which we say discloses without any question that this was always what was intended.

Even if we did not have that file history, however, I should say this: That we are held up by a ruling which is adverse to us on the technical words "civil servants as of July 19, 1924." The fact is that these men were contributors from 1921 to the retirement fund. The whole purpose of Part II, I suggest, was to induce those in the retirement fund to transfer from the retirement fund to the Superannuation fund. That is what we did and we should, in our view, be given the benefits of the inducements which were held out for that purpose.

The fact of the matter is that there has been inconsistency.

The Act requires an election to transfer the fund. That election was extended to those whom I represent and they elected under it. If they were, in fact, under Part I, the election was unnecessary because it was an automatic provision.

They not only took the election of the major group in 1925, but they also took the election of two individual people some years later.

Mr. McILRAITH: That was in 1947.

The WITNESS: That is correct, and we earnestly request that consideration be given to the acceptance in principle of the inclusion of a provision in the bill which will rectify the situation which in our view is unintentional and which is unjust to those concerned. I should like to thank you for the opportunity of coming before you. I should also like to say before I sit down that we have spoken from time to time to the departmental officials concerned and we have been received with unfailing courtesy. We are indebted to them. I have with me Mr. Martindale and Mr. Palmer who have taken a very great interest in the group to which I have referred. The members of the committee may want to ask them questions. They are available for that purpose.

The CHAIRMAN: Are there any questions?

By Mr. Lesage:

Q. Can you tell me on what date the decision of the Superannuation Branch, mentioned in the past paragraph on page 2 of your brief, was taken?—A. I think I can get you that answer if I may refer to my experts.

Q. And also the date of the opinion of the Justice.—A. I think there was in fact more than one opinion. Mr. Palmer, would you be good enough to speak as to that?

Mr. PALMER: I think the last one was in 1949.

The WITNESS: The fact of the matter is that this has been before the Superannuation Branch and the Department of Justice on more than one occasion. I should think that Mr. Palmer or Mr. Henry may have something more specific.

The CHAIRMAN: I would suggest that in order that our record may be complete, if the committee is willing, I would ask Mr. Osborne to supply the committee with a copy of P.C. 52/517.

The WITNESS: I should be happy to do so.

The CHAIRMAN: And a copy of the adverse opinion of Justice, and if it is agreeable, they will be printed as appendices to today's proceedings. All those in favour will please signify?

Mr. MCILRAITH: Would you not want to have P.C. 2958 as well?

The CHAIRMAN: If I have the correct number.

The WITNESS: There are two orders in council, and if you say you want both, I will see that copies are supplied. I presume they are available from the office of the Privy Council.

Mr. LESAGE: I am most interested first in the decision of the Superannuation Branch, when this group was taken in under Part I rather than under Part II? When was that?

The WITNESS: Well, Mr. Palmer's answer was that he though it was in 1949.

Mr. PALMER: The decision of the Superannuation Branch was much before that.

Mr. LESAGE: Yes, it must have been much before that.

Mr. PALMER: I think it was about 1927. I think Mr. Gullock will agree with me.

Mr. LESAGE: The decision of the Superannuation Branch was taken in 1927. Was there an opinion of Justice on that decision immediately after or only in 1949?

Mr. PALMER: Perhaps Mr. Gullock could say something on that.

The WITNESS: Yes; Mr. Henry has been kind enough—

By Mr. Lesage:

Q. You understand as a lawyer the reason for those two questions. I want the members of the committee and myself to have as clear an opinion on the matter as possible. Now, my thinking is that the position is as follows: The decision was taken in 1925 and was it not easier at that time for the people making that decision as to those people who come under Part I to know of the intention behind the order in question than it would be for ourselves here.—A. One would perhaps think that that is true, but there is an extensive file on this subject. I do not know how far I am permitted to go in saying what I know, and in some cases what I believe to be contained in that file, but from the very first it was quite clear that the whole backdating of the order in council of 1925 was for the purpose of giving the very advantage to these gentlemen that I suggested. The writing is conclusive on the point in my submission.

Q. It was not the opinion of Justice?—A. The Department of Justice did not express any opinion on what the intent of the legislation was. I think Mr. Henry will confirm that. They ruled—and I have no quarrel with their ruling, in this place at any rate—that as a technical matter these men were not civil servants as of July 19, 1924. Mr. Henry was kind enough to say we might read the ruling of the Department of Justice into the record. I will be happy to do so if you wish.

Mr. McILRAITH: It should be on the record.

The CHAIRMAN: We have a lot of ground to cover tonight and I think the committee would be content for this document to go in as an appendix.

Agreed.

We have three other delegations here and I do not want to crowd them.

The WITNESS: I have no desire to take up the committee's time.

Mr. McILRAITH: One of these orders in council will cover all the delegations. One of them has application to all, that of the 16th of October, 1920 will be an order in council we will be hearing more of.

The CHAIRMAN: Would it be wise to hear that now, Mr. McIlraith?

Mr. McILRAITH: I think that order in council should appear in the printed record, and it should be read.

The CHAIRMAN: All right, if you will read it now. P.C. No. 2958 is the one.

The WITNESS: I do not think I have a copy of it. If there is a copy available, I will read it.

Mr. CANNON: I would like to ask just one question.

The CHAIRMAN: If we may get this on the record first, Mr. Cannon.

The WITNESS: This is P.C. Order No. 2958, dated as of the 16th day of December, 1920.

The CHAIRMAN: I have October in your memorandum, Mr. Osborne, Part I. Is that the wrong date?

The WITNESS: I agree, sir.

The CHAIRMAN: It should be December 16, 1920?

The WITNESS: The copy now handed to me is dated December 16.

The CHAIRMAN: Will you read it into the record?

The WITNESS: December 16 is right. I apologize. It is an error.

P.C. 2958

Privy Council

Canada

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, the sixteenth day of December, 1920

PRESENT

HIS EXCELLENCY

THE DEPUTY GOVERNOR GENERAL IN COUNCIL:

Whereas the Civil Service Commission reports that by section 11 (2) of the Civil Service Amendment Act, 1919, it is provided that "No temporary employee shall be given a permanent position as a result

of classification except upon examination under the provisions of this Act, or without examination under the regulations made by the commission and approved by the Governor in Council";

Therefore His Excellency the Deputy Governor General in Council, on the recommendation of the Secretary of State, is pleased to instruct and doth hereby instruct and direct the Civil Service Commission to submit to His Excellency in Council lists showing the temporary employees who are now occupying positions regarded by the Civil Service Commission and by the department concerned as of a permanent nature, whose services are certified as satisfactory by the department and approved as such by the commission and who conform to the following regulations:

1. Such employees shall have been assigned to the said position prior to November 10th, 1919, being the date on which the Civil Service Amendment Act, 1919, became law.
2. Such lists shall not include for the present, any temporary employee of the Soldier Settlement Board, the Department of Soldiers' Civil Re-Establishment or the Income Tax Office, inasmuch as these departments are operating under exemption from the Civil Service Act in so far as their temporary employees are concerned.
3. Such lists shall not include any temporary employee whose age or physical condition is such as to merit his retirement from the service.
4. Such lists shall not include any male temporary employee who was of military age during the recent war and who is not a returned soldier or sailor, as defined by the Civil Service Act, 1918, unless such employee can furnish reasons satisfactory to the department and to the commission of his failure to enlist for such service in the war.

His Excellency in Council is further pleased to order that such of the above employees as may be granted permanent status by the Governor in Council shall have their rates of pay determined as follows:

Group I. The rate of pay for employees receiving rates of compensation less than the minimum of the classes in which their respective positions are placed shall be advanced to the minimum rate of the class, effective April 1st, 1919, or, if the employee entered the service since that date, the date of such entry.

Group II. The rate of pay for employees receiving rates of compensation which are either at the minimum or maximum or intermediate between these rates for the classes in which their respective positions are placed shall be at rate which the employee is then receiving, or if such be not an established classification rate, then the next higher classification rate shall be paid, effective April 1st, 1919, or, if the employee has entered the service since that date, the date of such entry. If an employee in this group has received an increase since April 1st, 1919, the corresponding classification rate shall be effective only from the date of such increase.

Group III. The rate of pay for employees receiving rates of compensation more than the maximum of the classes in which their respective positions are placed shall be the maximum of the said class effective from the date the permanent classification of the position has been confirmed by the Civil Service Commission under these Regulations.

(Sgd.) RODOLPHE BOUDREAU,
Clerk of the Privy Council.

By the Chairman:

Q. Did I understand you correctly, that notwithstanding that order, from your clients' viewpoint, those servants remained on a part time basis?—A. That is correct, sir.

Q. So the strongest ground in your opinion is the order in council which has been referred to as 52/517?—A. Yes, I would perhaps rather not commit myself to that being the strongest ground. We take a double position, a perfectly consistent position, but we say the intent of the earlier order in council was—

Q. —confirmed?—A. Yes. I think, looking back upon it, sir, if I may say so with great respect, it would have been better all around had the order in council of 1925 dated back to 1921 instead of as it did, back to April 1, 1924. It was assumed by my people, in any event, that the April 1, 1924, date was perfectly good enough to accomplish the purpose. It might have provided a more consistent picture if it had been carried back to the earlier orders in council.

By Mr. Lesage:

Q. I have a last question to ask Mr. Osborne. I understand, though, that the contributions of these employees to the Retirement Fund were put to their credit in the 1927 Superannuation Fund.—A. Yes.

Q. And they were given credit for their years?—A. Oh, yes. There is no question about that. The fund, or their credits in the fund, were transferred from the earlier Retirement Fund to the later one. All we say on that point is that the inducement in the statute to transfer was the benefit provided for by Part II, and having been called upon, or in any event invited to elect, the inducement was then withheld.

By Mr. Cannon:

Q. J just wanted to get it on the record that it is not suggested that the legislation you suggest would have any retroactive effect, it would just take effect from the date it was passed?—A. I find myself in a difficult position when I come to answer that question.

Q. You did not mention it, and that is why I brought it up.—A. No, and I am very grateful to you for mentioning it. There is a very small group who are now employed. That group is naturally very much concerned because they have been in this period of service since 1945. There is a group of some fifteen persons who have retired since 1948. They also in varying degrees are affected. Prior to that time it makes very little difference. We are coming to the committee tonight on a point of principle, on what I personally believe to be a moral issue. I would rather not suggest to the committee that the legislation should affect one group, when in principle it ought to affect a somewhat larger one. The committee might determine—I am obviously not in a position to suggest—that it is the last two groups who, as a matter of dollars and cents, are primarily concerned, those now employed and those who have retired since 1948. Those who retired earlier will not be affected in any substantial degree.

Q. You are not making any definite suggestion on that point?—A. If I may express my own view, I would like to see the legislation that I am suggesting made retroactive to include all of those who were materially affected, namely, those who have retired since 1948.

Q. Thank you. I thought we should get that on the record.

Mr. LESAGE: Apart from that, you would feel those who have retired have been discriminated against?

By Mr. Dumas:

Q. Could there be any other reason for P.C. 52/517 being made effective as from April 1, 1924, other than giving these persons the privilege of getting under Part II? Could there be any other reason?—A. I think the department officers may have one to suggest. I do not know what it is. Perhaps it is not fair to say that. There might be some other advantage in it.

Mr. PALMER: I have seen a letter from the Deputy Minister of the Interior to the Civil Service Commission asking that there be a setback to that date for that very reason, so as to let us come in under the Act.

The WITNESS: The record, in my submission, shows very clearly that was the purpose, and I am free to say this at least, that my understanding of the situation is that the order in council was not originally intended to be retroactive when representations were made that it should be made retroactive. I am subject to correction if I am wrong in any respect.

The CHAIRMAN: If there is an original letter from the deputy indicating that, should that not be added to the record?

Mr. DUMAS: Yes, it is very important.

Mr. LESAGE: I do not know, but that 52/517 order in council should be in the record also.

The WITNESS: We will supply a copy of it.

The CHAIRMAN: Thank you, Mr. Osborne. Your presentation has been quite helpful.

Now we will hear from the Canadian Legion. Mr. Anderson.

Mr. T. D. Anderson, Secretary, Canadian Legion, called:

The WITNESS: Mr. Chairman and gentlemen. I believe, sir, that copies of our brief are now being distributed. I should, first of all, like to express our appreciation for the opportunity to appear before this committee on behalf of a group of veterans who feel they have a just and proper claim. I believe that the brief which you have before you is self-explanatory and I shall not take up any of the committee's time on any introductory matters. With your permission, I will proceed to read the brief.

Brief Presented By The Canadian Legion, B.E.S.L. to the Standing Committee on Banking and Commerce, House of Commons.

Subject—Bill 334

An Act to Provide for the Superannuation of Persons employed in the Public Service of Canada

The Canadian Legion has over the past four or five years made continuous representations to the Prime Minister, the Minister of Finance and parliamentary committees concerning amendments to the Superannuation Act.

We are extremely gratified to note that the bill which is presently under consideration embodies two of the amendments we had requested. There is, however, one notable omission, and it is this which we would ask the committee to consider at this time.

This recommendation has been adopted by three dominion conventions of the Canadian Legion and, therefore, has the full support of our membership.

It can best be stated perhaps, in the words used by the dominion president in presenting the Legion brief to the Prime Minister and the cabinet in November 1949:

> As the Act now stands, veterans who were not employed in the civil service prior to enlistment and civilians who entered the civil

service from pensionable, industrial employment are required to contribute at the same rate, namely, twice the normal contribution plus 4 per cent interest.

The Legion still contends that there is an obligation on the part of the government to recognize a distinction between service in the armed forces during a national emergency and industrial employment at any time, and must repeat that this organization maintains that service in the armed forces is the highest type of government service. This principle is admitted in the wording of the Superannuation Act as amended in 1947, where it says, the period of his active service in the forces shall be deemed, for the purposes of this Act, to be service in the civil service.

We therefore urgently reiterate our request that those who volunteered for active service during a national emergency, who entered the civil service following their discharge from the armed services and became contributors under the Act, be permitted to contribute at the normal rate and not be required to pay the dominion government's contribution as well as their own.

While the Special Committee on Veterans Affairs which met during the 1947-1948 Session was not called upon to deal with the Civil Service Superannuation Act, it did feel obliged to make a firm, straightforward recommendation on the matter under discussion.

The following is the committee's unanimous recommendation with respect to the double contribution:

> Your committee also feels that the veteran of World War I is under a disadvantage as compared with the civilian, in so far as payment for superannuation credits is concerned. The civil servant who has at any time been employed in a temporary capacity, and is later appointed to a permanent position irrespective of whether or not his employment in the civil service has been continuous, may elect to include the period of his temporary service on payment of the contributions he would have made had he been a contributor during the period, plus simple interest at 4 per cent. Until the Act was amended in 1940 he might elect to claim half of his temporary service without cost to himself.
>
> The World War I veteran had no such opportunity in respect of his military service until 1947 and is required to pay double the ordinary contribution for the period claimed, plus simple interest at 4 per cent to the date of his election. His contribution is calculated on the assumption that his salary during his period of military service was the salary he received on appointment to the Civil Service.
>
> Your Committee therefore recommends that the Civil Service Superannuation Act be amended to provide: that, in respect of a contributor's service in the Forces during World War I, the amount he shall be required to contribute shall be the amount required to be contributed under Section 5 of the Act.

In other words, that is the normal contribution which any civil servant makes.

The Parliamentary Committee dealt only with the veteran of World War I, principally, it would seem, because superannuation and the counting of war service was a matter more immediately urgent for the veteran of the First World War. The principle upon which their recommendation is based, however, applies to all veterans who volunteered for service in the Armed Forces.

Let us consider the present status of two permanent employees of the Federal Government under the Superannuation Act as it will be constituted unless Bill 334 is amended on recommendation of this Committee.

Mr. A voluntarily enlisted in the Armed Forces in 1939 and served his country (not private industry) until 1945 going whither he was sent and generally carrying out the policies dictated by the Government at that time to the best of his ability. Upon being demobilized he entered the Civil Service as a temporary employee, thereby continuing in the service of the State, and eventually obtained his permanency thus becoming a contributor under the Superannuation Act. When the Act was last amended, Mr. A elected to count his war service and is presently contributing for the period 1939-1945 at twice the normal rate plus interest. I direct your attention particularly to the underlined portion of that sentence.

Mr. B voluntarily did not enlist in the Armed Forces but obtained a position in the Federal Civil Service as a temporary employee. Wartime restrictions prevented him obtaining his permanency until 1948, but from that moment on he was entitled to count his war-time service in the Public Service by electing to pay the single contribution. It should also be borne in mind that Mr. B's entry into the Civil Service during the war when there was a shortage of manpower may have enabled him to rise to a position of some importance in the Government Service. It does not seem equitable, therefore, that, in addition to losing this advantage, Mr. A should also be required to pay a double contribution for the period of his war service.

The fact remains that both these men served the Government of Canada during an emergency each in his own way, and surely no one will say that Mr. A's service was less than Mr. B's, yet this is the implication in the Act as it stands at present.

It is therefore hard for us to understand why this discrimination has not been corrected in the present Bill and we would urge that this Committee recommend that those who volunteered for Active Service during a national emergency, who entered the Civil Service following their discharge from the Armed Services and became contributors under the Act, be permitted to contribute at the normal rate, and not be required to pay the Dominion Government's contribution as well as their own. I shall try to answer any questions, should there be any, Mr. Chairman.

By Mr. Lesage:

Q. I think Mr. Cannon asked a question of the previous witness as follows: Do you believe that any provision dealing with this item should be retroactive? —A. Well, Mr. Chairman, the legislation as it provides for the ex-serviceman, and others who were employed in industry, might be considered to be already retroactive in that this groups is permitted to count time previous to actual service in the civil service toward superannuation.

Q. I mean, as to those who have already purchased past years of service in the army at the government rates?—A. I take it you are referring, sir, to those who have elected to pay their contributions in previous years for time served in the armed forces.

Q. That is right.—A. I would say, I think, without question that they would have to be considered in this legislation.

Q. And reimbursed for credits?—A. Yes.

By Mr. Fulton:

Q. You no doubt know that there was an amendment to the Canadian Forces Act in, I think, 1951, whereby it was provided that a person going directly from the forces could continue to serve in the forces up to 1950, I think it was, and then leave the forces and go into the civil service, and he should be allowed to contribute to the superannuation fund at the rate of 6 per cent for his time in the service. It would then count towards his superannua-

tion. You are aware of that fact? Would you say that that privilege extended to those who continued in the forces after the war, up to 1950, and that it should be applied to those who left the service at the end of the war, prior to 1950, and went directly into the civil service? You are asking that they should be put on the same basis?—A. I cannot see why there should be any distinction.

Q. Well, the first group I mentioned is entitled to contribute only 6 per cent, whereas the group with which you are concerned must contribute 12 per cent. You have not covered it in your brief, but in your submission that would be a fair argument in favour of your brief?—A. I would say so.

The CHAIRMAN: Are there any further questions? If not, I have just one question. You refer to a resolution in regard to World War I. Was there any similar resolution in regard to World War II?

The WITNESS: The last resolution adopted by the Canadian Legion was adopted at the Dominion convention in Montreal and it provided for both.

By the Chairman:

Q. Then, coming to the second part of your presentation, when you dealt with Mr. A and Mr. B, Mr. B of course got no benefits under the veterans charter. That is obvious. Now at the time the veterans charter was being compiled, and the various advantages were extended to the veterans of World War II, was there any discussion at that time in regard to this question of superannuation in the civil service, do you recall?—A. I do not recall just what took place at that time, although that record could be easily checked, and the information supplied if necessary. But we perhaps know, and the members of the committee will perhaps know, that the Canadian Legion made representations to a special committee on civil service matters as long ago I believe as 1937 or 1938. I am not certain of the exact years, but it was on this very subject.—A. I am referring now to the veterans of World War II. At the time the veterans charter was being prepared for the veterans of World War II, was there any discussion or any resolution passed by the veterans committee of that day in regard to superannuation?—A. I am sorry but I could not answer that question at the moment. As I have said, there have been three resolutions in the past at three Dominion conventions which take us back at least to 1946.

Q. Are there any further questions? If not, then thank you, Mr. Anderson.

By Mr. Brooks:

Q. I would like to ask Mr. Anderson with reference to the veterans of the first World War, how many took advantage of the provision which allowed them to enter the civil service by paying 12 per cent, or double the amount?—A. I have not got the exact figures, but I think it is something just over 1,000.

Q. Was not the proportion very low?—A. That again is a question which I could not answer categorically. I would assume that there are many times that many first World War veterans employed in the civil service today, but I understand that the number who availed themselves of this opportunity was very small.

The CHAIRMAN: It was quite limited.

Mr. BROOKS: These men considered it was very unfair at that time and they did not avail themselves of the opportunity of paying 12 per cent.

The CHAIRMAN: We have Mr. Hewitt-White with us.

By Mr. Lesage:

Q. I understand that your brief covers only those civilian employees who entered the civil service immediately following their demobilization?—A. Not necessarily sir.

Q. Because your example says that upon being demobilized he entered the service as a temporary employee. There is quite a difference there.—A. Those examples are simply typical examples and we are asking that the proposed amendment be applied to all veterans entering the civil service at any time.

By Mr. Fulton:

Q. Do you suggest that the 6 per cent rate should apply to those years subsequent to his discharge and prior to his joining the civil service?—A. No.

Q. Only the 12 per cent rate would apply?

Mr. LESAGE: Is the brief asking that the 6 per cent apply only to those who entered the civil service after they were demobilized?

Mr. FULTON: He says no. Are you suggesting that supposing they were discharged in 1945 and did not enter the civil service until 1948, that the years between 1945 and 1948 should also be counted at the 6 per cent rate?

Mr. MCILRAITH: They could not be counted at all.

The WITNESS: No. It is only for the time they served in the armed forces.

The CHAIRMAN: Thank you very much.

The WITNESS: Thank you, sir.

The CHAIRMAN: Now we have Mr. Hewitt-White.

Mr. W. Hewitt-White, Secretary of the Department of Veterans Affairs Employees National Association, called:

The WITNESS: Mr. Chairman and gentlemen, first of all I want to thank the committee for giving our association this opportunity to present its viewpoint as to particular matters referring to the bill which is before you.

We are affiliated with the Civil Service Federation of Canada. You heard representations from them this morning and of course we go along with them. But inasmuch as one particular matter with which we are concerned is peculiar almost to our department, it was felt that we should present this viewpoint and with your permission I should like to read you the letter of transmittal connected with this brief which brings it up to date.

The brief itself is a slight revision of a previous brief which was presented to the superannuation advisory committee in 1950 and I believe the letter of transmittal brings it up to date.

DEPARTMENT OF VETERANS' AFFAIRS EMPLOYEES' NATIONAL ASSOCIATION

Affiliated With
The Civil Service Federation of Canada
88 Argyle Avenue, Ottawa 4, Ontario

APRIL 20, 1953.

Mr. H. Cleaver, M.P.,
Chairman,
Banking and Commerce Committee,
House of Commons,
Ottawa, Ont.

Dear Sir:

I am enclosing herewith the briefs which we have requested permission to present in person to the Banking and Commerce Committee during its consideration of Bill 334.

That figure of 500 may be slightly inflated at this time. That was estimated in 1950. No doubt there are some people who have retired since that date, thus reducing that figure slightly.

The first brief has to do with the plight of some 500 civil servants still employed in the public service who, although appointed prior to July 19, 1924 to the Department of Soldiers' Civil Re-establishment and the Soldiers Settlement Board and subsequently granted permanent appointment under the department of Pensions and National Health Act and the Soldier Settlement Act, will be retired with less advantageous superannuation allowances than those available to other employees with similar or shorter lengths of service.

I say shorter length of service, because some of these people on behalf of whom we are making representations have been in the service since 1916, whereas, as you know, anyone who was a civil servant within the meaning of the Act on July 19, 1924, would come under part 2 of the superannuation 1924.

The reason for this disparity of treatment is that Part II of the Superannuation Act of 1924 permitted those who were civil servants on the 19th day of July 1924, and who elected to become contributors, to become entitled to superannuation benefits based on their average salaries during the last five years of service, whereas the employees on whose behalf these representations are being made, being exempt from the Civil Service Act at that time and therefore not classified as Civil Servants for the purposes of the Superannuation Act, were not permitted to elect and thus, when they were eventually made permanent under authority of the Acts previously referred to—that is the Department of Pensions and National Health Act and Soldiers Settlement Act,—they came under Part I of the Superannuation Act of 1924 which provides for a superannuation allowance based on the last ten year average salary. Bill 334 has no provision which will correct this disparity of treatment; hence these representations.

You may ask "Why did these employees not receive the same treatment as other government employees who were permitted to elect to become contributors?" The answer is not simple. The principal reason would seem to be that there was an erroneous opinion at that time that the D.S.C.R. and the S.S.B. were temporary wartime creations, that they would disappear and thus the duties being performed by employees could not be certified as being of continuous indeterminate duration. This view is not borne out, however, by the terms of an order in council passed on October 3, 1921 (P.C. 3560) which contains the following two significant paragraphs:

> And whereas the staff of the Board of Pension Commissioners of Canada has recently been amalgamated with the Department of Soldiers' Civil Re-establishment under the direction of the latter and the work of the combined organizations is now approaching a permanent basis:
>
> And whereas the Soldier Settlement Board has now reached a stage where the general business of the Board, including the collection of monies loaned, will continue for some years to come and may be regarded as on a permanent basis;

There would appear to be other reasons, therefore, that prevented the employees of these two agencies from being brought under the Civil Service Act, without which action they could not be considered to be "civil servants" within the meaning of Part II of the Superannuation Act. One such reason would appear to be the difficulty that was experienced (by the S.S.B. at any rate) in hiring fully qualified personnel at short notice at rates of pay authorized by the Civil Service Commission for similar classes of civil servants, as indicated by Order in Council P.C. 370, dated 21st of February, 1920—that was a very long order in council, and it went on at great length to say why the Soldiers Settlement Board could not operate within the Civil Service Act. I do not know whether the reasons given in the order in council are the real reasons or not, but, whatever the reason, the distinction was purely a technical one, since these 500 odd persons have been employed continuously since before 1924 (some as far back as 1916) and we submit that they should not be prevented,

because of a mere technicality, from enjoying as beneficial terms of superannuation as those enjoyed by other civil servants, many of whom have been employed in the public service a lesser number of years than the employees for whom we seek parity of treatment.

Representations have been made on behalf of these employees before. A strong delegation from the Department of Veterans Affairs appeared before the Superannuation Advisory Committee in 1950 and since then representations have been made by our Association directly to the Minister of Finance. So far as we are aware, the equity of the case of these employees has never been challenged at any level. It is noted that speakers from all sides of the House of Commons spoke on behalf of this group of employees when Bill 334 was introduced in the house on April 10. At that time, the Minister of Finance suggested that to extend the benefits we are seeking to those employees affected would be unfair to those who have retired. It does not seem to us a valid argument to say that because certain people who have been discriminated against unfairly cannot now be helped that this aid should therefore be withheld from those who can be so helped.

I do not wish to be facetious, but it reminds one of the analogy of some persons on shore who see a raft filled with survivors of a wreck and they say, "We cannot help these survivors because that would be discriminating against their fellow sailors who have already drowned." The Minister also indicated that the decision as to whether to extend the privileges of Part II of the Superannuation Act to these employees had to be made in the light of previous decisions. We submit that the decision to be made now should be made on the basis of equity, regardless of what decisions may have been made in the past. It is perhaps significant that the Minister did not defend the Government's failure in Bill 334 to correct this situation on the grounds that the decisions made in the past were just. In fact he went so far as to admit that such a situation was "unsatisfactory" and that the new legislation would avoid a repetition of it (*Hansard*, April 10, 1953, p. 3736.)

The second brief deals with the question of double payment for war service as required by Section 5A of the Superannuation Act and continued in Section 6 (1) (*e*) (ii) of Bill 334. Inasmuch as this war service was just as much Government service as that of persons who entered the Public Service during the war years, we are of the opinion that the Government ought to pay its share of contribution to the superannuation fund for this prior service. In other words we think that veterans in the public service should be required to pay only single rates plus interest for war service which they elect to count as service for superannuation purposes.

With your permission we are supplying each member of your committee with a copy of this letter and copies of the briefs.

Yours sincerely,

W. HEWITT-WHITE,
Secretary-Treasurer.

Now, with your permission, Mr. Chairman, I will proceed with the brief itself.

This presentation seeks consideration of the cases of employees appointed prior to 19 July 1924 to the department of Soldiers' Civil Re-establishment and Soldier Settlement Board who, although subsequently granted permanent appointment by the terms of the Department of Pensions and National Health Act and of the Soldier Settlement Act, were denied the privilege of enjoying superannuation benefits within the provisions of Part II of the Superannuation Act, 1924. Bill 334 contains no provision correcting this situation.

When the Superannuation Act was passed in 1924, it was assumed by the Department of Soldiers' Civil Re-establishment that it would apply to employees of the department and 506 employees elected to become contributors. The great majority did make contributions, commencing in April 1925, those contributions being later returned to them in 1927, the Department of Finance having stated that they could not be accepted.

Records indicate that when the Superannuation Act was being considered by a committee of parliament, its application was discussed and it was the intention of the Committee that its provisions should extend to employees of the D.S.C.R. With that object in view, part 5 of the Act was added by the Committee but the situation may not have been fully comprehended by the draftsman with the result that although Part 5 provided for classes exempted from the operation of the Civil Service Act by order in council, it did not similarly provide for those classes exempted from the Civil Service Act by another Act of parliament.

The Department of Soldiers' Civil Re-establishment Act as amended by Chapter 67, 14-15, George V, provided:—

> 5 (2) Subject to the approval of the Governor in Council, the Minister may make such regulations from time to time as he may deem necessary and advisable.
>
> (b) To authorize the selection and employment of such officers, clerks and employees as may be required from time to time for the carrying on of the work with which the Minister is charged and the creation for this purpose of appropriate positions, notwithstanding anything contained in the provisions of the Civil Service Act, 1918, and the said staff and positions are hereby wholly excluded from the operation of the said Act and shall be subject in all respects only to the regulations made under the authority of this Act; provided, nevertheless, that the employees selected and employed under the authority of the said regulations shall, as far as practicable, be classified by the Minister in accordance with the schedule of classes of positions set forth in the Civil Service classification, and shall be paid such rates of salary as are thereby prescribed, and the said regulations shall, as regards salary increases, leave of absence, promotions and resignations, conform as nearly as practicable to the regulations made under the Civil Service Act, 1918.

In other words they were civil servants in everything but name, and their appointment was not subject to the Civil Service Act.

In October 1924, the Assistant Deputy Minister of Justice provided the department with a draft regulation made pursuant to the provisions of the Act cited in the last preceding paragraph which, on approval by the Governor in Council, would have enabled the department to make permanent appointments without submitting each case to council, and also to confirm retroactively those employees in positions of continuing indeterminate duration as permanent from the date of assignment.

The memorandum from the assistant secretary to the acting minister of the Department of Soldiers' Civil Re-establishment accompanying the draft order just referred to, together with the draft Order itself, is reproduced in Appendix "A" to this brief.

Is it your wish I should read appendix A or would you prefer to place it in the record?

The CHAIRMAN: It can go on the record.

Mr. FULTON: At this point.

APPENDICE A

Copy

DEPARTMENT OF
SOLDIERS' CIVIL RE-ESTABLISHMENT

Ottawa,
October 21st, 1924.

Memorandum

The attached draft order has been prepared by the Department of Justice to complete the regulations with respect to the staff of this department made under the authority of the Department of Soldiers Civil Re-Establishment Act, as amended by Chapter 67, 14-15, George-V.

2. These changes are essential so that:

1. Persons appointed under the D.S.C.R. Act may become contributors under the Civil Service Superannuation Act, 1924.

2. That appointments, promotions, salary increases, transfers, etc., made by the Minister since the 10th November, 1919, under a misapprehension of the authority conferred by the D.S.C.R. Act, prior to its amendment by Chapter 67, 1924, may be legalized and confirmed.

3. In further explanation it is to be stated that the Superannuation Act 1924, applies only to every "permanent officer, clerk, or employee" and to every employee who at the date of the coming into force of the Superannuation Act occupied a position subject to the provisions of the Civil Service Act, or, which would be so subject for an order in council made under authority of section 38 (*b*) of the said Act. The staff of this Department being exempted from the Civil Service Act by authority of an Act of Parliament, a person employed by this Department is not eligible, under the above quoted provisions of section 23 of the Superannuation Act, to become a contributor, unless he is a "permanent officer, clerk, or employee", as defined in section 2 (*h*) of the Superannuation Act, as follows:

> Permanent officer, clerk, or employee, is a person who was appointed during pleasure to perform the duties of an office of continuing indeterminate duration by Act of Parliament or by order, of the Governor-in-Council in the competent exercise of subsisting executive powers in that behalf, or under and in pursuance of authority in that behalf conferred upon as officer or agent of the crown by Act of parliament or by order of the Governor-in-Council as aforesaid.

4. There are a number of persons employed by the Department who have been in the service for many years who occupy positions of "continuing, indeterminate duration", and, who, so far as it is possible to judge, will continue to be employed for many years to come. It is considered that they should not be denied the privilege of becoming contributors under the Superannuation Act.

5. When the Superannuation Act was being considered by the Committee of Parliament its application to this Department was discussed and it was the intention of the Committee that its provisions should extend to persons employed by this Department. It was chiefly with that object in view that Section 23 (Part V) of the Act was added by the Committee, but unfortunately, the draftsman who prepared the Section did not completely comprehend the situation with the result that, while it provides for the inclusion of classes

exempted from the operation of the Civil Service Act by order in council, it does not provide for the inclusion of classes exempted from the Civil Service Act by another Act of Parliament.

6. It is the opinion of the Department of Justice that the amendment of the staff regulations of the Department, which is now proposed, will remedy this defect.

7. Dealing with the addition to the regulations of section 12, it is to be explained that on the 29th November, 1923, the Department of Justice, expressed the opinion that all increases in salary, transfers, promotions, leave of absence, etc., authorized by the Minister under the assumed authority of the D.S.C.R. Act as it then existed, were without legal sanction. Following this the Auditor General requested "that steps be taken immediately to authorize increases, transfers, promotions, etc., which had been made subsequent to appointment by the Minister." In order that this might be done, the 1924 amendment to the D.S.C.R. Act was declared by parliament "to have and to be deemed to have had force and effect from the 10th day of November, 1919". The Department of Justice now advised that it is necessary also to incorporate this provision in the regulations so as to legalize all, appointments, promotions, etc. conformable to the present regulations, which have been made by the minister since the 10th of November, 1919.

The proposed amendment was rejected by Treasury Board in February, 1925, without official reason being stated.

Those who were subsequently made permanent under the authorities quoted in paragraph 1, and who were deprived of the privilege of electing under Part II of the Superannuation Act, suffered an injustice, directly or by implication, from Treasury Board's rejection of a procedure by which they might have received parity of treatment with members of the Public Service employed in other departments.

It is submitted, therefore, that a means should be found whereby these employees or their dependents may be given an entitlement of which a Treasury Board decision, based on an incorrect concept of the continuing nature of the department's function, deprived them.

This applies equally to employees of Soldier Settlement Board who were employed prior to 19 July, 1924, and who were subsequently made permanent.

If it be considered that an amendment to the Superannuation Act is the appropriate means by which the object of these representations may be accomplished, it is suggested that the attached addition (Appendix "B") to section 24 of bill 334 be studied as providing a suitable course of action.

DEPARTMENT OF SOLDIERS' CIVIL RE-ESTABLISHMENT

OTTAWA, October 24, 1924.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL,

The undersigned has the honour to recommend that the order in council of the 17th October, 1924, P.C. 114/1818, be amended:

(*a*) By the insertion of the following as paragraph (*f*) of Section 2:

(*f*) Any person who is employed on the staff of the Department and was so employed on July 19, 1924, and prior thereto under the regulations established by order in council of the 20th December, 1919, (P.C. 2491), may if he is performing the duties of an office or position of continuing indeterminate dura-

tion, and if he has rendered meritorious service, be given, by the Minister, permanent appointment in such position, and such appointment may be made effective, notwithstanding anything contained in these regulations, from the date when such employee was first assigned to perform the duties of such position or from such later date as the Minister may determine.

(b) By the addition of the following as Section 12:

12. These regulations shall be deemed and construed to have had force and effect from and after the tenth day of November, one thousand nine hundred and nineteen.

Respectfully submitted,

Acting Minister of Soldiers' Civil Re-Establishment.

APPENDIX B

BILL 334

AN ACT TO PROVIDE FOR THE SUPERANNUATION OF PERSONS EMPLOYED IN THE PUBLIC SERVICE OF CANADA

Amendment respecting employees of the Department of Soldiers' Civil Re-Establishment and Soldier Settlement Board

Proposed to amend Clause 24 of Bill 334 by introducing immediately following subclause (2) thereof the following:

"(3) Every contributor under this Act who on the 19th day of July, 1924 was employed under The Department of Soldiers' Civil Re-establishment Act or under the Soldier Settlement Act and who in either case became a contributor under the Superannuation Act by virtue of section 14 of The Department of Pensions and National Health or subsection (3) of section 5 of the Soldier Settlement Act or under any other authority shall be entitled to an annuity under this Act calculated on the average annual salary received by him during any consecutive 10 years of employment in the Public Service or on the average annual salary received by him during the last 5 years of such employment, whichever is the greater."

NOTE: This will involve renumbering the present subclauses (3) and (4) of Clause 24 of Bill 334.

The CHAIRMAN: Is it the wish of the committee that appendices A and B should go on the record?

Mr. MCILRAITH: Should not they go in at the point to which they are referred to instead of as appendices?

The CHAIRMAN: Would you ask whatever question should be asked at this stage then?

Mr. MCCUSKER: Did you answer Mr. McIlraith's question? Should not these appendices be inserted in this narrative at their appropriate place as they are referred to?

Agreed.

By Mr. McIlraith:

Q. In an earlier brief tonight there was a reference to Order in Council 2958 of December 16th, 1920. In your letter, Mr. Hewitt-White, you refer to Order in Council 3560 of October 3rd, 1921. That later order in council is an amending

order in council to the one referred to in another brief tonight. I am wondering if we could have the whole order in council printed in the record?—A. No. 3560?

Q. Yes.—A. I have a copy here.

P.C. 3560

PRIVY COUNCIL

Canada

AT THE GOVERNMENT HOUSE AT OTTAWA

Monday, the 3rd day of October, 1921.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas by order in council of the 16th December, 1920, (P.C. 2958), the Civil Service Commission was instructed and directed to submit to the Governor in Council lists showing the temporary employees in the services of the government occupying positions regarded by the Civil Service Commission and by the department concerned as of a permanent nature, whose services were certified as satisfactory by the department, were approved by the Commission and conformed to certain regulations therein set forth:

And Whereas Regulation 2, contained in the said order in council reads as follows:

> Such lists shall not include for the present, any temporary employee of the Soldier Settlement Board, the Department of Soldiers' Civil Re-establishment or the Income Tax Office, inasmuch as these departments are operating under exemption from the Civil Service Act in so far as their temporary employers are concerned.

And Whereas almost entirely the work with which the department is now charged is the provision until death of the necessary medical treatment and prosthetic appliances required by pensioners and other ex-members of the forces and with the administration of the payment of pensions awarded by the Board of Pension Commissioners;

And Whereas the staff of the Board of Pension Commissioners of Canada has recently been amalgamated with the Department of Soldiers' Civil Re-establishment under the direction of the latter and the work of the combined organizations is now approaching a permanent basis;

And Whereas the Soldier Settlement Board has now reached a stage where the general business of the Board, including the collection of monies loaned, will continue for some years to come and may be regarded as on a permanent basis;

Therefore His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Soldiers' Civil Re-establishment, is pleased to order that Regulation No. 2 contained in the said order in council of the 16th December, 1920, (P.C. 2958) shall be and the same is hereby amended to read as follows:

> Such lists shall not include for the present any temporary employee of the Income Tax Office, inasmuch as that office is operating under exemption from the Civil Service Act, in so far as its temporary employees are concerned.

(Sgd.) RODOLPHE BOUDREAU,
Clerk of the Privy Council.

Mr. McILRAITH: I want to make it clear that 2958 was an order in council which exempted certain employees as being temporaries and then the amending order in council a year later took out the D.S.C.R. exemption. Now, you make reference to 506 employees as having elected to become contributors after the 1924 Act came into operation and you will recall giving an estimate of something under 500 civil servants who had been permanents prior to 1924 still being employed.

Mr. LESAGE: I do not believe he said that.

By Mr. McIlraith:

Q. They would not be entitled to come under Part II if they were not permanent in 1924. You do not distinguish between the groups of your employees who were permanents prior to 1924 and the ones who were temporaries?—A. The point is that the Department of Soldiers Civil Re-establishment and the Soldiers Settlement Board did not have the power to declare them permanent and they did not have the power to declare anyone permanent prior to 1928.

Q. I never held that view. I am quarrelling with your view of the department's authority. I have never been able to get hold of the document—the old certificate of permanency under the retirement fund. They held that according to the section on permanency they were contributing under the old retirement fund. You do not draw any distinction in your brief.—A. There may be one or two that that applies to. I am afraid I do not know the particulars of that.

Mr. LESAGE: That could have been transfers from other departments.

The WITNESS: That is possible. They might have been permanent before transfer and had been allowed to carry on permanency, and that brings out a point of discrimination which we feel very strongly about that here you have people as early as 1916 who perhaps immediately on discharge went into the Department of Soldiers Civil Re-establishment or Soldiers Settlement Board and these people have never been able to become permanent at least not in time to come under Part II, and other people who came in from other departments and work side by side with them have been able to carry on their permanency and go out on superannuation on the last five years. That is the inequity.

By Mr. McIlraith:

Q. I am rather surprised that in your brief you do not draw a distinction. You have two lines of argument you can take; one applicable to all employees not prior to 1924 and the other you could make applicable to other employees who claim to be permanents prior to 1924.—A. You mean those 506 who elected?

Q. Yes.—A. Of course they were not permanent any more than the others.

Q. Why do you assume that?—A. From the action taken by the superannuation board in returning the contributions.

Q. Is not that the whole point you are raising, that the superannuation branch acted inequitably in returning these and should not have done so?—A. I will concede that.

Q. That is the whole point as I see it.

Mr. FRASER: They should not have been returned?

The WITNESS: I do not think so. We also think that the government should have made it possible for the department to have made anyone permanent, and the same with the Soldier Settlement Board.

By Mr. McIlraith:

Q. The government did in December 1920 pass an order in council of that kind and followed it by another on October 3, 1921.—A. I thought those

orders in council were not acted upon. The whole thinking on the part of the government seems to have been very confused. I have a copy of a letter here from the Deputy Minister of Finance dated May 7th, 1925, addressed to the Chairman, Soldier Settlement Board. He says:

> Dear Sir:
>
> Doubt has been expressed whether, under the terms of the Civil Service Superannuation Act, 1924, your Board comes within its provisions. It is proposed to recommend that an Order in Council be passed under the authority of Section 2(c) and Section 11 bringing under the Act those branches or divisions of the public service as to which there is doubt.
>
> Would you kindly advise if you wish your Board to be included in the proposed recommendation.

My understanding is the answer given was "yes" but nothing was done.

Mr. FULTON: May I ask a couple of questions. On page 1 of the brief you refer to "records indicate that when the Superannuation Act was being considered by a Committee of Parliament, its application was discussed and it was the intention of the Committee that its provisions should extend to employees of the D.S.C.R." What date would that be? Would that be the first Act?

The WITNESS: The 1924 Act.

The CHAIRMAN: Before you leave that page, in the concluding paragraph on page 1 of your letter of transmittal you refer to P.C. 370 of 1920. Have you a copy of that order in council? Could we have it for the record here?

P.C. 370

PRIVY COUNCIL

Canada

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 21st day of February, 1920.

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL.

Whereas the Secretary of State submits as follows:

The Civil Service Commission has reported that shortly after the passing of the Civil Service Act, 1918, placing all appointments to the Public Service under the jurisdiction of the Civil Service Commission, an arrangement was entered into between the Commission and the Soldier Settlement Board to facilitate the employment of the latter's staff, giving them the right to engage their employees if the Civil Service Commission had none on its eligible lists as required. Under this arrangement the Board was to requisition the Commission for staff as required, and, if none suitable were available on the eligible lists of the Commission, the Board would then be authorized by the latter to engage suitable persons without regard to personal or political considerations, all of which facts were to be embraced in a written statement from the Board, when the Civil Service Commission would issue the necessary certificates. Very great latitude was permitted the Board in staff matters inasmuch as the work of the Board was highly important and rapidly increasing

and many of the positions to be filled were of a professional or technical character, for which it was extremely difficult to secure adequately qualified candidates at the short notice desired by the Board.

Thousands of returned soldiers, commencing from February, 1919, pressed on the Board for the immediate benefit of the land settlement legislation. Applications for loans poured in during this period and under this arrangement, adequate staff was promptly secured to deal with the qualification of men for farming, inspection and appraisal of land selected by applicants, expenditure through the Board for purchase of land, machinery, implements, stock, building material, etc.

2. In February, 1919, when the order in council under the War Measures Act was passed making the purchase provisions, the Board's total staff was 110. In March it was 192; in April 326; in May 504; in June 671; in August 1023; and in December 1245. In March nearly one million dollars was approved in loans for soldiers. During May, June and July the average for each month was over five and one-half million dollars. During August, September and October, the average for each month was over seven million dollars.

3. The greater part of the Board's staff is therefore on a temporary basis. The duty and responsibilities for appointing the staff under authority of the Civil Service Commission devolved upon the Board's district superintendents in the various provinces, except in respect to such positions for which the Civil Service Commission had waiting eligible applicants. Its temporary staff is now trained for the next season's work, and the Board considers that serious disruption would be caused by an attempt to bring the same into line with the Civil Service Act and regulations or to limit increases of salaries of certain officials in merited cases to one increase per annum.

4. An estimate of the requirements of the Soldier Settlement Board has been stated by that Board to be impossible since the demand seems to depend largely on sudden developments that must be met without delay. Without such an estimate of future needs, particularly in view of the peculiar nature of many of the positions under the Board, it is exceedingly difficult for the Commission to have eligible lists available for all classes from which immediate assignments may be made.

5. Until the positions under the Soldier Settlement Board are classified—which at the present is regarded by both the Civil Service Commission and the Soldier Settlement Board as inadvisable—the Commission cannot pass intelligently on the salary rates recommended by the Board which may thus be much higher than those allowed in other departments, the result being dissatisfaction against alleged inconsistency of the Commission in approving one set of salary rates for one department and an entirely different set of rates for another department.

6. Frequent re-arrangements of the personnel of staff of the Soldier Settlement Board was in the past made under pressure of business in order to utilize the experience of those trained in the work by which appointees took on more responsible duties than those originally assigned them and adjustments of salaries have been required sometimes twice or more within twelve months, which it is impossible for the Civil Service Commission to approve under the Civil Service Act, as such permits of but one increase of a stated amount per annum.

In view of the above facts, the Civil Service Commission, in an endeavour to bring appointments to the Soldier Settlement Board and increases of salary therein into harmony with the principles of the Civil Service Act, is confronted with the fact that it would thereby in the opinion of the Soldier Settlement

Board retard the work of the Board, and it is obvious that if the Soldier Settlement Board is unable to conform with the law, its appointments and salary increases should be made without reference to the Civil Service Commission. This can be done by invoking the provisions of Section 38A of the Civil Service Act, 1918, as amended. The Soldier Settlement Board has requested that this action be taken. The Civil Service Commission concurs in this request of the Soldier Settlement Board, and recommends that for a period of two years all temporary appointments to the Soldier Settlement Board and increases of salary to temporary employees be made without reference to the Civil Service Commission.

Therefore His Excellency the Governor General in Council, on the recommendation of the Secretary of State, and under and in virtue of the provisions of Section 38A of the Civil Service Act, 1918, as amended, is pleased to approve and doth hereby approve the following regulation:

That except with respect to such permanent appointments as have been, or may at any time hereafter be made to the Soldier Settlement Board, the Soldier Settlement Board of Canada be granted authority, for the period of one year, subject to the approval of the Governor General in Council, to employ in a temporary capacity such technical, special and other temporary staff described in Appendix A hereto attached, or similar positions as may from time to time be required to meet the special conditions arising in carrying on the work of the Board at such salaries subject to the approval of the Governor General in Council, as to the Commissioners of the Soldier Settlement Board shall seem fair and reasonable, notwithstanding the Civil Service Act, 1918, and amendments thereto or any similar Act bearing on the Civil Service of Canada, but subject to such regulations governing such appointments as may be recommended by the Soldier Settlement Board and approved by the Governor General in Council.

That employees of the Board now receiving bonus shall continue to receive payment of the bonus in accordance with order in council P.C. 1485, dated 15th July, 1919.

(Sgd.) RODOLPHE BOUDREAU,
Clerk of the Privy Council.

APPENDIX "A"

POSITIONS IN SOLDIER SETTLEMENT BOARD

Assistant to Chairman
Assistant to Commissioners
Secretary to the Chairman
Personal Representative to the Chairman
Secretary
Assistant Secretary
Chief Clerk

Director Agricultural Branch
Assistant Director, Agricultural Branch
Chief Qualification Division, Agricultural Branch
Chief Pay and Allowance Qualification Division, Agricultural Branch
Chief, Training Division, Agricultural Branch
Chief, Supervision Division, Agricultural Branch
Eastern Agriculturist, Agricultural Branch
Western Agriculturist, Agricultural Branch
District Agriculturist, Agricultural Branch
Assistant District Agriculturist, Agricultural Branch
Field Supervisor, Agricultural Branch
Assistant Field Supervisor, Agricultural Branch
Superintendent, Training Centre, Agricultural Branch
Assistant Superintendent, Training Centre, Agricultural Branch

Instructor, Agricultural Branch
Quartermaster, Agricultural Branch
Gardener, Agricultural Branch
Horse Man, Agricultural Branch
Cattle Man, Agricultural Branch
Farm Mechanic, Agricultural Branch
Farm Manager, Agricultural Branch
Cook, Agricultural Branch

Secretary, Qualification Committee, Agricultural Branch
Assistant Secretary Qualification Committee, Agricultural Branch
Pay and Allowance Clerk, Agricultural Branch

Director of Lands and Loans Branch
Assistant Director, Lands and Loans Branch
Assistant to Director, Lands and Loans Branch
District Director of Loans
Chief Inspector, Lands and Loans Branch
Assistant Chief Inspector, Lands and Loans Branch
Land Inspector, Lands and Loans Branch
Secretary, Loan Advisory Committee
Land Listing Clerk
Land Map Clerk
Registrar of Lands
Assistant Registrar of Lands
Draughtsman

Director Organization and Equipment Branch
Assistant Director, Organization Branch
Assistant Director, Equipment Branch
Superintendent Office Equipment Stationery and Printing
Assistant Superintendent, Office Equipment, Stationery and Printing

General Assistant, Organization Branch
Special Advisor
District Supervisor, Equipment Branch
Assistant District Supervisor, Equipment Branch
Equipment Clerk, Equipment Branch
Chief Multigraph Operator, Organization Branch
Multigraph Operator, Organization Branch
Supervisor, Equipment Branch
Live Stock Purchasing Agent, Equipment Branch
Assistant Live Stock Purchasing Agent, Equipment Branch

Director of Publicity
Director, Home Branch
Assistant Director, Home Branch
District Director
Assistant District Director, Home Branch
Home Counsellor, Home Branch
Secretary

General Counsel, Legal Branch
Assistant General Counsel, Legal Branch
Solicitor, Eastern Division, Legal Branch
Solicitor, Western Division, Legal Branch
District Solicitor, Legal Branch
Assistant District Solicitor, Legal Branch
Secretary to General Counsel, Legal Branch
Law Clerk, Legal Branch
Notary, Legal Branch
Personal Representative to the Chairman
Provincial Superintendent
District Superintendent
Assistant District Superintendent
Member of Loan Advisory Committee
Member of Qualification Committee
Secretary to District Superintendent
Supervisor, Collection Branch
Collector
Supervisor, Salvage Branch
Salvage Clerk
Local Representative
Transportation Clerk
Information Clerk
Insurance Clerk

Superintendent of Construction
Overseas Representative
Assistant Overseas Representative
Member, Overseas Qualification Committee
Secretary, Overseas Qualification Committee
Administrator
Assistant Administrator
Supervisor Mail Branch
Principal File Clerk
Senior File Clerk
File Clerk
Supervisor Central Registry
Chief Correspondence Clerk
Correspondence Clerk

Chief Accountant
Senior Accountant
Accountant
Junior Accountant
Principal Account Clerk
Senior Account Clerk
Account Clerk
Junior Account Clerk

Senior Statistician
Statistician
Senior Statistical Clerk
Statistical Clerk
Junior Statistical Clerk

Cashier

Senior Clerk Bookkeeper
Clerk Bookkeeper
Senior Stenographer Bookkeeper
Stenographer Bookkeeper
Junior Stenographer Bookkeeper

Principal Clerk
Senior Clerk
Clerk
Junior Clerk
Office Boy

Senior Law Clerk Stenographer
Law Clerk Stenographer
Senior Clerk Stenographer
Clerk Stenographer
Junior Clerk Stenographer
Senior Clerk Typist
Clerk Typist
Junior Clerk Typist

Telephone Operator

Senior Messenger
Messenger Clerk
Caretaker.

By the Chairman:

Q. Arising out of that P.C. at the top of the following page you refer to the fact that some of those employees were as far back as 1916. Were they previous civil serants before they transferred or how do you know they were in the service as far back as 1916?—A. I have been informed we have employees who came into the service as far back as 1916.

By Mr. Fulton:

Q. In connection with the question I asked a moment ago you refer to records indicating that the Superannuation Act was being considered by a committee. Are you able to refer us to records before a committee or have you records on your file to that effect? Can you give us a reference to an

actual proceeding?—A. I presume this has reference to records of the committee—of the committee of parliament that considered the Superannuation Act of 1924 in much the same way this committee is considering it now.

Q. I wonder if you could give us something which would enable us to trace down that reference?—A. I would be very glad to.

The CHAIRMAN: It is now 10 o'clock. We cannot possibly finish and do justice to this presentation tonight. Shall we adjourn until 11.30 in the morning?

Mr. CANNON: I have a meeting of the Criminal Code Committee tomorrow morning and I have two short questions.

Mr. FULTON: Excuse me. I have only one other question.

By Mr. Fulton:

Q. The other question is on page 2 of your brief, about the middle of the page, where you are reproducing a section of the Act where it is stated the employees shall be paid such rates of salary as are thereby prescribed. Will you tell us whether the rates of salary in that period in the Department of Soldiers Civil Re-establishment compared with the rates of salary in the civil service generally?—A. I am afraid I cannot answer that question, Mr. Fulton. According to this they were to be paid rates of salary as prescribed by the Civil Service Act. Therefore I would think they would be in line with rates of salary generally paid in the Civil Service. I would simply assume that from this.

Q. I was not clear on that point. It is not clear whether the rates of salary are as prescribed by the regulations or Civil Service Act?—A. By the Civil Service Act is my understanding.

Q. Could you get us confirmation on that? It might come up that the rates of salary paid were higher than the Civil Service.—A. I think I can state definitely now that this means that they shall be paid such rates of salary as are prescribed in the Civil Service classification.

Mr. FULTON: I am willing to accept that.

Mr. CANNON: If I understand correctly, the basic problem dealt with in your letter and in the brief is the same as that dealt with by Mr. Osborne in his brief except that it was in respect to a different class of employees.

The WITNESS: There are similarities, but—

Mr. MCILRAITH: It is different.

Mr. CANNON: With regard to different employees, but is it not the same problem. The reason for not allowing the benefits is different but they are both complaining they did not get the benefits of the Superannuation Act?

Mr. MCILRAITH: Yes.

By Mr. Cannon:

Q. My next question is, are you suggesting that any action we should take should be retroactive?—A. By retroactive you mean they should apply to those people who have already retired?

Q. Yes.—A. No, we are simply making representations on behalf of people who are still in the Civil Service.

Mr. FULFORD: Mr. Chairman, regarding the meeting tomorrow, I wonder if it would be possible to have as a witness someone who is actually affected by some of these regulations?

The CHAIRMAN: Is it the wish of the committee that I delegate Mr. McIlraith and Mr. Fulford to find one?

The WITNESS: I could certainly undertake to make sure that one appears here. How many do you want to hear?

Mr. FULFORD: Mr. White, I do not want you to think that I am criticizing your excellent brief.

The CHAIRMAN: There is a motion to adjourn.

Agreed.

EVIDENCE

APRIL 23, 1953.
11.30 a.m.

The CHAIRMAN: Gentlemen, before we continue with Mr. Hewitt-White, I have now received the letter from the Deputy Minister of Justice and the other material which the committee asked for last night. Shall it go on the record as an appendix to our evidence taken last evening?

Mr. MCILRAITH: Mr. Chairman, I imagine we will be considering this matter in some detail later on today and we are going to be handicapped in not having this printed.

The CHAIRMAN: We will ask the reporting staff to bring it back.

Mr. MCILRAITH: I wonder if there is any possible way of having some mimeographed copies made of this material.

Mr. FRASER: Of the whole thing?

Mr. MCILRAITH: Of these letters, yes.

The CHAIRMAN: We shall ask the reporting staff to return them.

Mr. MCILRAITH: Even one set of typewritten copies would be helpful.

The CHAIRMAN: We have with us Mr. Hewitt-White.

Mr. W. Hewitt-White, Secretary, Department of Veterans Affairs Employees National Association, called:

The WITNESS: Thank you, Mr. Chairman. Before the committee starts to ask questions, I wonder if I might make a brief statement in regard to one or two points raised last night?

First of all, a question was asked by Mr. Fulton, I think it was, as to the pay scales in the Department of Soldiers Civil Re-establishment, and if those pay scales were the same as paid in the civil service. I now have an answer. The answer is that the civil service classifications pay scale was applied in the Department of Soldiers Civil Re-establishment.

The CHAIRMAN: After what date?

Mr. FRASER: Right from 1916?

The WITNESS: No, from 1918, I think, but I could not answer that categorically.

Mr. MCILRAITH: It would be February 1918, would it not?

The WITNESS: The other matter related to the words contained in the brief on page 1, where we said:

> Records indicate that when the Superannuation Act was being considered by the committee of parliament its application to this department was discussed and it was the intention of the committee that its provisions should extend to persons employed by this department. It was chiefly with that object in view that section 23 of the Act was added by the committee, but unfortunately, the draftsman who prepared the section did not completely comprehend the situation with the result that, while it provides for the inclusion of classes exempted from the operation of the Civil Service Act by order in council, it does not provide for the inclusion of classes exempted from the Civil Service Act by another act of parliament.

That is a reference. If the members will look at appendix A to the brief, they will find that on page 2, paragraph 5, a copy of the letter or the memorandum written by the assistant secretary of the Department of Soldiers Civil Re-establishment.

The CHAIRMAN: That was Mr. D. M. Stewart.

The WITNESS: Yes, Mr. D. M. Stewart. It reads:

> When the Superannuation Act was being considered by the committee of parliament its application to this department was discussed and it was the intention of the committee that its provisions should extend to persons employed by this department . . .

I am now informed that the committee which studied this matter at that time was some sort of special committee which did not keep a record of its proceedings, so that our record is simply this letter of Mr. Stewart's which you will note was written on October 21, 1924, which was very close to the time when the Act was being considered.

Now the final matter which I wanted to comment on was this: There was a suggestion made I think at the end of last night's proceedings of one or two specific cases of individuals who were actually affected which might be considered by the committee. I have here and I should like to place on the record a statement by a present employee of the Veterans Land Act branch who is an example of an employee who actually entered the service in 1916. In this case it was the Department of the Interior and he was transferred over to the Department of Soldiers Civil Re-establishment or the Soldiers Settlement Board in 1918 as a temporary employee, but he had no opportunity to elect to come under Part II of the Act. I refer to Mr. S. H. Radford.

By the Chairman:

Q. Why would he be transferred if he was already in the civil service?—A. That is a question which Mr. Radford will have to answer.

Q. Did he do so for higher pay?

Mr. S. H. RADFORD: I am present, sir, and I should like to say that before I was transferred there was a number of permanent civil servants transferred to carry on the administration of the Soldiers Settlement Act when it was passed in 1918. First of all there was the 1917 Act which provided for settlement on Dominion lands. Then in 1918 they passed the other Act to provide for loans to veterans to purchase farms. And in order to administer that Act they transferred a number of permanent civil servants who had been in the civil service for a long time, technical men, and they happened to be civil servants. I was the first veteran to be transferred. They were all transferred from the Department of the Interior. The Act was administered by the Minister of the Interior, and I suppose they wanted to have a returned soldier to start off with the Soldiers Settlement Board. After all, we were looking after the soldiers. But as far as getting an increase in salary was concerned, I received an increase of $300 to handle the general correspondence of the Soldier Settlement Board.

Q. That answers my question.

Mr. LESAGE: Did you not have your certificate of permanency in the civil service at that time?

Mr. RADFORD: No. I entered the service in 1916 and I was only a temporary. Then about a year after I left the Department of Interior, in my branch in the Department of Interior they started to blanket them in, taking in all temporary civil servants and making them permanent, that is, if the minister concurred.

Mr. LESAGE: When you were transferred to the Soldier Settlement Board, is that what you call it?

Mr. RADFORD: The Soldier Settlement Board.

Mr. LESAGE: Were you holding at the time a certificate of permanency?

Mr. RADFORD: No.

Mr. FULFORD: Did you ask to be transferred?

Mr. RADFORD: No, I did not ask to be transferred. I was asked to go.

Mr. FULFORD: You were told to go.

Mr. RADFORD: I had no say in the matter at all.

The WITNESS: May I place this statement of Mr. Radford on the record?

The CHAIRMAN: Shall this statement go into the record?

Agreed.

Mr. RADFORD: My statement reads as follows:

Statement by S. H. Radford: Appointed to position in the Department of the Interior by temporary certificate in August 1916, after discharge from the army.

In July 1918 I was transferred to the Soldier Settlement Board. Previously a number of permanent civil servants in the Department of the Interior, without war service, had been transferred in connection with the administration of the Act.

Subsequently the veterans in my old branch of the department were granted permanent status by a blanketing-in order. If I had not been selected from among them for transfer there is every reason to believe that I would have been granted permanency, and later benefited by the five-year average under the Superannuation Act of 1924.

Each year the staff of the board expected to attain permanent status. The question was continually before the House and it was the subject of voluminous correspondence.

The staff of the Soldier Settlement Board was first excluded from permanency by an order in council dated December 16, 1920, (PC 2958), as also were employees of the Department of Soldiers' Civil Re-establishment, when regulations governing permanency of temporary employees of the public service were amended. Regulation 4, of the order in council, states that "such lists shall not include any male temporary employee who was of military age during the recent war and who is not a returned soldier or sailor, as defined by the Civil Service Act, 1918, unless such employee can furnish reasons satisfactory to the department, and the Civil Service Commission, of his failure to enlist for such service in the war." From this regulation it would appear that the blanketing-in order was to be of particular benefit to veterans, yet regulation 2 debarred those branches of the public service having the bulk of veterans employed. It was like handing veterans something with the left hand and taking it away with the more powerful right. Regulation 2 does say that "such lists shall not include for the present, any temporary employee of the Soldier Settlement Board, etc. etc." The intention was evident, but it took 16 long years to finalize it.

Under order in council PC 3560, dated October 3, 1921, regulation 2 was amended, which had the effect of granting the staff of the board permanent status. No action, however, appears to have been taken. In any event, our applications to benefit under the Superannuation Act 1924 were returned by the Department of Finance.

Order in council PC 2958 was further amended on October 22, 1921, to provide for inclusion of those who were not in the same position, for example, where the good work of the employee had merited advancement to higher and more responsible duties. It is possible that this order in council was intended to cover cases such as mine.

On May 7th, 1925, the Deputy Minister of Finance wrote the Chairman of the Soldier Settlement Board as follows: "Doubt has been expressed whether, under the terms of the Civil Service Superannuation Act, 1924, your board comes within its provisions. It is proposed to recommend that an order in council be passed under the authority of section 2(c) and section 11 bringing under the Act those branches or divisions of the public service as to which there is doubt. Would you kindly advise if you would wish your board to be included in the proposed recommendation." The chairman replied in the affirmative but that appears to have ended the matter according to the records.

It was not until August 12, 1935, that an order in council was passed which enabled the staff to make a successful application under the Superannuation Act but, through no fault of their own, were denied the benefit of the five-year average for counting superannuation allowance, and in my case I have to pay arrears covering 19 years with interest for the rest of my life.

It is interesting to note that the present Minister of Finance admits that an unsatisfactory situation existed and, no doubt, the committee will recommend some remedial measure.

I would like to suggest to the committee that inasmuch as the Minister of Finance, according to page 3736 of *Hansard,* states that the government is taking steps to get away from any repetition of such an admittedly unsatisfactory situation, the bill before the House be amended to overcome the technicalities which existed to enable those who were in the service prior to November 10, 1919, or any other date determined to be satisfactory, to benefit by Part 2 of the Superannuation Act 1924.

The WITNESS: We have with us this morning another employee who is presently an employee of the Veterans Land Act and who is in a somewhat different category. This man entered the Soldier Settlement Board by way of an examination under the Civil Service Commission and was granted a certificate of permanency in 1919. He elected to come under Part 2 of the Civil Service Superannuation Act and contributions were deducted for some time from his pay, but were later returned to him. That man is Mr. Alexander Jamieson. I have with me copies of correspondence between the Director of Personnel of the Department of Veterans Affairs and the Deputy Minister of the Department of Justice relating to Mr. Jamieson's case, and I should like to place them on the record together with the letter of the Director of Personnel which I believe sets out this case very well.

I should also like to make a comment for the record with regard to the reply of the Deputy Minister of Justice made by our president, Mr. A. B. Hamilton. It is very short:

> It seems to me that if this opinion is to hold water, all these employees who were permanent before transference to the old Soldier Settlement Board are also ineligible under Part 2 of the Act, since they were not employed in the civil service and their permanency should also have been withdrawn in the same manner.

The CHAIRMAN: Thank you. It was you, Mr. McIlraith, who asked for this material and I would rather that you took a look at it before it goes in the record.

(Enclosure No. 3)

COPY

OTTAWA 2, May 19, 1952.

Deputy Minister,
Department of Justice,
Justice Building,
OTTAWA, Ont.

Attention: D. H. W. Henry, Esq.

Re: Alexander Jamieson—Head Office—Finance File No. 33662.

Dear Sir:

It would be appreciated if you would give consideration to the facts outlined below as they refer to Mr. Alexander Jamieson, a Senior Officer of the Veterans' Land Act at Head Office.

Mr. Jamieson contends, and I can only agree with him, that when he retires, he should retire under Part II of the Civil Service Superannuation Act and that his annual allowance should be based on the average salary received during the last five years of his service. Mr. Jamieson was made a permanent civil servant in the Soldier Settlement Board effective from the date of his original appointment, i.e., January 20, 1920. This was confirmed by Civil Service Commission Notice of Permanent Appointment dated December 29, 1919. A photostat copy of this certificate is attached as Appendix A.

On March 11, 1920 Mr. Jamieson requested deductions on account of Retirement Fund (Appendix B). These deductions were made retroactive to the date of his permanent appointment.

As a permanent civil servant, Mr. Jamieson was accepted as policy-holder by the Department of Insurance and policy No. 4448 was issued on March 31, 1921.

On September 30, 1924, Mr. Jamieson elected to come under the Superannuation Act, (Appendix C), and his election was accepted by the Chief Accountant, Department of Finance in his letter dated November 7, 1924. (Appendix D).

The decision of the Chief Accountant was reversed by Mr. G. L. Gullock in his letter dated June 19, 1926 (Appendix E). Mr. Gullock's decision was based on the fact that Mr. Jamieson's name did not appear on order in council PC 225/795 dated May 20, 1926. A copy of this order in council is not available in this department. The significance of this order in council is not understood as section 15 of the Civil Service Superannuation Act does not appear to make any exceptions and there is certainly no mention made of the fact that Soldier Settlement Board employees would be excluded from the provisions of Part II of the Act.

A further ruling was requested by Mr. Jamieson on July 10, 1934, and Mr. W. O. Ronson in his letter dated July 11, 1934, (Appendix F) ruled that since the staff of the Soldier Settlement Board did not come under the provisions of the Civil Service Superannuation Act, Mr. Jamieson was not eligible to become a contributor.

On the blanketing-in of the Soldier Settlement Board Mr. Jamieson was accepted as a contributor to the Superannuation Fund effective from September 1, 1935 and was considered as coming under Part I of the Act and his contributions to the Retirement Fund were transferred to the Superannuation Fund.

A very fair summary of this case was presented to the Chief, Superannuation Branch, by Mr. Jamieson on September 10, 1948 (Appendix G), and again his representations were rejected. This rejection was contained in Mr. Gullock's letter dated December 1, 1948 (Appendix H).

It is my opinion that Mr. Jamieson's case meets all the requirements of Part II of the Civil Service Superannuation Act and the fact that the Soldier Settlement Board was not considered a permanent branch of the government should have no bearing on Mr. Jamieson's entitlement.

Mr. Jamieson is now approaching the end of his career in the Civil Service and I might add that he has rendered service of the highest order during his employment with the Soldier Settlement Board and later with the Soldier Settlement and Veterans' Land Act Branch of the department. It appears to me that a definite injustice will be done to Mr. Jamieson should he be retired under the provisions of Part I of the Civil Service Superannuation Act.

I would appreciate your giving full consideration to this case and advising me whether, in light of the facts outlined above, it is your opinion that Mr. Jamieson might be eligible for retirement under the provisions of Part II of the Civil Service Superannuation Act.

Yours very truly,

Original signed by
O. L. McCULLOUGH,
Director of Personnel and
Administrative Services.

Copy

(2) Mr. Jamieson: Passed from Colonel McCullough's office for your information

DEPARTMENT OF JUSTICE
CANADA

OTTAWA, August 5, 1952.

Col. O. L. McCullough,
Director of Personnel and
Administrative Services,
Department of Veterans Affairs,
Ottawa, Ont.

163821

Dear Colonel McCullough:

I have now considered the material submitted by you in connection with the case of Alexander Jamieson who was a permanent employee with the Soldier Settlement Board.

In order to be subject to Part II of the Civil Service Superannuation Act, an employee must have been a "Civil Servant" as defined in the Act on July 19, 1924, the date when the Act came into force.

Mr. Edwards, who was then Deputy Minister of Justice, in years immediately following the coming into force of the Act expressed the opinion that the Soldier Settlement Board was not part of the Civil Service as defined by the Superannuation Act. He made it clear, however, that it was competent to the Governor in Council to designate the board as part of the Civil Service under the provisions of section II of the Superannuation Act. This was done with general effect in August, 1935.

In my view, until that time Mr. Jamieson, as an employee of the Soldier Settlement Board, was not a civil servant within the meaning of the Superannuation Act and did not become a civil servant until the passing of PC 161/2387 on August 12, 1935. He, therefore, became a civil servant after July 19, 1924 and by virtue of section 3 (1) of the Superannuation Act, Part I applies to him. Mr. Jamieson is, therefore, not eligible for retirement under the provisions of Part II of the Act.

In reaching the foregoing conclusion, I have not overlooked the fact that he was accepted as a policy holder by the Department of Insurance and that his election to come under Superannuation Act as a civil servant was at first accepted by the Department of Finance in 1924. This, however, has no bearing on the legal position as I have stated above.

Yours very truly,

Sgd. F. P. VARCOE,
Deputy Minister.

The CHAIRMAN: Am I correct in the statement that the reason there was not a proper legal finality in regard to this question was the fact that at that time superannuation was not a legal right as it now is under the Act?

The WITNESS: I am sorry, but I could not answer that question.

The CHAIRMAN: Is it not true, Mr. Taylor, that under the present Act, if a man is denied his legal right, he has an enforceable right?

Mr. TAYLOR: That would be true under the bill.

The CHAIRMAN: Is it not rather obvious that the reason these men did not prosecute to finality their rights years ago was because they had no legal right at that time?

Mr. MACDONNELL: Was there not a practice to which they could appeal?

Mr. MCILRAITH: No, there was not. That is the main change in the new bill.

The CHAIRMAN: That is the trouble. That is one of the main changes in the bill, and I think it is exceedingly important. These men should not be penalized for laches or delay or anything of that kind because they had no legal right.

Mr. TAYLOR: The Superannuation branch does follow an established practice, and it does get legal opinions. We get many. I suppose every week there are cases being referred to the solicitors of the Department of Justice for rulings. If they are, so to speak, appealed, we get formal opinions from the Chief Law Officer of the Crown, the Deputy Minister of Justice, as to whether or not they come within the terms of the Act. It is true that there is no appeal beyond the Deputy Minister of Justice or I suppose the Governor in Council. There is no appeal to the courts as there will be under the bill before us.

Mr. MCILRAITH: How long has that been the practice? That is the first question. That is the practice now. I am not questioning you on that.

Mr. TAYLOR: I have been involved in the administration of the Act in a general way for only the last two or three years, but I presume that has been going on for a very long time. I have seen opinions of the Department of Justice going back to 1924.

Mr. GULLOCK: That is quite true, sir.

Mr. MCILRAITH: On the individual cases your difficulty arises from the fact, in my experience, that you were relying on the *ex gratia* principles of the Act, which arose in many cases in relation of payments to widows on the question of whether they were separated or not. My opinion is that it was relying on the fact, that the bill relied on the fact that it was an *ex gratia* payment to

these involved domestic relations cases. I admit now you are much more careful, but in the last ten to fifteen years there has not been the same degree of care taken that you are taking now. I think you are continually improving your situation in being careful.

Mr. TAYLOR: A class of cases where there is exercise of a complete discretion by Treasury Board is the consideration of the worthiness of wives, common law wives, and that sort of thing. Treasury Board is, of course, a committee of the Governor in Council and the proceedings are, therefore, secret; but I think I may be permitted to say that the Treasury Board has always given very careful consideration and got very detailed reports on these cases where there is serious doubt as to the "worthiness" of the widow.

Mr. MCILRAITH: Yes, but the Treasury Board was first created in 1932, wasn't it? The forerunner of the present form of the Treasury Board with its jurisdiction enlarged.

Mr. TAYLOR: Well, the Treasury Board has existed since about 1870. When its constitution was modified under the Consolidated Revenue and Audit Act of 1932 its duties were enlarged, but Treasury Board dealt with this kind of cases right back to 1924.

Mr. MCILRAITH: I am not critical of either the board's practice or the superannuation branch's practice, but I think it was all they could do in these circumstances, in these difficult domestic relations cases, that they were always driven back to the principle of it being an *ex gratia* payment, and that is the way that they concluded most of them, is it not?

Mr. TAYLOR: Sometimes you get a case where a man and woman were married, there had been no divorce but they had not lived together for twenty years, the man had been living for ten or fifteen years with another woman as man and wife, and the lawful wife has been off somewhere else. In such cases the minister will be glad to be relieved of the responsibility of making decisions by the present bill.

Mr. LESAGE: That is covered by section 9.

Mr. MCILRAITH: What I am getting at is: I think there is no doubt that in the early stages of the superannuation legislation the fact that the legislation was based on the *ex gratia* payment principle was used a great deal more than has been the modern practice, and there has been a great improvement in the situation now, and in the new bill we are coming to a complete acceptance that it is a matter of right.

The CHAIRMAN: And the other point, Mr. Taylor, although it does not happen often, you will admit, of course, that our courts have not always sustained opinions or rulings of Justice.

Mr. TAYLOR: Oh, I quite agree. I have here the original print of the 1924 Act, which in section 9 (4) provides that "A widow's or a childs' allowance shall be suspended or discontinued if, in the opinion of Treasury Board, such widow or child becomes unworthy of it." So the Treasury Board existed in 1924 for this purpose.

The WITNESS: I wanted also to say that Brigadier Melville of the Canadian Pension Commission, who is also one of the employees of the department affected, is here this morning and has expressed his willingness to answer questions of the committee.

The CHAIRMAN: If you are through, then, Mr. White, we will hear Brigadier Melville.

The WITNESS: There are no questions, Mr. Chairman?

The CHAIRMAN: No. Brigadier Melville.

Brigadier J. L. Melville, Chairman, Canadian Pension Commission, called:

The WITNESS: Mr. Chairman and gentlemen. I listened with very great interest to the proceedings of this committee last evening and I have done the same again this morning. The deputy minister has asked me to furnish an answer to a question asked last evening. Reference was made to some 500-odd employees of the Department of Soldiers' Civil Re-establishment, who became contributors, and as to how many were still employed.

Mr. MCILRAITH: Are you speaking now of the 500-odd who became contributors immediately after 1924 and who later on had their contributions rejected?

The WITNESS: That is quite right.

Mr. FRASER: They were appointed prior to July, 1924.

The WITNESS: Yes. The figures are: Veterans' Land Act, 68; Department of Veterans Affairs, 224; a total of 292 employees still on the strength of the department.

Mr. LESAGE: How many of those were holding, in 1924, a certificate of permanency?

The WITNESS: None, I would believe, but I will explain, as I go on with my remarks, the situation that existed. Having heard the discussion which took place yesterday, I thought I might put together some notes which would clarify the situation for your committee, and I will endeavour to do so very briefly. I am sorry in some respects that I am an interested party, but I certainly do say, gentlemen, with no hesitation whatsoever that I am sincerely of the belief there are a number of employees of the Soldier Settlement Board and the Board of Pension Commissioners of that date, and of the Department of Soldiers' Civil Re-establishment, whose claims have not been dealt with, in my opinion, on an equitable basis. Now, they are the victims of circumstances over which they had no control, and there are two points I would make mention of at the outset: first, that this is not a criticism of Bill 334; it has so many admirable benefits, so there is no criticism of that bill and its many good features. Secondly, that the representations are not being advanced on behalf of all former employees of the Department of Soldiers' Civil Re-establishment, and I think there is a misconception in that regard. The concern is for a group whose positions were reviewed and classified as permanent and of indeterminate duration and time alone has established the correctness of that decision.

It is necessary to briefly review the situation towards the end of World War I. The responsible bodies at that time to deal with the affairs of veterans were: Military Hospitals Commission, Soldier Settlement Board, and the Board of Pension Commissioners. The initial authority for the establishment of the Department of Soldiers' Civil Re-establishment was order in council 432 of 1918, and later on that year was incorporated in the statutes of Canada. That Act gave the minister power to make appointments notwithstanding the provisions of the Civil Service Act of 1918. Classifications, however, were to conform to those in the civil service, and in answer to the question put by Mr. Fulton last evening I can state most emphatically that the classifications did correspond. There were a few in my view which were new to the civil service at that time, particularly those relating to the Soldier Settlement Board, but the great majority of the classifications of the department corresponded to those in effect by the Civil Service Commission.

I now call the attention of the committee to two orders in council, because they are very important. There is P.C. 2958 of the 16th December, 1920, and that, I believe, Mr. Chairman, has been incorporated in your minutes as a result of a decision made last evening. That order in council states that His Excellency the Deputy Governor General in Council on the recommendation

of the Secretary of State is directed to submit to His Excellency in Council lists showing temporary employees who are now occupying positions regarded by the Civil Service Commission and by the department as of a permanent nature and whose services are certified as satisfactory by the department, and approved as such by the commission, and that goes on to contain this clause: "Such lists shall not include for the present"—and these words are important—"any temporary employee of the Soldier Settlement Board, the Department of Soldiers' Civil Re-establishment or the Income Tax Office."

Now we come to order in council P.C. 3560, which is dated the 3rd October, 1921. It is also on record. I take the liberty, Mr. Chairman, of making particular reference to the content of this amending order in council because I do not think these amendments were properly stressed or brought forward to your attention last evening.

It quotes from the previous one and it says:

"And whereas Regulation 2, contained in the said order in council reads as follows:

> 'Such lists shall not include for the present, any temporary employee of the Soldier Settlement Board, the Department of Soldiers' Civil Re-establishment or the Income Tax Office, inasmuch as these departments are operating under exemption from the Civil Service Act in so far as their temporary employees are concerned.'
>
> And whereas almost entirely the work with which the department is now charged is the provision until death of the necessary medical treatment and prosthetic appliances required by pensioners and other ex-members of the forces and with the administration of the payment of pensions awarded by the Board of Pension Commissioners;
>
> And whereas the staff of the Board of Pension Commissioners of Canada has recently been amalgamated with the Department of Soldiers' Civil Re-Establishment under the direction of the latter and the work of the combined organizations is now approaching a permanent basis;
>
> And whereas the Soldier Settlement Board has now reached a stage where the general business of the Board, including the collection of monies loaned will continue for some years to come and may be regarded as on a permanent basis;
>
> Therefore His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Soldiers' Civil Re-establishment, is pleased to order that Regulation No. 2 contained in the said order in council of the 16th December, 1920 (P.C. 2958) shall be and the same is hereby amended to read as follows:
>
> > 'Such lists shall not include for the present any temporary employee of the Income Tax Office, inasmuch as that office is operating under exemption from the Civil Service Act, in so far as its temporary employees are concerned'."

Very definitely that instrument of 1921 placed or intended that the employees of the department, the Soldier Settlement Board of Canada and the Board of Pension Commissioners, were then considered to be permanent. That determination was reached at that time, and from then on they were considered of a permanent nature. That was not *all* of the employees, but was a certain establishment which would be set up.

We now travel along and reach the Superannuation Act of 1924. When that Act came in, it was read with a great deal of interest by all the employees of the department, and the general feeling at that time was: Here is where we can make provisions for our future. We have been denied that up to date, because the department was not under the Civil Service Act, but surely that is the situation now and we will be protected.

The department prepared a list of those employees whose positions were considered to be permanent or of an indeterminate duration, and they were advised of the provisions of the Act and given election forms.

I have right here—I read the file late last night and I was interested to see the application form of the Civil Service Superannuation Act of 1924, a well-thumbed copy of the election form which was submitted to the employees at that time.

By Mr. McIlraith:

Q. It was only submitted to 500 of the employees.—A. That is right. I am coming to that. The staff numbered 8,126 on the 31st December, 1919, and it decreased to 2,524 by the 31st December, 1924, and of those, somewhat over 500, I believe, elected. That is, one in five of the department were selected as their positions were considered to be permanent and of an indeterminate duration. Whereas today, as the members of the committee are well aware, the percentage is very much higher. The relationship between permanents and temporaries is probably one to one, or maybe better.

Q. I think it is two to one.

The WITNESS: The employees concerned completed the very form to which I have called attention, and deductions were made from their salaries, and forwarded to the Department of Finance. This continued until 1927 when the department was advised that the staff concerned were not permanent civil servants because they were operating under the Department of Soldiers Civil Re-establishment Act, by which the minister had the power to make appointments. So they were not permanent civil servants within the meaning of the Civil Service Act, and their contributions were returned, and we were just where we were.

By the Chairman:

Q. Have you a copy of the opinion of Justice? Whose decision was it that resulted in all of those contributions being returned?—A. The Department of Finance said that they had no authority to accept contributions because the employees were not contributors under the Civil Service Superannuation Act. I think I am right.

Mr. TAYLOR: Yes. A ruling was made by the Deputy Minister of Justice, and it was quoted in *Hansard* of April 10 by the Hon. Mr. Abbott. It is my information that our department returned the funds immediately. The Department of Soldiers Civil Re-establishment continued to tender funds every month or so, and every month or so they were returned. The Department of Soldiers' Civil Re-Establishment held those funds in a special account for three years, tendering the money each month and having it returned each month until 1927 when the matter was further discussed in parliament. At that time parliament decided not to amend the Act in such a way as to overrule the opinion of the Deputy Minister of Justice.

Mr. MCILRAITH: Did parliament decide not to amend it, or did it just not deal with it?

Mr. TAYLOR: I was not there.

Mr. MCILRAITH: There was no resolution before parliament which it rejected.

Mr. TAYLOR: I understand from a review of the debates at the time that the matter was raised and that nothing was done.

By Mr. McIlraith:

Q. That is right. The matter was raised but nothing was done.

The WITNESS: That is my understanding of the case. The advice of Justice was sought. Justice, in 1924, I think, prepared a draft which would correct the

situation and remove any doubt in the mind of the Department of Finance. But it just died a natural death and that is what happened to the case of unfortunate employees of the department.

The CHAIRMAN: Because of the fact that they had no way of having their claims adjudicated by any court.

The WITNESS: We had no method of approaching them. It was not until the Department of Pensions and National Health was created in 1928 that recognition was given to the staff of the former Department of Soldiers Civil Re-establishment, who were considered to be permanent, and they then became contributors.

It is now 35 years since 1918 and therefore those employees, most of whom are veterans, are nearly all due for retirement, having completed their 35 years of service, which is the maximum, towards their superannuation fund.

They do not ask for something they have not earned. They have paid contributions with interest over the period from their initial engagement, to the date of their acceptance as permanent civil servants in 1929. I need hardly state the permanent nature of the department's work. The operative section of the order in council of October, 1921, has most certainly been justified. I believe it has been stated that administratively such an amendment would impose untold difficulty, and I am sorry that in my position, as Chairman of the Canadian Pension Commission, I cannot quite agree.

Difficulties are just something to be surmounted. They are a challenge, and if there is to be equity, then I believe equity should result. If there are employees in the public service who have not received equity, then I consider their claims are certainly entitled to be considered. To illustrate why I think there is no great difficulty, I would say that favourable legislation, at least from my experience with veterans legislation, is not usually retroactive. It becomes effective upon a fixed date.

The Department of Finance is paying superannuation to certain of these employees on whose behalf I am speaking. In order to arrive at that superannuation they had to find out their salaries over the past 10 years, let us say, from 1942 to 1952. Those lists are still available and they take the average over those 10 years and arrive at the superannuation to be paid. As I say, the lists are available, and all they would need to do now is to strike off the first five years and take the last five years, to arrive at the amount which, if the adjustment is made, would be the new amount in favour of those employees from the date that the amendment would become effective.

In closing I would say that I understand that the recommendation has the endorsation of the various organizations of the civil service. It has the recommendation of the Professional Institute, and I may say that those organizations and their officers examined with very close detail the case of these employees, and that it is most worthy of your full support and commendation.

Mr. MACDONNELL: You spoke about the situation between 1924 and 1927 when tenders were made and not accepted. And you spoke about 1927 when it was brought up in parliament but nothing was done. And you mentioned the year 1929. I was not quite clear what you said happened in 1929.

The WITNESS: In 1929 the Department of Pensions and National Health was formed and the Department of Soldiers Civil Re-establishment went out of being; and in the statute setting up the Department of Pensions and National Health there was a provision whereby the employees, on the recommendation of the Civil Service Commission, and with their approval, could become permanent, that is, certain of them could become permanent.

By Mr. McIlraith:

Q. I have just one question. Do you know of any ex-employees of the Department of Soldiers Civil Re-establishment who were not transferred from the other department and who were superannuated under the five year scheme, the Part II scheme?—A. Most definitely.

Q. Would you be prepared to give those names in private to the Superannuation branch so that they can look up the forms? I would prefer not to have their names placed on the record.—A. They were, I believe, employees of the Board of Pension Commissioners, and I could not give them to you.

Q. I would like to submit those names privately to Mr. Taylor.

By the Chairman:

Q. I think we read over rather hurriedly order in council 3560. The recitals in that order in council have been quoted and stressed by you. But the operative part of the order in council appears to be very limited. What do you argue from that?—A. I am afraid that I am not in a position to argue very much from it. I am reading the order in council now.

Q. You see the recitals there are very strong, and the operative part is simply general, that PC 2958 is amended to read as follows:

> Such lists shall not include for the present any temporary employee of the Income Tax Office,—

Are you arguing the fact, that one small group was specifically deleted from the effect of the previous order in council, and that it strengthens your position?—A. No, the income tax was not deleted. The Soldiers Civil Re-establishment and the Soldier Settlement Board, the three groups mentioned, were deleted from it, but the only group left in it by the operative concluding paragraph of the order in council was the Income Tax Office. Because, I would say, at that time it was rather hoped that income tax would not be permanent.

Mr. McILRAITH: That is the whole case.

By Mr. Lesage:

Q. A question has just been asked by Mr. McIlraith of Brigadier Melville: Do you know if there were many employees of the Soldiers Civil Re-establishment Department who benefited under the five year rule? And the answer was "yes". I am looking at the opinion of the Deputy Minister of Justice which is dated Ottawa, September 24, 1924 and is addressed to the Deputy Minister of Finance, giving the reasons for that action. I should like, sir, to put this on the record at this point. I wonder if it would not clarify the situation if I were allowed to read it?

The CHAIRMAN: Yes.

Mr. LESAGE:

OTTAWA, 24th September, 1924.

Dear Sir:

Referring to your letter of the sixth instant and the enclosed copy of letter from the Assistant Secretary of the Department of Soldiers' Civil Re-establishment, with reference to the question of eligibility of members of the staff of that department to become contributors under the Civil Service Superannuation Act, 1924.

I observe that the staff is divided into three groups. The first group consists of those who have been given a permanent appointment under the Civil Service Act and who are contributors to the Retirement Fund. The second group consists of persons appointed under the authority of

the Department of Soldiers' Civil Re-Establishment Act. These persons are considered by the Department to be occupying positions of continuing indeterminate duration, and, therefore, entitled to be regarded as "permanent officers or clerks" within the meaning of the Superannuation Act. The third group consists of persons appointed under the authority of the Department of Soldiers' Civil Re-Establishment Act but who are occupying positions to which they were appointed for a temporary purpose and which are not of continuing indeterminate duration.

It is stated that, subject to my opinion, your Department proposes to treat the officials who are within either the first or second group as eligible, and those who come within the third group as ineligible, to become contributors under the Superannuation Act. I think the proposed action is right as regards officials within the first group, but it not right as regards those within the second group. The status of the latter is governed by the provisions of the Department of Soldiers' Civil Re-Establishment Act, chap. 29 of the Statutes of Canada, 1919, which authorized the Minister, subject to the approval of the Governor in Council, to make regulations from time to time "for granting authority to the Minister, subject to rules and regulations approved by the Governor in Council to employ such technical and special temporary staff as may be required to meet special conditions that may aries in carrying on the work with which the Minister is charged," etc. In the exercise of this statutory power the Minister made certain regulations under which the second group of employees were taken on the staff of the Department and I am of the opinion, in view of the terms of the statute, that such employees have only a temporary and not a permanent status. It follows that they are not eligible to become contributors under the new Superannuation Act.

In view of my ruling on this point, I presume that no answer to the other question set out in your letter will be required.

I have the honour to be,
Sir,
Your obedient servant,
(sgd) W. STUART EDWARDS,
Asst. D.M.J.

The WITNESS: Maybe a word is indicated because I would not for one instant attempt to mislead the committee. I think you will see when you read that in the record, that there were employees, the ones to whom I made reference, and the ones of whom I have knowledge, who were with the Board of Pension Commissioners. They were absorbed into the Department in the early 1920's, so they had the benefit and were subject to the five year plan.

Mr. MCILRAITH: I think we are interested in determining under which group these employees come. But to get the actual facts we do not need to conjecture about it. It is a matter which we can check very easily.

The WITNESS: I know.

The CHAIRMAN: We have arrived at a point in our work in this committee where I think I owe it to the committee to make a ruling on policy. I want to make a suggestion. As the members of the committee know, our order of reference is simply bill 334 and we have no order of reference in regard to the whole question of superannuation.

I thought it would be helpful to the minister and the deputy minister and the department to have more or less an official record at this time on this important matter. In allowing the evidence to go in, perhaps I was acting outside the scope of our reference, but I thought it would be helpful that we

should have a permanent record. Now, we have no power, without going back to the House and asking for authority, to deal with pensions or superannuations as a subject. It is so late in the session I doubt very much if parliament would grant us that authority. I cannot accept any motion in regard to anything except the bill which is before us. I think that it might be wise, if Mr. Taylor is willing for us to have an in camera meeting with him, so that the members of the committee could indicate to him quite clearly their feelings on the subject now, and that we can do no more than that.

Mr. CARROLL: Brigadier Melville made a certain suggestion which I think might be incorporated as an amendment to the bill, could it not?

The CHAIRMAN: The difficulty with it is this: You well know, Mr. Carroll, that no private member of the House of Commons, and no committee of the House of Commons, and no one excepting a minister of the Crown can initiate legislation which involves the expenditure of public money.

Mr. ARGUE: But is it correct, Mr. Chairman?

The CHAIRMAN: This committee is not empowered by parliament to make a report to Parliament which includes a suggestion on a subject which has not been referred to the committee.

Mr. ARGUE: But has the committee not the right, which I believe it has, to make recommendations?

The CHAIRMAN: No. Our order of reference is simply the bill.

Mr. ARGUE: I have been a member of committee where we have recommended that the government consider certain things which involved the expenditure of money.

The CHAIRMAN: I have chaired many committees where we had an order of reference which was purposely worded in order that we could do that. But our present order of reference simply is bill 334.

Mr. MCILRAITH: If we proceed in the manner you have indicated, could we not avoid arguing the point of order and getting a ruling on it at this stage? I think that the necessity of having a firm ruling on it may disappear if we can get a discussion, now that we have the evidence before us.

The CHAIRMAN: Are the members of the committee content that we do that? I mean that we complete the hearing of the evidence of the president who is in attendance. He may wish to make some remarks, and then we would have an in camera meeting and discuss the whole matter and express our opinions to the deputy minister, knowing quite well that they will go on to the minister.

Mr. QUELCH: Surely we would have the power in our report to the House to say that we had heard evidence from these various groups and that we urge that the House give consideration to their briefs?

The CHAIRMAN: I have checked the rules very carefully, and where a bill is referred to a committee, the committee has the sole right to report on the bill with or without amendments, but we have no right to make recommendations.

Mr. ARGUE: But if we can consider possible amendments to this bill, surely the field is pretty wide open.

Mr. MCILRAITH: Do you mean to say that the last five years of a man's employment will necessarily be more costly than the last 10 years? He might conceivably—from a reading of the legislation—argue that in the future we can reduce the salaries of all people at the age of 55. You are caught in that event, and there is a nice legal point. I admit it is a legal point, but that is why I sought to avoid having a formal ruling now. We could spend hours arguing it, and if we can just avoid a formal ruling I think we may avoid the necessity of an argument, and it would save time.

The CHAIRMAN: I have indicated my position. I have made no ruling. I can call an in camera committee meeting at 3.30 and we can thrash out the matter then.

Mr. MACDONNELL: Before you determine that matter finally, I appreciate what you say about an in camera meeting although I am not terribly keen about in camera meetings. But in any event we want to have this information on the record, and could we not ask the House to have our reference extended and then get over the difficulty in that way?

The CHAIRMAN: With the winding up of the House in the immediate future and the fact that this committee has three other references with which we have still to deal, I am looking at the question of time, Mr. Macdonnell.

Mr. FRASER: We should not be forced to hurry a bill through like this.

The CHAIRMAN: Nobody suggests that we hurry it. I suggest that the order of reference is so and so, and I invite you to read it.

Mr. MACDONNELL: Surely it would not take an extra minute if it is purely a question of time. Surely it would not take an extra minute to have that done in the House of Commons, if the government is prepared to do it, just to extend that order of reference so that we can bring in our recommendations.

Mr. LESAGE: Why do we not follow Mr. McIlraith's suggestion and hear the last witness and then come back at 3.30 this afternoon and hear Mr. Taylor and then decide on these things?

Mr. MCILRAITH: I would like to avoid a firm decision at the moment, because we cannot take up a lot of time in arguing a point of law, and I think it would be necessary to argue it, and I am anxious to get the bill back into the House.

Mr. ARGUE: I object to in camera meetings just upon principle. I think that at any meeting of this committee the evidence should go on the record. Moreover, if our order of reference does not cover this discussion, how does it cover it at a meeting in camera?

The CHAIRMAN: You know that the report meeting of the committee is always held in camera.

Mr. ARGUE: But that is not the idea of this in camera meeting. I do not think it is so necessary to wind up the session at the end of next week that we should have to hurry a subject such as this.

The CHAIRMAN: I am not thinking of the session winding up at the end of next week, but two weeks away. You apparently are interested only in one matter, while I as chairman am responsible for the three other assignments.

Mr. ARGUE: I am interested in more than one matter, and I think your remark was unnecessary.

The CHAIRMAN: Do you wish to make your presentation now, Mr. Hamilton?

Brigadier MELVILLE: I would like to thank you, Mr. Chairman, and the members of the committee for the opportunity given on behalf of a number of employees, to make these representations. They have been looking for that chance for years and I thank you very much for them.

The CHAIRMAN: Thank you.

Mr. FULFORD: Before Brigadier Melville leaves, I want to say that I was requested by Mr. Balcom, who unfortunately had to go to Halifax, to ask a number of questions. But I believe that the evidence submitted today by Brigadier Melville has provided an answer to those questions.

The CHAIRMAN: Thank you, Mr. Fulford. Mr. Hamilton, will you please come forward?

Mr. A. B. Hamilton, President, Department of Veterans Affairs Employees National Association, called:

The WITNESS: Mr. Chairman and members of the committee: The presentation I have to make this morning is similar to the one you heard from Mr. Anderson of the Canadian Legion last night. I propose to read our presentation and to speak possibly only to that subject. You will note that in the brief which we have presented we quoted a certain part of bill 334 and we did that so that we could come back with our recommendation to you and show how a change in the bill could be made to provide relief for the subject we are making representations for. You will find it attached to the big brief. That brief is attached to the one which you received last night. With your permission I shall now read my brief:

> *Re:* Bill 334: An Act to provide for the Superannuation of Persons Employed in the Public Service of Canada.
>
> This representation seeks consideration for the amendment of Bill 334 to provide for the payment of single contributions for war service.

The next paragraph refers to the bill itself.

> Section 5 of Bill 334 provides:
>
> (1) Subject to this Act, the following service may be counted by a contributor as pensionable service for the purposes of this Act, namely,
>
> (*b*) (iii) (A) any period of service on active service in the forces during World War I or World War II, if he elects, within one year of becoming a contributor under this Act, to pay for that service.
>
> Section 6 of Bill 334 provides:
>
> (1) Subject to section 7, a contributor who is entitled under this Act to count as pensionable service any period of elective service specified in (*b*) of subsection (1) of Section 5 is required to pay, in respect thereof, as follows:
>
> (*e*) (ii) in the case of a person who was not, immediately prior to his enlistment in the forces, employed in the Public Service on a full time basis, an amount equal to twice the amount that he would have been required to contribute during the period of his service in the forces had he, during that period, been required to contribute in the manner and at the rates set forth in subsection (1) of section 4, in respect of a salary at the initial rate authorized to be paid to him upon subsequently becoming employed in the Public Service, together with interest.
>
> In other words, a veteran who was not in the Civil Service prior to enlistment, when becoming a contributor under this Act and electing to pay for his Active Service is required to pay double rates, plus 4 per cent interest to date of election. In most cases this is 12 per cent of the initial salary plus 4 per cent per annum interest, a prohibitive cost for the long-service veteran with relatively few remaining years of Public Service life.
>
> As a result, a great many veterans, particularly those who have entered the Public Service toward middle life, have not exercised their option of paying for their period of service in the Armed Forces to extend their period of superannuable employment. A great many of those who have so elected, find that it means that they have to carry a heavy burden for many years.

If I might comment here, I think particularly in our department you will find that with those employees who were given an opportunity to elect to pay

back for their war services, that the great majority of them have not elected to do so because of the prohibitive cost involved. That prohibitive cost is based mostly on the total contributions and the interest that is required.

On what basis are other civil servants treated? Briefly:

(*a*) A permanent civil servant given leave to enlist received a concession over and above the normal gratuities and other veteran benefits in that the government paid his superannuation contributions during his absence on military leave;

(*b*) The temporary civil servant when made permanent paid single contributions only; and

(*c*) The non-veteran who entered the civil service during the war pays single contributions, even though he enjoyed immunity from the discomfort and hazard of war and at the same time had the advantage of earlier entry into an expanding service with opportunities and seniority unavailable to those in the Forces.

Perhaps we could not quarrel with the concession made to prewar permanents and temporaries. However, it is far from clear why a veteran should not be accorded equality of treatment with those in (*c*) above who, although serving the Crown as did the soldier, did so in a civilian capacity and at no personal risk.

It has been argued that veterans have already received recognition and recompense for their service in the form of gratuities and other benefits and thus that they should expect nothing further. No one knew, when he enlisted, what benefits, if any, he would receive when or if he returned. None of them will deny that they were generously dealt with under the Veterans' Charter. But, by the same token, there are few veterans in the public service who would feel that they should not be dealt with in the matter of superannuation on at least equality of terms with those who, for one reason or another, did not serve.

It has also been argued that veterans have been granted a concession in being allowed to pay back on war service at all. However, the word "concession" indicates the granting of a right or privilege *of value*. If many veterans, *because of the cost*, are unable to avail themselves of it, then in effect it is not a "concession" at all.

As the Superannuation Act now stands, all too often we find the veteran who has been made permanent weighing the cost of paying for his war service, and the resultant income therefrom, against what he might receive as a War Veterans Allowance recipient. It is felt that any veteran would prefer, if it were possible for him to do so, to retain his morale and independence through providing for his own future security by contributions during his productive years. Thus, any move toward assisting him to do so would seem desirable and in the national interest.

It is not suggested that the actuarial basis of the Superannuation Fund should be disturbed by waiving the payment completely of the employer's portion of the contribution for the period of war service involved, but that the government should match the veteran's payment to the fund.

It is therefore requested that Bill 334 be amended by removing the word "twice" in line 24 on page 8 thereof.

The CHAIRMAN: Thank you, Mr. Hamilton.

By Mr. Lesage:

Q. Could I ask only one question, Mr. Chairman. Might I draw your attention to the second last paragraph of your brief, where you say:

> It is not suggested that the actuarial basis of the Superannuation Fund should be disturbed by waiving the payment completely of the

employer's portion of the contribution for the period of war service involved, but that the government should match the veteran's payment to the fund.

I would like to have an explanation.—A. We feel that it would be unfair, so to speak, to the fund to completely forgive the payment of the government's share for back service. In other words, we feel that the payment should be made but that the veteran himself should not be required to pay for it. We feel that the veteran served in the armed forces, and if that veteran had been serving in the government as a temporary employee, the government would have paid his contributions. We maintain that the veteran was in the employ of the government and, therefore, the government should pay the contribution for that period.

Q. You contend it should be done by a separate item in the estimates—is that what you have in mind?—A. I have no knowledge of how the estimates handle a matter of this nature.

Q. That is the only conclusion I can draw from what you are saying on that point.—A. I think provision should be made for the government to pay this portion of the contribution.

Q. That would have nothing to do with the bill. That would have to be a separate item in the estimates.—A. The bill, Mr. Chairman, provides that the veteran shall pay twice the contribution, and the bill would have to be amended to forgive that payment.

Q. Then you would have to upset the actuarial basis of the superannuation Act?—A. I submit that is a matter for the government to worry about.

Mr. QUELCH: It would not upset the actuarial basis if the government matched the contribution of the veteran. It would not upset the actuarial basis at all.

Mr. MCILRAITH: No, not if the government matched the contributions to the fund.

The WITNESS: May I conclude on our whole presentation, Mr. Chairman?

The CHAIRMAN: Yes, go ahead.

The WITNESS: There is one thing I would like the committee members to remember, and that is that you have it, I hope, within your power to make a recommendation that will alleviate a situation which was created through a mere technicality in the legislation. We are not quarrelling at all with the rulings of the Department of Justice based on the legislation which was passed in the Superannuation Act of 1924. We do not quarrel with that, but we do feel that the legislation did not provide for certain employees. They have been dealt with unjustly. There is inequality of treatment all the way through. I believe you have it within your power to correct that situation and I would honestly implore you to consider that you have the welfare of a number of good and faithful employees to consider. If you can find it within your power to make a recommendation, I would earnestly implore you to do so. I am referring to those old employees, mostly veterans of the First World War, that we have had a lot of discussion about. Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Hamilton. Mr. Victor Johnston.

Mr. Victor Johnston, President, Civil Service Association of Ottawa, called:

The WITNESS: Mr. Chairman, honourable members, on behalf of myself, Mr. Hall, who is accompanying me, and on behalf of the Civil Service Association of Ottawa, I may say we are very pleased to have this opportunity to make a submission before this standing committee on Bill 334 to provide for the superannuation of persons employed in the public service of Canada.

We have had our submission mimeographed and I believe it is being distributed to members of the committee and I would like to see it go in the record, if that meets with your approval. I think I can leave it up to the committee as to whether they would wish that I read this brief.

The CHAIRMAN: I think you had better read it.

The WITNESS: Our association, as you know, is particularly composed or is largely represented in the city of Ottawa. It covers employees in most of the government departments and I think, therefore, it is indicative of what civil servants as a whole have on their minds. Our membership can be considered as a cross-section of the civil servants as a whole. Therefore, the major points that we have stressed in this brief are the issues that have more or less widespread application, and, as we mention later, representations on behalf of some smaller groups who have more vested interests in this bill we would like to see handled by an advisory committee that it has been proposed in this bill to set up.

I will proceed with the reading of our submission.

The Civil Service Association of Ottawa welcomes this opportunity to go on record as warmly supporting Bill 334 which provides for the superannuation of persons employed in the public service of Canada. Without going into detail concerning the numerous modifications of the public service superannuation program contained in this bill, we are satisfied that the changes and additions will be beneficial to the great majority of civil servants. This bill has received serious study by the government's advisory committee on superannuation, on which we have been represented. Superannuation is a complex subject and this bill a very technical one, but it is apparent that the various improvements, some of them small in themselves, will work to the advantage of civil servants and of the public service in the form of good administration.

We are particularly pleased that coverage of this public service superannuation bill will extend to the many thousands of "temporary" civil servants. It is generally believed that civil servants have greater security of employment than most other workers in Canada, but the fact is that most civil servants are employed only on a temporary basis. This extension of superannuation coverage will help fill an important gap in the objective of providing sound working conditions for all government employees. Moreover, it will provide protection that is badly needed in the case of so called "long-term" temporaries who may never become permanent. We also endorse the proposals to make superannuation a matter of right rather than of privilege, to increase the maximum amount of benefits to dependents, to make better provisions for civil servants with broken service, to remove the present restriction of active service in the forces to "overseas" service, and so on.

The Civil Service Association of Ottawa does not wish to delay the passage of this public service superannuation bill and therefore recommend only three changes in this bill at the present time.

1. We recommend that the words "temporary employee", defined in Section 2 (*n*) as meaning

(i) an employee who is engaged for a term of twelve months or less,
(ii) a part-time employee or
(iii) a sessional employee,

be changed to "short-term employee", and that "short-term" be substituted for "temporary" in all other sections of the Bill where it has the above definition.

Although this seems a very minor recommendation, we believe it to have significant implications. For many years the term "temporary" in public service employment has applied to the very large number of civil servants who have been employed in positions of a continuing nature but who have not been

made "permanent" under the Civil Service Act. We believe that the term "temporary" as defined in this bill would conflict with the generally accepted definition of this term and that its introduction here would eventually lead to confusion in relating interpretations under the public service superannuation Act Bill with interpretations under other Acts.

Our association hopes that this is not the beginning of a policy to remove the differentiation between permanent and temporary employees in the public service, with a view to the eventual disappearance of the permanent classification. In addition to the opportunity to make contributions under the Civil Service Superannuation Act, permanency has been the basis of the security of tenure in public service employment. We do not wish to have this degree of security restricted or removed without full discussion involving the Civil Service Commission and the National Joint Council of the Public Service of Canada, on which the major staff associations are represented. We do not believe that civil servants as a whole would wish to see the elimination of the permanency classification until the government is prepared to give full, official recognition to civil service employee organizations as representatives of civil servants in matters relating to their employment in the public service.

2. We recommend the deletion of Subsection (2) (c) of section 4, that "no person shall contribute to the Superannuation Account as required by subsection (1) after that person has reached 65 years of age", and the deletion of references to this subsection in other sections of the bill.

The trend today seems to be against compulsory retirement at the age 65, and much investigation is currently being given to this problem. The government itself is looking into this, and indicated by the remarks of The Hon. D. C. Abbott, Minister of Finance, in the House of Commons on April 16, 1953:

> Under the present act retirement is compulsory if an allowance is offered to a contributor, and no contributor may be retained in the civil service beyond 65 years of age, except where the Governor-in-Council, for reasons of exceptional efficiency and fitness, grants annual extensions up to the age of 70.
>
> The proposed act does not specify an obligatory retirement age but continues the provision in the present act whereby, after August 1, 1957, superannuation benefits are frozen for those already over 65 and will be frozen for others on becoming 65. Because of ever changing conditions the government feels that there would be some advantage in not being too rigid about this matter in an act which is primarily designed to cover the situation when employment ceases. The policy to be followed in lieu of that provided under the present Civil Service Superannuation Act is being worked out and will be made known in due course.

As it is highly probable that some flexibility may be introduced governing the age at which civil servants must retire before this section becomes effective in 1957, we believe this deferred restriction should now be removed.

3. We recommend that subsection (1) (*b*) of section 9 be amended to read "the average annual salary received by the contributor during any *five* year period of pensionable service selected by or on behalf of the contributor, or during any period so selected consisting of consecutive periods of pensionable service totalling *five* years".

We recognize that the present bill represents an improvement over the Civil Service Superannuation Act in that it makes benefits calculable on the best ten years of service rather than on the last ten years of service. At a time when salary levels have been changing to meet the rising cost of living, our recommendation would help to bring pension rates to a more appropriate level. It would also be a quick and easy partial solution to a more fundamental problem of superannuation benefits which we would like to discuss below.

We believe the above recommendations could be introduced immediately, and without delaying the passage of this legislation.

We would also like to bring to the attention of this committee some other matters relative to superannuation that may require a more lengthy period of consideration. We do this in the hope that this committee may request that the government undertake a study of these problems at an early date. We believe a thorough investigation of these points may result in beneficial amendments to the public service Superannuation Act in future years.

1. We would like to see some consideration given to the problem of relating pension benefits to living costs or to the changing level of salaries. When parliament approved the original Civil Service Superannuation Act in 1924, it broke new ground and set an example to employers in Canadian private industry in the comparatively new field of providing adequate retirement benefits for those who had rendered long years of service, these retirement benefits being financed by an employer-employee contribution. Although private industry in recent years has followed this government example and established similar plans for its own employees, we believe the civil service superannuation scheme still ranks with the very best in Canada.

However, economic trends of the last decade make it apparent that there is still another important step to be taken before the objective of old age security can be achieved. There are numerous cases of civil servants, retired after thirty-five or more years of service, who have found that the pension they relied on to keep them in modest comfort for the remaining years of their life has had its value sharply reduced by the rise in the cost of living. A civil servant who retired in 1946, for example, would find that the pension that then seemed to be adequate and reasonable is no longer enough to maintain anything like the standard of living on which he had planned. Obviously the objective of old age security is not achieved if price rises wipe out much of the value of the pension.

We are well aware of the difficulty of remedying this situation. It is a problem that has implications for other groups in the country besides civil servants. Our present superannuation scheme is based on the principle of relating current cash benefits to past cash contributions. It would appear that in the future something should be done to relate current benefits, not to the past level of contributions, but to the current cash level of contributions.

As an example, let us take the case of a man who retired in 1946 after thirty-five years of service, during the last years of which he was employed as a clerk Grade 4. He would have been receiving a salary of $2,244.00 at the maximum, and would be entitled to a pension in the neighbourhood of $1,500.00. Today, however, a clerk Grade 4 position is worth not $2,244.00 but $3,110.00 at the maximum. A salary of $3,110.00, if maintained over a ten year period, entitles an employee to retire with a pension of about $2,100.00. We believe it is only fair that the man who retired in 1946 as a clerk Grade 4 should receive a pension of about the same amount as a man who retires in 1953 as a clerk Grade 4. Both of these employees receive a pension based on the same grade of work, but one suffers because he was doing this work in an earlier period of time.

Parliament acted boldly in 1924 to meet the problem of old age security for employees in the public service of Canada at a time when this was a comparatively new and untried field. Parliament set a standard at that time which ultimately spread to private industry. Three decades have passed and a new aspect of the problem of superannuation benefits has come into focus requiring equal vision today. We believe this broad problem of superannuation should receive official study and hope it will provide an opportunity for parliament once again to take the initiative in providing an example for employers in private industry.

2. We believe further consideration should be given to increasing the benefit to the widow of a contributor from the present 50 per cent to the amount payable to the deceased contributor. If the adage that "two can live as cheaply as one" is even partly true, it is apparent that the widow of a contributor would require more than one-half of the benefit to which both she and her late husband had been entitled.

We realize that these further improvements in the public service superannuation scheme may require an increase in the amount of contributions payable by the contributors, but we believe civil servants as a whole would be prepared to give serious consideration to an increase in contributions in order to achieve these benefits. Our objective in suggesting that this committee recommend to the government a study of these points is to enable it to bring forth some estimate of the size of the increase in contributions, if any, that would be required to attain these ends.

The changes we have suggested in the public service superannuation bill will, unfortunately, not benefit those civil servants who have retired before the beginning of this year. We are gravely concerned about those persons whose superannuation benefits have been so adversely affected by the sharp postwar rise in the cost of living. The reduction in the purchasing power of the superannuation benefits has in many cases reduced to the extent that the original purpose of the Civil Service Superannuation Act has been defeated. We strongly recommend that the government provide a supplementary benefit to those retired civil servants whose relative superannuation benefit has been so seriously reduced by this postwar rise in price.

We also support the representations made on behalf of other groups, such as those who were in the old Soldiers' Civil Re-establishment Department. We believe that these groups should be treated as special cases under the proposed public service superannuation Act, and we shall be prepared to make further representations on their behalf after this new Act is officially proclaimed.

We would once again like to thank this committee for the opportunity it has given us to present this submission concerning the public service superannuation Bill No. 334. The Civil Service Association of Ottawa would again urge that the terms of this bill be put into effect with the least possible delay.

The CHAIRMAN: Thank you, Mr. Johnston. Any questions?

Mr. LESAGE: Mr. Chairman, I have here a number of amendments which will be proposed and I have copies of them for the members of the committee.

The CHAIRMAN: I would like you to have them circulated now so that members can see them.

Mr. LESAGE: They will be distributed now, and I will endeavour to have a minister of the Crown to move them this afternoon, since some of them may involve additional expenditure.

The CHAIRMAN: The meeting is adjourned till 3.30 this afternoon.

AFTERNOON SESSION

The CHAIRMAN: Gentlemen, we have a quorum.

We have concluded the deputations. Mr. Taylor would you care to make any general comments?

Mr. Kenneth Taylor, Deputy Minister of Finance, called:

The WITNESS: Thank you, Mr. Chairman.

Might I just make two or three general comments, and at the same time supply some information that was asked for by members of the committee?

I think we should start from a recognition that we have one of the best, most generous, and I think I might add, one of the most fairly administered pension schemes in the world. There will always be room for continuing improvement and it may well be, with the provision for a five year report to parliament, that parliament will take this opportunity to take a good look at the Act as a whole at stated intervals.

The Act is based on the principle of a contributory system on a fifty-fifty basis. As seen from the witnesses before the committee, there will always be some complaints and requests for improving benefits. At present we have a very close balance between long term revenue and long term expenditure and any significant improvements in benefits would have to come from reduced benefits elsewhere or higher contributions.

In this bill some priority has been given to increased pensions to employees who have several young children. The bill as you realize is not intended to increase benefits to present contributors across the board. The improved benefits in the present bill are chiefly matters of smoothing out the present pattern and removing a few anomalies and improving the "insurance element" to employees with a larger number of young children. The main big changes are the establishment of pensions as a matter of right and bringing in the great mass of so-called temporaries under the scheme.

Some reference has been made to the position of already superannuated civil servants, and I thought I might give certain figures relating to "rank and file" employees. I have taken the average terminal salaries of certain classes, which contain very large numbers of employees such as postal clerks, mail carriers, clerks Grade 2, cleaners helpers and so on. The terminal salaries in these classes before the war were about fourteen to seventeen hundred dollars. They averaged about fifteen hundred dollars. So the typical rank and file civil servants who went out on superannuation just before the war or any time up to about 1945 would have a pension, if they had 35 years service of about $1,050, or with 25 years service a pension of about $750. Those civil servants who went out at prewar salaries would now be almost invariably qualified for the old age pension so their gross income would be something around $1,500 if single or as high as $2,000 if both husband and wife were over 70. The rank and file going out today would go out on an average ten year salary of something of the order of between $2,200 and $2,500 and on a 35 year basis would have pensions between $1,500 and $1,800, depending whether they were under the five or ten year average, and with 25 years service they would go out on pensions at about $1,100 or a little higher.

The question of medical examinations came up and I checked with the Department of National Health and Welfare. The Department of National Health and Welfare do not make any examination of civil servants outside of Ottawa, but they do review the results of every examination whether in Ottawa or outside of Ottawa. In Ottawa they examine as many future permanent employees as they can within their limits of staff, but because of the large numbers awaiting examination many may decide to go to their private practitioner in which case of course they would pay a fee.

The question or reciprocal agreements being extended to cover universities as well as public service employees was referred to in the Professional Institute's brief and was covered in general discussion. The present bill empowers the minister to enter into agreement with public service employees of provincial governments, governments of other countries and international organizations. I would be reluctant at this stage to extend it any further than that. If you get into the question of extending it to universities, the first question is, do you mean just Canadian universities; and then would you extend it to teachers' groups and public and private schools. Once you

get away from the concept of public service employer it would be difficult to draw the line until you get down to the private business employer. And a suitable agreement does involve our turning over substantial funds which are to the credit of an individual to somebody else, and we would certainly have to satisfy ourselves very thoroughly that that money was being safely placed. So, for the time being I would be reluctant to recommend any extension beyond our present experimental extension.

As I said before, scientific people who leave our service can take deferred pensions commencing at 60 and start new pensions at the universities to which they go. The situation is not as difficult as it had been before we had the principle of having a deferred pension at age 60. Perhaps I might try to state in simple, but I think in accurate form, the treatment that is accorded to veterans in connection with the Superannuation Act. Any civil servant who was a contributor under the Act before he enlisted and went into the armed forces from the permanent civil service and came back again, having been given leave of absence, received a free credit for his period of war duties in the armed forces. If a person was in the civil service but was a temporary, that is he was not a contributor under the Act, and he went into the armed forces and then came back to the government service, he can buy into his superannuation his war service period by paying the usual 6 per cent—5 per cent of course in the case of females. If a person was not employed in the civil service at all before the war, but having had war service comes into the government service, he is treated as though he came from a pensionable employment: in other words the fund has to be reimbursed for the full amount of the 12 per cent. It seems to me that this is the action of a good employer. The minister covered that very fully in moving the amendments to the Act in 1947. I will not endeavour to read the whole section. I will just give the reference. It appears in the 1947 *Hansard* where the minister explained why they were making this additional right to purchase back service available to persons who had active war service. I have not got the page number here. Perhaps I had better take time to read it.

Mr. MACDONNELL: This might have been explained yesterday when I was absent. I wonder if there is anyone like myself who would like to hear it explained a little further.

The CHAIRMAN: We went into it thoroughly and it is on the record. There are three main groups: people in the service at the time of the war; temporaries in the service at the time of the war; and those in other employment but as a result of their war service preference changed their employment when they came back. Those constitute the three groups.

The WITNESS: The main reason the minister gave in 1947 was that it was undesirable to give a special benefit to one fairly small fraction of the veterans, namely those who joined the civil service.

On the five year average, the question was asked how many now employed in the government service are on a five year average. We do not know exactly. It will take some time to get those statistics. In the period 1924-27, approximately 15,000 people came under the Superannuation Act under the five year rule. Very few of those would be under 25 years of age at the time. We made an estimate that there would at the present time be well under 3,000 people still employed in the public service who are entitled to the five year average. That is rather less than 5 per cent of the people presently under the Act and about 2 per cent of those who will be under the Act when this bill comes into effect.

I was interested in Mr. Osborne's statement last night where he showed you a group of 57 persons who were employed prior to 1924 and of whom only

one sixth are still in active service, which would be about the same proportion as I have given above.

I was asked what would be the cost of changing from a ten year average to some lower average, specifically a five year average. Members of the committee will realize that if you have a completely stable salary structure where for year after year the salary structure is unchanged and where the great majority of civil servants reach the limit of their salary range long before they retire, the cost of dropping from a ten year average is very small because the great bulk of the employees would have the same salary for the last three years as they had for the last five, ten or even fifteen years. I am again referring to the great bulk of the civil servants. It would not be quite the same for those in the higher managerial ranks. If you had a completely stable salary structure the increased cost of dropping to a five year average would be about ·22 per cent for male and ·09 per cent for females, of total salary.

The real cost comes when there are general increases of salaries. It is only when you get into that period that you have the question opened up. When we had stable salaries from the middle twenties to middle forties, the question of a five year average vs. ten year average was almost an entirely academic question. It became lively only after there had been a general upward movement in the whole salary structure. In the case of the last general increase in salaries which was about 8 per cent across the board—the increase of December, 1951—the additional benefits to civil servants arising out of that would have required an average additional contribution of about 1·3 per cent of salary over the contributory period of those affected, that is an increase from 6 per cent to 7·3 per cent in order to carry the extra load.

Mr. MACDONNELL: What is that in money?

The WITNESS: The government had to make a special contribution to the fund of $23 million based on the 10 year average. Had we been on a 5 year average, the government would have had to put in something over $28 million instead of the $23 million. That was just to fill up the hole, as somebody described it. That applies only to the present people under the Act. Had the Act been then applicable to all that it will become applicable to, the government might well have had to put into the fund $46 million to fill up the hole on the 10-year average basis and something over $56 million had it been on the 5-year average basis.

By Mr. Fraser:

Q. That is on the 7 increases they have had?—A. No, that is on the one 8 per cent increase.

On the question of compulsory retirement at 65, I noticed the conflicting views of the Civil Service Federation—

By Mr. Macdonnell:

Q. Mr. Taylor, you just said the figures you gave were on one of the salary increases. Does not the full answer to the question imply that we have worked on the whole?

The WITNESS: The other salary increases are reflected in the big hole, if I may use that word, of $365 million, which we have been filling up by stages. There were other factors in that hole as well.

On the question of compulsory retirement, members of the committee will appreciate the problem of administration in considering these issues when we get directly conflicting views by the Civil Service Federation on the one hand, and the Civil Service Association of Ottawa on the other. There is no general agreement in the public service organizations. Some feel that at the age of

65 a man should go out, and others feel that this is far too rigid—that people by and large should be allowed to work as long as they wish to if they are fit and efficient.

The policy in the bill is that a civil servant is free to retire at the age of 60. Between 60 and 65 you are free to retire and take as much pension with you as you have earned, and the government may require anybody to retire when they reach the age of 60. The government offers you retirement when you are over 60 you have to take it. At the age of 65 under the present existing Act, retirement is automatic except by a special order in council applying it to the individual on grounds of peculiar efficiency or essentiality. In the bill that is before us a much more modified or flexible clause has been put in which in effect requires that as employees reach 65 their cases will be individually assessed and the government may continue their employment in the civil service in accordance with the needs of the service, and in accordance with the special problems involved.

The CHAIRMAN: What are the pension features?

The WITNESS: Under the amendment to the Act passed in 1947, parliament gave all civil servants 10 years notice that starting in 1957, if you continue in the service beyond 65 you will nevertheless cease to pay any contribution after 65, and you will also cease to improve your benefits after you reach 65.

By Mr. Macdonnell:

Q. And the government made no contribution?—A. No.

By Mr. Fraser:

Q. But the fund would keep on increasing?—A. That would be 4 per cent compounded on the over-all fund.

The reason for the rule that no payments are to be made after 65, and no pension improvements made after that date was largely, I understand, to remove the pressure by people to get extensions, and also the implied pressure on an individual to stay in the service. The only change in the present bill is that retirement at 65 is not as rigidly laid down. 65 is still a bench mark at which one would normally expect people to retire, but provision for extension is made easier and more flexible.

By Mr. McIlraith:

Q. But extension does not carry with it its superannuation rights?—A. It does at the moment, but as from August 1, 1957 there will be no further superannuation earned.

That is really all I have to say Mr. Chairman, except that I have some further notes on the problem of the D.S.C.R. and related problems.

Q. Could we deal with them separately?

The CHAIRMAN: My intention, subject of course to the wish of the committee, is that we would now deal with the bill a section at a time, after which we would go into the report stage.

By Mr. Richard:

Q. Has Mr. Taylor covered all the questions asked of him?—A. I think so.

Q. Can you cover that about employees loaned to the British Pensions Commission?—A. I must confess I have not looked up individual cases of that sort, and in that case we would have to have names, and Mr. Gullock would look them up. I have not had the opportunity to pursue individual cases.

Mr. MCILRAITH: All I was interested in was not being put in the position where we would be precluded from discussing certain matters. If we take each clause of the bill by one now, there may be incidental matters we will want to change.

The WITNESS: There were at the time of the 1924 Act some 14,000 temporaries, a very large fraction of whom came in under the Act at various stages in the following years, but of course under part I on the 10 year average. We have made a quick examination of the great variety of representations from various groups made back in those days, somehow or other to squeeze in under part II. The principal ones were the land surveyors, the D.S.C.R. and the S.S.B. but in addition to them, there was a large block in the Department of Transport and quite a number of others whose cases had been reviewed at various times. Some of these seem to have dropped the argument some time ago, and never came back, but I wanted to point out that there are a considerable number of groups apart from those who made representations before this committee who have appealed in the past, and received in substance the same answers.

By Mr. McIlraith:

Q. You have only mentioned one group, the Department of Transport, the Soldier Settlement Board, the Soldiers Civil Re-establishment Board and the Civil Service Association have all made their representations.—A. I am told there were two or three bodies grouped under transport, telegraphers and so on.

Mr. FRASER: In regard to the application form that you have to elect, there is nothing on it to indicate just what they are electing to. Now I asked Brigadier Melville to let me see one they had back in 1924, and it had quite a lot of detail on it.

The CHAIRMAN: Mr. Fraser, would you mind waiting until we get to clause 7—the manner of making election.

Mr. RICHARD: On my point I will end up once and for all. That was not individual cases I was talking about. These were a group of employees. Does what you have said mean that under this Act now there will be no facilities at all for any group of employees in the position which I mentioned—permanent employees before 1927-28 under the Superannuation Act of 1924 who were loaned to the British government for a number of years and who have been re-employed since and lost that period of 7 years superannuation because they were on loan through the agency of the government of Canada—does that mean that under this Act there is no means to help them out?

The WITNESS: There is no change.

The CHAIRMAN: Shall clause 1 carry?

Carried.

The CHAIRMAN: Clause 2.

Mr. LESAGE: On clause 2 Mr. Chairman, there is an amendment.

Mr. MCILRAITH: Before we go on with this, I suppose we will deal with these sections individually. Suppose there are amendments we want to make arising out of the report.

The CHAIRMAN: It should be distinctly understood that in going through the Bill a clause at a time we are not precluding any subsequent discussion or subsequent amendment based on the discussion.

Mr. MCILRAITH: That is fine. I just wanted to clear that point up.

The CHAIRMAN: Perhaps, gentlemen, you will now turn to the mimeographed copies of the proposed amendments. I will call the amendments if and when they arise. You will notice that in clause 2 (interpretation) paragraph 3, line 12, there is an amendment to insert after the expression "veterans hospital", the words "as defined in the regulations".

(See Minutes of Proceedings.)

The WITNESS: The point is, as pointed out by the Department of Veterans Affairs, that it may be more or less a matter of chance whether a veteran is placed in a veterans hospital. In some provinces there are no veterans hospitals and it may be the wish of the D.V.A. Treatment Service to admit a veteran to a special institution such as the Montreal Neurological Institute or a special T.B. sanitorium.

The CHAIRMAN: Shall the amendment to clause 2(*a*) carry?

(See Minutes of Proceedings.)

Carried.

Now, referring to page 3 of the proposed amendments, there is a motion to delete from paragraph (*p*) of clause 2 the words and figures "31st day of March, 1947" and substituting therefor the words and figures "30th day of September, 1947." What is the significance of that amendment?

The WITNESS: The date March 31 is in the present Act and we just carried it forward and it has now been drawn to our attention that there are other orders in council and regulations and legislation which declared World War II to have ended on September 30, 1957 and we think this should be consistent.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Clause 3, Superannuation. Are there any amendments?

Mr. LESAGE: No, sir.

The CHAIRMAN: Shall clause 3 carry?

Carried.

Shall clause 4, Persons Required to Contribute carry?

Carried.

Clause 5, Pensionable Service.

Mr. MACDONNELL: Could we ask Mr. Taylor if he thinks there is anything especially significant to draw it to our attention as we go along.

The WITNESS: Yes, sir.

The CHAIRMAN: Shall clause 5 carry?

Carried.

Clause 6, Elective Pensionable Service: Amount Required to be Paid.

The WITNESS: This covers all questions of the amount to be paid for elective service.

The CHAIRMAN: Shall clause 6 carry?

Carried.

Clause 7, Elections.

Mr. FRASER: I would like to know just what the application form now is for election. Have you a copy there?

Mr. GULLOCK: I do not have a copy with me but we have a form now that has been revised from time to time. It is a double page form.

Mr. FRASER: That is the new form?

Mr. GULLOCK: That is the form we have revised. Page 1 on the front gives the details about the man, his marital status, department, and so on, and the election as to whether he wishes to contribute for his service. I have got one here now.

Mr. FRASER: That is the form that will deal with this new Act, is it?

Mr. GULLOCK: Oh, no, no.

Mr. FRASER: That is the one in force at the present time?

Mr. GULLOCK: This is the one we have in force at the present time.

Mr. FRASER: The one in force now is just merely a case of electing?

Mr. GULLOCK: Here is the contract.

Mr. FRASER: It is not a contract. It merely says "I hereby elect and agree that the estimated amount given above may be the basis for my contribution." But it is not a form of contract?

Mr. GULLOCK: It is not a form of contract, no sir.

By Mr. Fraser:

Q. Now, I have heard from some of them and they feel it should be more in the form of a contract so they know pretty well what they are getting.—A. You recall that the present Act is ex gratia.

Q. I realize what you mean there. I understand from one party, and I think he was speaking for others, that there should be something more definite there so they could find out what is what.—A. Members of the committee will realize there is much work to be done after the bill becomes law, and the bill protects everybody who is retired from the service after December 31, 1952, though they cannot be paid the higher benefits until the Act is proclaimed. I hesitate to make promises, but I would say the earliest conceivable date of proclamation is October 1 and may be January 1 of next year. There are 60,000 new people to come in and there will be new forms to get out, and as I told the committee we propose to draft what we hope will be an intelligible pamphlet for laymen that will deal with 98 per cent of all cases and generally do a little better job of education and public relations among all public servants so that they really understand what they are getting.

Q. I think that is the trouble at the present time. A number of them do not understand just what the set-up is and therefore they do hesitate, and especially those that come in from outside hesitate, to pay the 12 per cent when they do not know just what they will get for that 12 per cent. Am I right?

Mr. GULLOCK: May I say a word? Mr. Chairman, what Mr. Fraser said is quite correct. A lot of these people do hesitate; but we have inaugurated now in our branch a system whereby we will on request give a contributor an estimate of what he will be required to pay. We tried that out on an experimental basis.

Mr. FRASER: When did you start that?

Mr. GULLOCK: Last July and it is still on an experimental basis and it is working out fairly well. I understand now he gets it without request.

Mr. FRASER: While you are on your feet, a party goes to the superannuation office to elect, does he?

Mr. GULLOCK: No. He should go to his personnel office. We cannot service all our people. The personnel offices of the various departments must co-operate.

Mr. FRASER: If they go to their personnel office and make the application to elect they sign it and then they have to get somebody else to sign it?

Mr. GULLOCK: It is just a witness.

Mr. FRASER: That can be done in the personnel officer's office?

Mr. GULLOCK: Yes.

Mr. FRASER: I have heard that some of these personnel officers will not sign it.

Mr. GULLOCK: That cannot be placed at our doorstep. Any person can witness the signature.

Mr. FRASER: That is all right then. On the new form there will be—

Mr. GULLOCK: We do not know what the new form will be.

Mr. FRASER: I am just wondering if you will put more detail on it.

Mr. GULLOCK: We are doing it now to the best of our ability.

The CHAIRMAN: After a civil servant has elected is any special communication sent to him acknowledging the validity or the correctness of his election? Has he any confirmation that his election has been received as satisfactory?

Mr. GULLOCK: Yes. After we have made the calculation.

The CHAIRMAN: If you receive an election as to which some error has been made in completing it and it is not a valid election, do you so advise the applicant so that he knows his election is not complete.

Mr. GULLOCK: Yes.

The CHAIRMAN: He is sent an official notification?

Mr. GULLOCK: Yes, sir.

Mr. FRASER: Has that always been done?

The CHAIRMAN: I think not.

Mr. GULLOCK: I would like to know if there are any cases where it has not been done.

The CHAIRMAN: I will be pleased to send you one.

Mr. BROOKS: Did I understand Mr. Taylor to say all the 60,000 civil servants would have to elect before the Act is brought into force?

The WITNESS: No. They have one year to elect for most types of service in order to get in at their initial salary, but we will be pretty well swamped with work. We have new sets of regulations and forms and we will have to co-operate with the Comptroller of the Treasury for almost doubling his pay deduction operations in the central pay office, and it will take certainly several months to do all the necessary work.

The CHAIRMAN: I have a motion that paragraph 2(*b*) of clause 7, "elections" be amended by deleting the paragraph and substituting in lieu therefor the following. (See Minutes of Proceedings.)

Shall the amendment carry?

Carried.

Shall the clause carry?

Carried.

Mr. MACDONNELL: Clause 7, sub-clause 2: "An election under this Act is void in so far as it is an election to pay" and so on, and it says on the right hand page: "New, but see clause 5A(3)."

Mr. LESAGE: Of the old Act?

Mr. MACDONNELL: What is that?

The WITNESS: 5A(3): an election is void if it concerns service which you can still count for pension purposes under another plan. It is included to avoid the possibility of getting two pensions for the same service. It is only void if he elects for service that is covered by another plan.

The CHAIRMAN: Clause 8, Benefits. We have heard a very full explanation of clause 8 in the deputy minister's presentation. Are there any further questions; if not, shall the clause carry?

Carried.

Clause 9, Annuities?

Mr. MACDONNELL: I confess I am not quite clear now as to the conflict between the ten year and the five year period. Does this raise the D.S.C.R. question?

The WITNESS: This merely establishes the fact it is a ten year average.

Mr. MACDONNELL: The five is going to be washed out?

The WITNESS: Anyone now in the service who is entitled to the five year average still retains that five year average; but in the next five or six years there will be no five year averages left.

The CHAIRMAN: Shall clause 9 carry?

Carried.

Clause 10, Contributors with Less than Five Years of Pensionable Service. I have an amendment to Clause 10, subclause 3. (See Minutes of Proceedings.)

The WITNESS: This substitutes a new reworded clause, and the only change is to provide that the children's allowances are not subject to the same reduction as a widow's. As I explained briefly the other day a widow's pension may be reduced actuarially if she is more than twenty years younger than her husband. The bill as drafted provides that the children shall get a fraction of the widow's pension. Now, it was not intended to reduce the pensions of the children of widow's who are more than 20 years younger than the husband, therefore the new wording provides that the children's pension benefit shall be one-fifth of what you might call the basic widow's pension and not the actual widow's pension.

Mr. FRASER: Then the pension that comes into the home would be practically the same?

The WITNESS: No, because if the widow were more than twenty years younger than her husband her pension would be lower.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Clause 11, Contributors with Five or More Years of Pensionable Service.

Shall the clause carry?

Carried.

Clause 12, Payments to Widow and Children.

The WITNESS: The main new part here is the one we referred to before that widows at present lose their pension on remarriage, but under the new bill the pension is merely suspended and may be resumed on a second widowhood.

Mr. MACDONNELL: You mean to say she cannot get both?

The WITNESS: If the second husband were a civil servant she will collect a second one as well as the first one.

The CHAIRMAN: Shall clause 12 carry?

Carried.

Clause 13. I have an amendment.
(See Minutes of Proceedings.)

The WITNESS: (5) is consequential. (6) is to make it quite clear a widower does not get any pension on the death of his wife who was a contributor.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Clause 14, Residual Amounts.

The WITNESS: The purpose of this is no matter what happens every contributor ultimately gets at least his money back without interest. If he lives only two years and draws much less than he had paid in, the balance is paid to the estate.

The CHAIRMAN: Shall clause 14 carry?

Carried.

Clause 15, Disability Payments. Shall the clause carry?

Carried.

Clause 16, Persons Re-Employed.

The WITNESS: The main change here is at the present time we say that if the person is re-employed and gets a salary of more than $1,800 his pension is suspended. The new rule will be if a person is re-employed the sum total of his pension and his new salary shall not exceed his own terminal salary. If you have a person who has been getting $5,000 a year and retires and has a pension of $2,500 he can be re-employed at a salary but the combined salary and pension must not exceed $5,000.

By Mr. McIlraith:

Q. That would be an advantage to the government. It is quite an important thing to the one seeking re-employment, but it will also save considerable money to the government service.—A. We have a retired civil servant in one of my departments we were most anxious to recall to duties of a non permanent nature. He is very well qualified and went out on a salary of something over $7,000. I think the re-employment salary is $4,500 for this job and he was glad to take it on and he will get $4,500 but his pension will be reduced so long as he continues on that job so that the combined total will not exceed $7,000.

The CHAIRMAN: Shall Clause 16 carry?

Carried.

The CHAIRMAN: Clause 17, Failure to Apply for Re-employment. Shall the clause carry?

Carried.

Clause 18, Medical Examinations. Shall the clause carry?

Carried.

Mr. FRASER: This was explained fairly well. It mentions here that the examination is free if you go to the government direct and if you do not you would have to pay for it. That applies right across the country?

The WITNESS: Yes.

The CHAIRMAN: Clause 19, Diversion of Amounts Payable in Certain Cases, Recipient defined. Shall the clause carry?

Carried.

Clause 20, Former Provincial Government Employees.

We have already dealt with 20 pretty thoroughly. You have nothing further to add.

The WITNESS: I think not, sir.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 21, Transferred Pensionable Newfoundland Employees.

Mr. ASHBOURNE: Mr. Chairman, I would like to say on account of the coverage and publicity which was given to my remarks here on Tuesday night I think I would have heard about this matter by wire if there was any serious objection to this Act. I would like to say I have not had any representation in this regard, and I would also like to say I regret very much if my remarks had occasioned any concern in the public service of Canada in regard to the possibility of delay in passing this bill through the committee.

The CHAIRMAN: Thank you, Mr. Ashbourne.

Shall clause 21 carry?

Carried.

Clause 22, Diplomatic and Consular Representatives.

By Mr. Fraser:

Q. How does this work out? Is there a special Act that covers them?—A. Yes.

Q. And under this special Act it would only cover those that were at the top?—A. This clause relates to a special Act for diplomats who come from outside the civil service.

Q. They do not contribute.—A. Those clauses deal with career men who have acquired diplomatic status. It says they are deemed to be continued in the public service although a diplomat legally is outside the public service.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 23, Public Service Corporations. Shall the clause carry?

Carried.

Clause 24, Parts II to IV of the Superannuation Act?

Mr. MCILRAITH: Is it your intention to raise these other points of the D.S.C.R.?

The CHAIRMAN: I think it would be much more satisfactory to the committee if we would reserve all rights and go through the bill a section at a time and then return to that.

Mr. BROOKS: But you do not intend to pass 24 now?

The CHAIRMAN: We reserve our rights under it.

Mr. BROOKS: You have not passed 24 I understand?

The CHAIRMAN: Carried subject to right to refer back.

Clause 25, Royal Canadian Mounted Police and Defence Services Pension Acts. Shall the clause carry?

Carried.

Clause 26, Retirement Fund Contributions. Shall the clause carry?

Carried.

Clause 27, Application. Shall the clause carry?

Carried.

Clause 28, Reciprocal Transfer Agreements. Shall the clause carry?

Carried.

Clause 29, Advisory Committee.

The WITNESS: The advisory committee in the past has been based on an order in council and the minister felt that it was desirable both from the point

of view of its status and its function to put it into the statute. The National Joint Council have a voice in the selection of the Advisory Committee and there was no National Joint Council when the earlier Act was passed.

The CHAIRMAN: Who are the present members of the Advisory Committee?

The WITNESS: There are five officials on the official side and five who represent the staff side. Mr. Ronson is the chairman of it. I was made a member of it quite recently. Mr. Whitehouse who was here is a member also. I could not give you all the names.

The CHAIRMAN: Thank you.

Clause 30, Regulations.

By Mr. Fraser:

Q. Are these regulations much different than they were before?—A. They are just as numerous, but as the minister said in the House as far as possible all rules on points of substance will be put in the Act and there is far less discretion on major points. They deal almost entirely with unusual combinations of cases where if you did not have some discretion there could be very serious injustices.

Mr. MACDONNELL: You ought to have the power to change these from time to time.

The WITNESS: We can change the regulations so long as they are made under these powers.

Mr. FRASER: A minor change, but not a major change.

Mr. LESAGE: As long as you are within the scope of what is permissible.

The CHAIRMAN: There is an inherent right to amend anything you have power to pass in all interpretation Acts.

Mr. LESAGE: That must be by order in council.

The CHAIRMAN: Anything you are empowered to do by order in council you automatically have power to amend. That is an inherent right.

I have an amendment to paragraph (v) of subclause 1 to clause 30 (regulations) to add immediately after the word "specifying" the words "notwithstanding subsection (3)".

(See minutes of proceedings).

Shall the amendment carry?

The WITNESS: The purpose of the amendment proposed is to make it possible to reduce the benefit of a retired contributor who becomes an employee of a Crown company. If they become employed in a Crown company this is to ensure that they cannot draw a full pension and a full salary from the Crown company.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Clause 31, Payments out of the account.

Carried.

Clause 32, Amounts to be credited to the account.

Carried.

By Mr. Macdonnell:

Q. Do you get simple or compound interest?—A. The fund is credited with 4 per cent interest per year and added to the fund, so the fund is compounded at 4 per cent. When a civil servant pays arrears it is a simple interest of 4 per cent but the fund is compounding at 4 per cent. This is a clause which requires the government to put into the fund each year amounts equal to, first, the interest of 4 per cent, and secondly to match the amount of total contributions made by employees including amounts paid in respect of past services. When I came into permanent service I was able to buy back my temporary service. I put in a substantial amount, but the government never matched that, and that was multiplied by thousands of others who bought back service. In the past two or three years these amounts have been paid in by annual votes. In future they will be required by statute to be put in.

The CHAIRMAN: Subparagraph 2 provides for the amount to go into the fund whenever there is a general salary increase.

Shall the clause carry?

Carried.

Clause 33, Actuarial report.

Mr. FRASER: That calls for a report every five years. This is new under the present Act.

The WITNESS: The requirement of an actuarial report every five years is certainly adequate according to our actuarial advisors. Some suggested 10 years, because the life tables do not change very rapidly, but the minister decided in favour of a 5 year report. A report was submitted to parliament two years ago, and it took two years to prepare. The next one will not take that amount of time because the spade work has been done, and a few months work will be all that will be needed.

The CHAIRMAN: Clause 33.

Carried.

Clause 34, Annual report.

Carried?

Carried.

I have an amendment to clause 35 (Transitional) deleting sub clause (6) and substituting therefor the following 6 (*a*) and (*b*).

(See minutes of proceedings).

The WITNESS: Clause 35 of the bill provides for certain elections before a contributor ceases to be employed. This section also provides that a person who ceases to be employed on and after January 1, 1953, will be able to enjoy any improvement in benefits. These improved benefits depend upon the election which must be made before a contributor ceases to be employed which of course is before the coming into force of the Act. To give any effect to this election opportunity, it is therefore necessary to make it possible for this person to elect after the coming into force of the Act, and to adjust any benefits already received in line with an alteration of his election. The present situation is this—I am dealing with two amendments together—the person who retired say last month must be given time after the Act is proclaimed to make his election. As previously worded, he had to elect before he retired, but he could not elect before the Act came into force, which produces an impossible situation. The amendments correct this.

The CHAIRMAN: The new clause 6, and the new clause 8 (see minutes of proceedings) are consequent. Shall the amendment carry?

Carried.

Shall the clause as amended carry?

Carried.

Shall clause 36 (references to the Superannuation Act) carry?

Carried.

Clause 37 (Coming into force).

Carried?

Carried.

Clause 38 (Repeal).

Carried?

Carried.

I have an amendment to schedule A. Part I (boards, commissions and corporations forming part of the public service).

(See minutes of proceedings).

The WITNESS: The amendment, sir, actually two amendments, is to delete the Atomic Energy Control Board from Part IV and put it in Part I.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall Part I carry?

Carried.

Part II. (Portions of the public service of Canada declared for greater certainty to be part of the public service).

Carried?

Carried.

Part III. (Boards, commissions, corporations, and portions of the public service of Canada deemed to have formed part of the public service).

Carried?

Carried.

Part IV. (Corporations declared to form or to have formed part of the public service for limited purposes only).

Part IV as amended.

Carried?

Carried.

Shall the Bill carry?

Carried.

Shall the Bill as amended carry?

Carried.

The CHAIRMAN: Mr. Taylor, would you be kind enough to wait. We have now reached the report stage, and I think it would be helpful if you would.

(The committee continued discussion in camera.)

DEPARTMENT OF JUSTICE

CANADA

OTTAWA, JANUARY 14, 1949.

G. L. Gullock, Esq.,
Chief, Superannuation Branch,
Department of Finance,
Ottawa.

15559

I acknowledge your letter of December 30, 1948, and in connection therewith have given consideration to the question whether Part I or Part II of the Civil Service Superannuation Act applies to certain employees of the Department of Mines and Resources who, on July 19, 1924, were permanent employees paid at daily rates. I understand that by P.C. 52/517 of April 6, 1925, the employees in question were reclassified at stated annual salaries, effective April 1, 1924.

Notwithstanding that the reclassification of the employees at stated annual salaries was made retroactive to a date prior to the coming into force of the Civil Service Superannuation Act, 1924, I am of opinion that the effective dates for Superannuation purposes were the dates upon which the reclassifications became effective in April, 1925.

It follows that because the employees in question were not in receipt of stated annual salaries on July 19, 1924, Part II of the Act does not apply to them, and that they are subject to Part I of the Act.

Your papers are returned herewith.

'sgd' F. P. VARCOE,
Deputy Minister.

Encls.
W. W. Cory,
Deputy Minister.
Roy A. Gibson,
Assistant Deputy Minister.
10.

Office of
The Deputy Minister of the Interior
Ottawa, Canada.

27TH MARCH, 1925.

Dear Mr. Foran,

I have discussed with my Minister the attached recommendation to Council covering certain proposed changes in the organization of the Topographical Surveys Branch and pointed out to him that if the effective date is made the 1st April, 1925, the permanent staff of surveyors who have been paid at a daily rate will be deprived of certain benefits to which they are reasonably entitled under the Superannuation Act assented to last Session, which benefits they were assured by the Chairman of the Commission would be guaranteed to them under the submission which the Commission would prepare for the signature of my Minister.

In our conferences with the officers of the Commission and in the agreements we have reached, we have taken it for granted that the classification would be effective from the 1st April, 1924. Under the circumstances, my Minister feels that he would not be justified in joining in any recommendation that would have the effect of depriving the permanent Dominion Lands surveyors of their just rights and the memorandum is being returned to you, herewith, in the hope that the Commission can see its way clear to implement the undertaking already given by the Chairman of the Commission.

I append, hereto, for your information a memorandum compiled by the Director of the Topographical Surveys Branch which will explain the situation in greater detail.

Yours very truly,

(Signed) W. W. CORY.

Wm. Foran, Esq.,
Secretary,
Civil Service Commission,
Ottawa.

Copy

Department of the Interior

TOPOGRAPHICAL SURVEY OF CANADA

OTTAWA, 27th March, 1925.

Memorandum:

W. W. Cory, Esq., C.M.G.,
Deputy Minister of the Interior.

Late yesterday afternoon I received the Civil Service Commission's report covering the re-organization of the Topographical Surveys Branch and I hasten to point out to you that the date upon which the re-organization is to become effective is stated as April 1st, 1925, instead of April 1st, 1924, as was understood throughout, and the basis of, all the negotiations concerning this matter.

This change in date of effectiveness is a most serious matter and I must ask that it be reconsidered.

The effect of this change is to take away from any members of the staff for the current year such benefits as are given by the changes made by the report and further, all the surveyors and assistant surveyors will be debarred from receiving under the Superannuation Act any credit for their past years of service given while they were under temporary employment and this I feel sure you will agree would be a grave injustice.

As to the understanding that the re-organization would ante date to April 1st, 1924, I give you my assurance that this was very definitely understood with the Commission's representatives and it is very reasonable because the employees concerned have under Dr. Deville's re-organization been carrying on for two years or more the same work as they will next year in accordance with the report. I would also point out that the re-organization of this Branch was actively taken up last spring and when the Order in Council providing for the re-organization of the Water Power Reclamation Branch was passed in July last, it provided for ante dating to April 1st, 1924. If any further proof is required as to the Department's definite understanding, it is provided by the fact that in the Estimates passed by the House at the last session, definite provision was made for the payment of such increases as might be given by the re-organization.

As to the surveyors and assistant surveyors, to the number of about fifty, who are so seriously affected under the Superannuation Act. When we became aware of the difficulty in this connection, you wrote, on November 21st last, to the Commission asking specifically that the re-organization or reclassification be ante-dated to April 1st, 1924, and in this connection please see copy of your letter attached and also that of the Departmental Solicitor, Department of Finance, dated September 19th last. I would also advise you that the President of the Topographical Surveyors Society representing the surveyors and assistant surveyors took this question up with Dr. Roche, the Chairman of the Commission, on January 27th last and received his assurance that the Order in Council confirming the re-organization would be made retroactive, to April 1st, 1924, as set forth in the Society's confirming letter to Dr. Roche dated January 28th, copy of which is attached. It is also a matter of record as Dr. Roche will no doubt recollect that when speaking to the Association of Dominion Land Surveyors on February 4th last he stated definitely that it was the intention to have the surveyors put upon a stated annual salary and in order to make them eligible to come under the new Superannuation Act, to have salary ante-dated to April 1st, 1924.

I might add that when the Commission sent us the letter, for advertising the positions to be competed for, which was within the week, it was still quite definitely understood that the re-organization was to be completed before the end of this fiscal year so that it could be ante-dated to April 1st, 1924.

Respectfully submitted.

(sgd.) F. H. PETERS,
Director.

Copy

President:
P. C. Purser, D.L.S.

Secretary-Treasurer
G. A. Bennett, D.L.S.
33 Cooper Street,
Ottawa.

TOPOGRAPHICAL SURVEYORS' SOCIETY

OTTAWA, January 28, 1925.

Hon. Dr. Roche,
Chairman,
Civil Service Commission,
Ottawa.

Dear Sir:

This letter is for purposes of record and to confirm our conversation with you yesterday afternoon. We understand that the data for the proposed reorganization of the staff of the Topographical Survey, Department of the Interior, is now practically in shape so far as the Commission is concerned and requires final authorization before it is submitted to Council. You also expect that this will become effective some time before March 31, 1925, and state that the Order-in-Council will be retroactive to April 1, 1924.

We are particularly interested in this matter on account of the fact that by this procedure the members of the field staff of the Topographical Survey, whose salaries are at present stated on other than an annual basis, will be able to receive the full benefits of the Superannuation Act, 1924.

Mr. Peters, Director of the Topographical Survey, expresses himself as gratified with the results of our interview and we wish to thank you for your courtesy in this matter.

Yours very truly,

(signed) G. A. BENNETT,
Secretary.

(signed) R. C. PURSER,
President.

Copy

W. W. Cory,
Deputy Minister
Roy A. Gibson,
Assistant Deputy Minister

Office of
THE DEPUTY MINISTER OF THE INTERIOR
OTTAWA, Canada

21st NOVEMBER, 1924.

Dear Mr. Foran,

Applications have been received from Dominion Land Surveyors and Assistant Dominion Land Surveyors and as their remuneration is at the rate of $9.00 and $7.00 per day, respectively, they are excluded from the operation of the Superannuation Act, 1924, in accordance with a ruling from the Justice Department. I understand, however, that in the reorganization which is going on in the Topographical Surveys Branch, it is the intention to reclassify these officials so as to give them a minimum and a maximum yearly salary. This would bring them under the operation of the Act, provided such reclassification is dated from the 1st April 1924, in which case they will have been employed at a stated annual salary on the 19th July, 1924, the date upon which the Act became law. The reclassification should, therefore, be hastened, and, in the meantime, their cases will have to stand.

I sincerely hope that under the circumstances you will expedite action in the matter of the reclassification of these employees and provide in the recommendation that the reclassification is dated from the 1st April, 1924. An explanation of the reason for fixing this date might be appended to the recommendation which is sent to Treasury Board.

Yours very truly,

(signed) W. W. CORY,
Deputy Minister.

William Foran, Esq.,
Secretary,
Civil Service Commission,
Ottawa.

P.C. 52/517

Certified copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor General in Council, on the 6th April, 1925.

Interior:—

The Board had under consideration the following memorandum from the Civil Service Commission, submitted by the Honourable the Minister of the Interior:

"As provided in Sub-Section 2 of Section 9 of the Civil Service Act of 1918 as amended, the Civil Service Commission, on the recommendation of the Department of the Interior, submits a report on the organization of the Topographical Surveys Branch, Department of the Interior, for approval—

At the request of the Department the Civil Service Commission undertook a detailed investigation of this Branch, with a view to drawing up a suitable establishment and effecting any necessary adjustments in classifications.

The late Dr. E. G. Deville, when Surveyor General, put into effect a reorganization of the Topographical Survey, which has been carefully reviewed, and with certain modifications which have been accepted by the Department is now recommended for approval—

Organization

Prior to the reorganization mentioned above, the Topographical Survey consisted of twelve divisions which have been reduced to five with two additional units for Land Classification and Aerial Surveys.

The decrease in township surveying and the development of new activities has greatly changed the character of the Branch the last five years. The functions of the various divisions of Survey are briefly:

1. *Land Survey Division*

Sub-division of land—township sub-division, B.C. Railway Belt Surveys, Yukon Surveys, surveys of town-sites, timber-berths, mineral claims, etc., Compilation and plotting recording of surveys applied for.

2. *Control Surveys Division*

Surveys of initial meridians, base lines and other governing lines; exploratory traverses and magnetic surveys; compilation of astronomic tables; testing of measures of length and scientific instruments.

3. *Topographical Mapping Division*

Plane table surveys, revision of sectional *sheets,* photo-topographical surveys, computation and plotting *compilation* of standard topographical sheets.

4. *Land Classification Division*

Classification of all unoccupied land with *respect* to its fitness for settlement; preparation of maps and reports for Dominion Land Agents and others interested; physical analysis of soils.

5. *Aerial Division*

All aerial surveys and photography for the Dominion Government in conjunction with Royal Canadian Air Force; plotting from aerial photographs devising apparatus for transferring contents of photographic to maps; research.

6. *Mechanical Division*

Preparation and printing of maps, plans, charts, forms, etc., as required. Four sections—Map Drafting, General Drafting, Photo Mechanical Plant, and Photo-lithographic Plant.

7. *Administrative Division*

Correspondence, filing, office routine; co-ordination of work of other divisions; issue of general administrative instructions; staff management; purchasing, accounts, supplies; preparation of estimates and reports.

I. *Classification*—The necessity of a standard grading for Surveyors, applicable not only to the Topographical Survey, but also to the Geodetic Survey and to the Surveys Branches of other Government Departments, has led the Civil Service Commission to recommend the following classification, Classes in the Topographical Survey which may be absorbed into the new grading are indicated:

Surveys Engineer—(Grade 1) $1,740-2,040 (To include Junior Topographical Engineer, $1,680-2,040).

Surveys Engineer—(Grade 2) $2,100-2,580 (To include Assistant to Dominion Land Surveyor, $2,558).

Surveys Engineer—(Grade 3) $2,580-3,120 (To include Chief of Party, $3,285 except as provided below).

Surveys Engineer—(Grade 4) $2,700-3,300 (To include Chiefs of Party in charge of Provincial survey operations and legal surveys).

Surveys Engineer—(Grade 5) $3,000-3,600 (To include Inspectors of Surveys, $3,000 one Chief of Party acting as Exploratory Surveys Engineer, one acting as head of the Land Classification Division, and one acting as head of the Aerial Surveys Division).

Surveys Engineer—(Grade 6) $3,300-3,900 (To include one Special Surveys Engineer $3,120-3,660 one Office Engineer, acting as head of the Land Surveys Division, and one Chief of Party, acting as head of the Topographical Mapping Division).

II. *Director Topographical Survey*—The compensation of this class was fixed at $3,900-4,500 but as the incumbent has since been required to act as Surveyor General, the Civil Service Commission is prepared to recommend a range of $4,200-4,800 but not $4,500-5,100 as requested by the Department as the compensation for the Director General of Surveys is $4,800-5,400 and a maximum of $5,100 for the Director, Topographical Survey would approach this too closely.

III. Assistant Director, Topographical Survey—This proposed new class is a combination of Assistant Survey or General ($3,600-4,140) and Supervisor of Surveys ($3,120-3,660). The present incumbent is also the Chief Aerial Surveys Engineer. The compensation recommended is $3,990-4,500.

IV. The present grading for the Surveys Physicists employed at the Surveys Laboratory is not satisfactory. There is only one class, at $1,740-2,280 which is too high for new men and not high enough for experienced employees. It is therefore proposed to establish the following grading:

Surveys Physicist (Grade 1)	$1,740-2,040
Surveys Physicist (Grade 2)	2,100-2,580
Surveys Physicist (Grade 3)	2,280-2,760

(The last named to apply only to the position of second in charge of the Surveys Laboratory.)

V. The position of Chief of the Soils Laboratory at Saskatoon should, in the opinion of the Civil Service Commission, be classified as "Soil Analyst (Topographical Survey) at $2,400-2,880. This is a new class graded somewhat lower than "Surveys Engineer (Grade 3)".

VI. It is proposed to create a new class "Chief, Mechanical Division" $3,000-3,600, to cover the duties of the employee who has assumed charge of the Map Drafting, General Drafting, Photo-mechanical and Lithographic Sections.

Reductions in positions—The following statement shows, in detail, the number of positions in the Branch prior to reorganization, and in the proposed establishment. Six more positions will disappear from the new establishment on the retirement of the present incumbents:—

Division of Work	Before Reorganization	Proposed Reorganization	Increase	Decrease
Administration	12	3	-	9
General Clerical Accounts, etc.	21	23	2	-
Geographic Board of Canada	2	2	-	-
Land Surveys (Legal)	63	23	-	40
Land Classification	18	14	-	4
Magnetic Surveys	2	1	-	1
Levelling	11	-	-	11
Topographical Mapping	29	26	-	3
Control Surveys	23	17	-	6
Surveys Laboratory	9	12	3	-
Aerial Surveys	-	11	11	-
Field Inspection and Miscellaneous	4	6	2	-
Warehouse, Edmonton	1	1	-	-
Soils Laboratory, Sask.	2	2	-	-
Mechanical Division (Chief)	1	1	-	-
Map Drafting	12	12	-	-
General Drafting and Relief Maps	24	18	-	6
Photo-Mechanical	11	7	-	4
Lithographic	10	10	-	-
Registration, Records and Distribution	29	13	-	16
TOTAL STAFF	284	202	18	100

Reduction In Cost—The tables given below show the difference in cost between the present number of positions and the proposed establishment, and also the cost of all necessary adjustments in classification:—

A. *Reduction In Cost*

	Accomplished Previous To April 1, 1924	1924-35	Eventually
(*a*) Positions abolished	$48,635.00		
(*b*) Retired from staff	7,780.00	$14,385	
(*c*) Positions transferred	68,300.00	11,285	
(*d*) To be retired		3,840	
(*e*) To be transferred (Levelling)		21,990	
(*f*) Amalgamation of positions		3,300	$ 2,700
(*g*) Positions not to be refilled			13,480
(*h*) Special reclassification Field Staff		2,805	9,240
Total:—	**$124,715.00**	**$59,605**	**$25,420**

B. *Increases In Cost*

	Accomplished Previous To April 1, 1924	1924-35	Eventually
Staff, Reclassification		$ 2,910	$20,375
Replacements		9,060	11,100
Total increase:		$11,970	$31,475
Less vacancies:		16,080	16,980
Total:		$ 4,110	$14,495
Total reductions:	$124,715.00	$63,715	$10,925

Flying Allowance—Last season only two Surveyors were engaged in actual flying but there will probably be two or more this year. The Department has raised the question of a special flying allowance, and the Civil Service Commission is of the opinion that the same scale of allowance as that now applicable to personnel of the Royal Canadian Air Force while engaged in flying duties, should be made applicable to this case.

Amalgamation of Surveys Branches—The Civil Service is strongly of the opinion that this reorganization should be the first step in the amalgamation of the Topographical Surveys Branches in the Government Service, in the interests of economy and efficiency.

Recommendation—The Civil Service recommends:—

(1) That the establishment as shown below, be approved for the various divisions of the Topographical Survey, Department of the Interior:

(*a*) *Land Surveys Division*

Surveys Engineer (Grade 6)	1
Office Engineer	1
Surveys Engineer (Grade 2)	1
Assistant Office Engineers	9
Senior Engineer Clerk	1
Map Draftsman	1
Engineering Clerk	1
Surveys Engineers (Grade 4)	4
Surveys Engineers (Grade 2)	4
Total:	23

(*b*) *Control Surveys Division*

Surveys Engineer (Grade 6)	1
Surveys Engineer (Grade 5)	1
Surveys Engineer (Grade 4)	5
Surveys Engineer (Grade 2)	5
Office Engineers	2
Assistant Office Engineers	2
Senior Clerk	1
Total:	17

Magnetic Surveys

Magnetician	1
Assistant Magnetician	0
Total:	1

Surveys Laboratory

Supervisor	1
Surveys Physicist (Grade 3)	1
Surveys Physicist (Grade 2)	2
Surveys Physicist (Grade 1)	4
Instrument Makers (Grade 3)	1
Instrument Makers (Grade 2)	2
Map Draftsman	1
Total:	12

(c) *Topographical Mapping Division*

Surveys Engineer (Grade 6)	1
Surveys Engineer (Grade 4)	4
Surveys Engineer (Grade 3)	7
Surveys Engineer (Grade 2)	8
Surveys Engineer (Grade 1)	1
Assistant Office Engineers	3
Senior Map Draftsman	1
Senior Engineering Clerk	1
Total:	26

(d) *Land Classification Divison*

Surveys Engineer (Grade 5)	1
Office Engineer	1
Surveys Engineer (Grade 2)	6
Assistant Office Engineer	1
Surveys Engineers (Grade 3)	5
Total:	14

Soils Laboratory

Soil Analyst	1
Clerk Stenographer	1
Total:	2

(e) *Aerial Surveys Division*

Surveys Engineer (Grade 5)	1
Surveys Engineer (Grade 3)	1
Office Engineer	1
Surveys Engineer (Grade 2)	1
Assistant Office Engineer	1
Head Clerk	1
Senior Map Draftsman	1
Map Draftsman	2
File Clerk	1
Junior Clerk	1
Total:	11

(f) Mechanical Division

Chief of Mechanical Division	1

Map Drafting

Chief Map Draftsman	1
Principal Map Draftsman	4
Senior Map Draftsman	4
Junior Map Draftsman	1
Junior Clerks	2
Total:	12

General Drafting Relief Maps, Etc.

Chief Map Draftsman	1
Principal Map Draftsman	1
Senior Map Draftsman	4
Map Draftsman	2
Junior Draftsman	1
Departmental Printers	2
Clerks	2
Junior Clerks	2
Assistant Office Engineer	1
Senior Relief Map Maker	1
Relief Map Maker	1
Junior Map Draftsman	1
Total:	18

Photo-Mechanical Plant

Chief of Photo-Mechanical Plant	.1
Senior Photographer	1
Photographers	2
Process Worker	1
Assistant Process Worker	1
Lithographic Artist & Engraver	1
Total:	7

Lithographic Plant

Chief, Lithographic Plant	1
Lithographic Artist & Engraver	1
Lithographic Printers	2
Lithographic Transferrers & Provers	2
Lithographic Press Feeders	3
Lithographic Crainer & Polisher	1
Total:	10
Total:	48

(g) Administrative Division

Director & Surveys General	1
Assistant Surveyor General	0
Assistant Director & Chief	0
Serial Surveys Engineer	1
Office Engineer	1
Total:	3

Clerical & Accounts

Office Engineer	1
Principal Clerk	1
Principal File Clerk	1
Clerk	1
Editor (Grade 1)	1
Principal Account Clerk	1
Senior Clerk	1
Engineering Clerk	1
Account Clerk	1
Senior Clerk Stenographers	3
Clerk Stenographers	4
Clerk Typists	2
Junior Clerk Typists	2
Messenger Clerk	1
Office Boys	2
Total:	23

Field Administration, Inspection & Equipment

Surveys Engineers (Grade 5)	2
Office Engineer	1
Custodian of Surveying Equipment	1
Senior Supplies Clerk	1
Caretaker Warehouse (Edmonton, Alta)	1
Packer & Helper	1
Total:	7
Total:	33

(2) As provided in Sub-section 1 of Section 45B of the Civil Service Act of 1918 as amended, the Civil Service Commission submits the compensation of the following classes for approval:

(*a*) Surveys Engineer (Grade 1)—Monthly: $145, 155, 165, 170; Annual: $1,740, 1,860, 1,980, 2,040.

Surveys Engineer (Grade 2)—Monthly: $175, 185, 195, 205, 215; Annual: $2,100, 2,200, 2,340, 2,460, 2,580.

Surveys Engineer (Grade 3)—Monthly: $215, 225, 235, 245, 255, 260; Annual: $2,580, 2,700, 2,820, 2,940, 3,060, 3,120.

NOTE: In the case of Chiefs of Parties who are now in receipt of $3,285 per annum, the maximum of this class shall be $3,285, but this shall only apply to Chiefs of Parties now in receipt of this salary and not to any future appointments.

Surveys Engineer (Grade 4)—Monthly: $225, 235, 245, 255, 265, 275; Annual: $2,700, 2,820, 2,940, 3,060, 3,180, 3,300.

Surveys Engineer (Grade 5)—Monthly: $250, 265, 280, 295, 300; Annual: $3,000, 3,180, 3,360, 3,540, 3,600.

Surveys Engineer (Grade 6)—Monthly: $275, 290, 305, 320, 325; Annual: $3,300, 3,480, 3,660, 3,840, 3,900.

Surveys Physicist (Grade 3)—Monthly: $190, 200, 210, 220, 230; Annual: $2,280, 2,400, 2,520, 2,640, 2,760.

Surveys Physicist (Grade 2)—Monthly: $175, 185, 195, 205, 215; Annual: $2,100, 2,220, 2,340, 2,460, 2,580.

Surveys Physicist (Grade 1)—Monthly: $145, 155, 165, 170;
Annual: $1,740, 1,860, 1,980, 2,040.

(c) Assistant Director Topographical Survey—Monthly: $325, 350, 375;
Annual: $3,900, 4,200, 4,500.

(d) Chief, Mechanical Division—Monthly: $250, 265, 280, 295, 300;
Annual: $3,000, 3,180, 3,360, 3,540, 3,600.

(e) Soil Analyst (Topographical Survey)—
Monthly: $200, 210, 220, 230, 240;
Annual: $2,400, 2,520, 2,640, 2,760, 2,880.

The existing classes which will be replaced by these new classes will be abolished after the incumbents have been placed in their new grades.

(3) Director Topographical Survey Division—The compensation for this class which is at present—Monthly: $325, 350, 375;
Annual: $3,900, 4,200, 4,500.
is to be revised to read as follows: Monthly: $350, 375, 400;
Annual: $4,200, 4,500, 4,800.

(4) That in the case of surveys actually engaged on flying duties, an allowance similar to that provided for personnel of the Royal Canadian Air Force when engaged in flying, may be paid.

(5) That the establishment and changes in classification recommended above be made effective from such date as may be determined by the Governor in Council.

(6) That, in the interests of economy and efficiency, the Surveys Branches of the Department of Mines and the Department of National Defence be amalgamated with, and made a part of, the Surveys Bureau of the Department of the Interior.

A chart showing the proposed establishement is appended.

The Board concur in the above report and recommendation, and submit the same for favourable consideration, subject to the following conditions:—

1. Effective date April 1st, 1924.

2. Elimination of provision as to payment of an allowance for flying duties.

3. Elimination of provision as to amalgamation of the Surveys Branches of the Department of Mines and the Department of National Defence with the Surveys Bureau of the Department of the Interior.

(Signed) E. J. LEMAIRE,
Clerk of the Privy Council.

Copy 14.

P.C. 4045

Copy of a Report of the Committee of the Privy Counciy, approved by His Excellency the Governor General on the 31st October, 1921.

Seal.

The Committee of the Privy Council have had before them a report, dated 15th October, 1921, from the Minister of the Interior, submitting the following from the Civil Service Commission:

Under authority granted by Order-in-Council of the 16th December, 1920, (P.C. 2958), the Civil Service Commission has received a report from the Deputy Minister of the Department of Interior, showing temporary employees in the Topographical Surveys Branch of the Department of the Interior who are now occupying positions regarded by the Department as of a permanent nature and certifying that such employees were so employed prior to November 10, 1919, and continuously to the present date, and are rendering satisfactory service.

The Deputy Minister of the Interior has further reported that there is no employee included in said list whose age or physical condition is such as to merit his retirement from the service, nor does it include any male employee who was of military age during the recent war and who is not a returned soldier or sailor as defined by the Civil Service Act of 1918 save the employees named in Schedule "B" attached hereto, and in the case of these employees reasons have been submitted to the Civil Service Commission for failure to enlist for such service which are satisfactory to the Department and to the Commission.

The Civil Service Commission has approved of the recommendation that these temporary employees be granted permanent status under the terms of the aforesaid Order-in-Council; the rate of pay to be determined in accordance with the regulations set forth in detail in the said Order-in-Council, except that said permanency be dated from the 1st of April, 1921, and the rate of pay adjusted accordingly.

The Civil Service Commission therefore recommends that authority be granted under the provisions of the said Order-in-Council for the granting of permanent status to the temporary employees named in schedules "a" and "b" appended to this report.

The Committee concur in the foregoing, and on the recommendation of the Minister of the Interior, submit the same for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable,
The Minister of the Interior.

LIST OF NAMES OMITTED.

6.

Copy

P.C. 208/1426

The following is a copy of a minute of a meeting of the Treasury Board, held on the 28th June, 1922, approved by His Excellency the Deputy Governor General in Council on the 30th June, 1922.

JULY 8, 1922.

The Board had under consideration the following report by the Civil Service Commission submitted by the Honourable the Minister of the Interior:

Under authority granted by Order in Council of the 16th December, 1920, (P.C. 2958), the Civil Service Commission has received a further report from the Deputy Minister of the Department of the Interior, showing the following additional temporary employees in the Department who are occupying positions regarded by the Department as of a permanent nature and certifying that such employees were so employed prior to November 10, 1919, and continuously to the present date, and are rendering satisfactory service.

Chiefs of Party

Name	Salary	Date of App't
LeBlanc, P. M.	$9.00 a day	1914
Martindale, E.	"	1911
McKay, R. B.	"	1913
Taggart, C. H.	"	1911
Walker, C. M.	"	1911

Assistants to Dominion Land Surveyors

Bayley, C. St. J.	$7.00 a day	1919
Burchnall, R. P.	"	1919
McCusker, K. F.	"	1914

The Deputy Minister has further reported that none of the employees above named are of such age or physical condition as to merit his retirement from the service, and in every case reasons for failure to enlist for military service during the late war have been submitted which are satisfactory to the Department and the Commission.

The Civil Service Commission has approved of the recommendation that these temporary employees be granted permanent status under the terms of the aforesaid Order in Council, the rates of pay to be determined in accordance with the regulations set forth in detail in the said Order in Council, except that said permanency be dated from the 1st April, 1921, and the rates of pay adjusted accordingly.

The Civil Service Commission therefore recommends that authority be granted under the provisions of the said Order in Council for the granting of permanent status to the temporary employees above named.

The Board concur in the above recommendation and submit that same for favourable consideration.

"sgd" RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable
The Minister of the Interior.

Copy

P.C. 22/2000

The following is a copy of a Minute of a Meeting of the Treasury Board held on the 20th September, 1922, approved by the Deputy of His Excellency the Governor General in Council on the 25th September, 1922.

Interior:

The Board had under consideration the following report by the Civil Service Commission submitted by the Honourable the Minister of the Interior:

Under authority granted by Order-in-Council of the 16th December, 1920 (P.C. 2958) as amended by Order-in-Council of the 22nd October, 1921 (P.C. 3895), the Civil Service Commission has received a further report from the Deputy Minister of the Department of the Interior, showing the following additional temporary employees in the Department who are occupying positions regarded by the Department as of a permanent nature and certifying that such employees were so employed prior to November 10, 1919, and continuously to the present date, and are rendering satisfactory service.

Name	Salary	Position	Date of App't.
Schedule "A"			
Employees with a record of Overseas Service			
C. A. R. Lawrence	$7 per diem	Asst. to Dom. Surveyor	1920
E. F. Browne	"	Surveyor	1920
A. M. Perry	$1,680 per An.	Surveyor	1919
Schedule "B"—Other male employees.			
W. H. Norrish	$9 per diem	Chief of Party	1914
G. H. Blanchet	$7 per diem	Asst. to Dom. Surveyor	1910
Arthur H. King	$7 per diem	" "	1916
James Gibbon	$7 per diem	" "	1916

The Deputy Minister has further reported that none of the employees above named are of such age or physical condition as to merit his retirement from the Service, and each of the employees in Schedule "B" has furnished reasons for failure to enlist for overseas service during the late war, which are satisfactory to the Department and the Commission.

The Civil Service Commission has approved of the recommendation that these temporary employees be granted permanent status under the terms of the aforesaid Order-in-Council, the rates of pay to be determined in accordance with the regulations set forth in detail in the Order-in-Council of the 16th December, 1920, (P.C. 2958) aforesaid, except that said permanency be dated from the 1st April, 1921, and the rates of pay adjusted accordingly.

The Civil Service Commission therefore recommends that authority be granted under the provisions of the said Order-in-Council for the granting of permanent status of the temporary employees above named.

The Board concur in the above recommendation and submit the same for favourable consideration.

"sgd" RODOLPHE BOUDREAU,
Clerk of the Privy Council.

The Honourable
The Minister of the Interior.

APPENDIX "B"

DEPARTMENT OF
SOLDIERS' CIVIL RE-ESTABLISHMENT

OTTAWA, July 31st, 1925.

Memorandum to:
A. J. Dixon, Esq.,
P. & P. Division.

I am to acknowledge receipt of your application to come under the provisions of The Civil Service Superannuation Act, 1924. I am also to advise that the Honourable the Minister has been pleased to authorize your permanent employment with effect from July 1st, 1925.

The Department of Justice has declared that: "in the case of a certificate of permanent appointment dated after the 19th of July, 1924, the Civil Servant, without option, become a contributor as having been appointed subsequent to the date of coming into force of the Act". In view of which the Accountant has been requested to make appropriate deductions from your salary with effect from the date of permanent appointment. The monthly deductions will consist of 5% of your current salary—gross rate—plus 5% of the salary received during past periods of non-contributory service (and interest thereon), repayable in accordance with the "option" chosen by you in completing "forms of election".

Having been permanently appointed you are eligible—if physically acceptable—to insure under The Civil Service Insurance Act, particulars of which will be made available to you on application.

R. M. STEWART,
Assistant Secretary.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: HUGHES CLEAVER, *Esq.*

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

BILL 338.

An Act respecting Co-operative Credit Associations.

FRIDAY, APRIL 24, 1953

WITNESSES

Mr. K. R. MacGregor, Superintendent of Insurance, and

Mr. R. S. Staples, President of the Co-operative Unions of Canada.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

STANDING COMMITTEE
ON
BANKING AND COMMERCE
Chairman: Hughes Cleaver, Esq.
Vice-Chairman: C. A. D. Cannon, Esq.
and Messrs.

Adamson	Gibson	McCusker
Argue	Gingras	McIlraith
Arsenault	Gour (*Russell*)	Nickle
Ashbourne	Harkness	Nowlan
Balcom	Hees	Picard
Bennett	Hellyer	Quelch
Blackmore	Helme	Richard (*Ottawa East*)
Brooks	Henry	Riley
Cameron	Hunter	Smith (*Moose Mountain*)
Cannon	Jeffery	Stewart (*Winnipeg North*)
Carroll	Laing	Thatcher
Cleaver	Leduc	Viau
Crestohl	Lesage	Ward
Dumas	Low	Welbourn
Fleming	Macdonnell (*Greenwood*)	White (*Hastings-Peterborough*)
Fraser	Macnaughton	
Fulford	Maltais	
Fulton		

R. J. GRATRIX,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, April 17, 1953.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 338, An Act respecting Co-operative Credit Associations.

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORT TO THE HOUSE

The Standing Committee on Banking and Commerce begs leave to present the following as a

SEVENTH REPORT

Your Committee has considered Bill No. 338, An Act respecting Co-operative Credit Associations, and has agreed to report the said Bill with amendments.

A copy of the evidence adduced thereon is appended hereto.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

FRIDAY, April 24, 1953.

The Standing Committee on Banking and Commerce met at 11.30 o'clock a.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Brooks, Cameron, Dumas, Fraser, Gibson, Gour (*Russell*), Macdonnell (*Greenwood*), McIlraith, Quelch, Richard (*Ottawa East*), Riley, Smith (*Moose Mountain*), Welbourn.

In attendance: The Hon. Stuart Garson, Minister of Justice; Mr. K. W. Taylor, Deputy Minister of Finance; Mr. K. R. MacGregor, Superintendent of Insurance; Mr. D. H. W. Henry, Solicitor to the Treasury Board; Mr. R. Humphrys, Chief Actuary, Department of Insurance; Mr. R. S. Staples, President, and Mr. B. Melvin, National Secretary, of the Co-operative Unions of Canada, and Mr. G. Blair, Solicitor for the Co-operative Unions of Canada.

The Committee commenced consideration of Bill No. 338, An Act respecting Co-operative Credit Associations.

Mr. MacGregor was called, made a statement in explanation of the said Bill and questioned thereon.

During the course of the examination of Mr. MacGregor, Mr. Staples answered questions specifically referred to him.

The Committee then commenced a clause by clause consideration of the Bill, Mr. MacGregor being further examined thereon.

Clauses 1 to 7 were severally considered and adopted.

On clause 8:

Mr. MacGregor placed before the Committee for consideration the following suggested amendment:

> That paragraph (c) of subclause (1) of clause 8 be amended by adding after the word "from" in the first line thereof the words *an association of which it is a member or from.*

After discussion, and the question having been put, the said amendment was adopted.

At 12.55 o'clock p.m. the Committee adjourned to meet again at 4.00 o'clock p.m. this day.

AFTERNOON SESSION

The Committee resumed at 4.00 o'clock p.m. Mr. Cleaver, Chairman, presiding.

Members present: Messrs. Ashbourne, Bennett, Blackmore, Dumas, Gibson, Low, Macdonnell (*Greenwood*), Quelch, Richard (*Ottawa East*), Smith (*Moose Mountain*), Stewart (*Winnipeg North*), Viau.

In attendance: Same as at the morning session.

The Committee resumed the clause by clause consideration of Bill No. 338, An Act respecting Co-operative Credit Associations, Mr. MacGregor being further examined thereon.

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Mr. Staples answered questions specifically referred to him.

Clause 8, as amended, was considered and adopted.

Clauses 9 to 11 inclusive were severally considered and adopted.

On clause 12:

Mr. MacGregor placed before the Committee for consideration the following suggested amendment:

That subclause (2) of clause 12 be amended by adding thereto immediately after the word "five" the following words: *a majority of whom shall be a quorum.*

After discussion, and the question having been put, the said amendment was adopted.

Clauses 13 to 85 inclusive, and the Title were severally considered and adopted.

The Bill, as amended, was adopted and the Chairman ordered to report the said Bill to the House with amendments.

On motion of Mr. Quelch:

Resolved,—That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in relation to Bill 338.

At 5.35 o'clock p.m. the Committee adjourned to meet again at 11.30 o'clock a.m., Tuesday, April 28, 1953.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

APRIL 24, 1953.
11.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum.

We have before us Bill No. 338, an Act respecting Co-operative Credit Associations. Mr. MacGregor, the Superintendent of Insurance is here.

Would you care to make a statement on the bill, Mr. MacGregor?

Mr. K. R. MacGregor, Superintendent of Insurance, called:

The WITNESS: Mr. Chairman, and honourable members; before discussing Bill 338 in detail I think I should make a few general remarks about the cooperative movement and more particularly credit unions.

The cooperative movement is of course a house of very many mansions embracing almost every conceivable kind of business enterprise from grain elevators to funeral parlours. However, for present purposes, we may conveniently divide the field in two.

First, a so-called banking group of cooperatives, being the credit unions. Secondly, a so-called non-banking group comprising all of the other various kinds of cooperatives, mainly the consumer cooperatives, producer cooperatives etc.

We are concerned at the moment only with the first group, the so-called banking group relating to credit unions and only in fact to a relatively small segment of that field.

I assume that everyone present is famliiar with the essential characteristics of a credit union but perhaps just to refresh one's mind I might mention that—without attempting a textbook definition or anything of that kind—a credit union is primarily an incorporated group of persons who have some common, well-defined tie of association, occupation, residence, etc. (that feature is very important—the common tie), a group that bands itself together, pools its resources in the form of shares and deposits, and out of the fund so accumulated makes loans to its members only for what are considered to be provident and productive purposes. I would stress at this point too the fact that credit unions lend only to their members and do not deal with the public at large.

Mr. MACDONNELL: By law or by practice?

The WITNESS: By law, but also by principle and philosophy.

Mr. FRASER: On the law, they would not be exempted from the income tax end of it if they did otherwise.

The WITNESS: That was a separate question dealt with by the royal commission on cooperatives in 1945.

The CHAIRMAN: I think, perhaps, it might throw Mr. MacGregor off his trend and he might eliminate something from his general presentation if he is interrupted. Perhaps members might make notes of their questions and allow him to make a general statement without interruption which might be better.

The WITNESS: Credit unions are, of course, subject to the main principles which govern all cooperatives. They are very democratic organizations, each

member having only one vote regardless of the number of shares he may own, and there is no voting by proxy. Interest, rather than dividends, is paid on the share capital and the rate of interest never exceeds the generally prevailing rate for investments. The profits of the organization,—of any cooperative, in fact,—are distributed in proportion to the business that the members give to the cooperative and they are usually called patronage dividends, so that, broadly speaking, it is not the shareholders who derive the profits, but rather the members who do business with the organization.

Would the committee be interested in a brief word on the history of the movement?

The CHAIRMAN: I think so.

The WITNESS: The credit union movement as it is known today had its origin about 100 years ago in Europe. In the 1840's, following the Napoleonic Wars, the country, of course, in many places had been laid waste and unemployment was rife; conditions generally were very bad. Two Germans founded the first credit union in 1848, and their efforts proved very successful. It was not long before the movement spread to Italy, around 1861, to Denmark and elsewhere throughout Europe.

The founder of the movement on this continent was a man named Alphonse Desjardins, a native of Quebec—who was in fact a Hansard reporter here—a journalist, and who in the latter part of the 19th century seems to have been appalled by the court cases in Montreal involving exorbitant rates of interest, usury. He went over to Europe in 1885, or thereabouts, and for the next fifteen years studied the cooperative movement there very extensively. He returned and in 1900 founded the first credit union on this continent, as we know it today, at Levis, Quebec. At that time it was a voluntary organization. There was no legislation in Canada governing credit unions, none at all. For twenty years, until his death in 1920, he was the pioneer of the movement. He was largely instrumental in sponsoring legislation in the province of Quebec in 1906, and it was at that time that his society in Levis was incorporated under the Quebec Act.

In 1909 he went to New Hampshire and Massachusetts, and he helped form the first credit union in the United States, in New Hampshire, in 1909. He also assisted in framing the first act in the United States, in Massachusetts, in 1909. I mention this because for the first twenty years of this century he played pretty much a lone hand. His movement grew, but almost entirely in Quebec. That was the origin of the so-called caisses populaires (peoples banks) in Quebec.

There was no further legislation and no real development of the credit union movement in Canada prior to about the late 1920's, except in Quebec. It did, however, extend to some parts of Ontario and there were several credit unions operating on a voluntary basis in Ontario from 1908 on—the Civil Service Cooperative Credit Society right here in Ottawa was formed on a voluntary basis in 1908, but did not in fact become incorporated till 1928, being the first to do so under the Ontario Act. That was the next step in credit union legislation in Canada. Ontario passed its Act in 1928. All the other provinces followed suit before long. Nova Scotia enacted its governing Act in 1932; New Brunswick and Prince Edward Island, in 1936; others in 1937 and in 1938.

All the provinces now have credit union Acts but up to this point there has been no Dominion legislation. The question has been raised in Parliament on several occasions in the past, but no legislation ever followed. I should like to mention here, however, that credit unions are essentially local organizations, and as such they are quite properly governed by local or provincial laws. Just by way of diversion for a moment: Since the movement spread to

the United States in 1909, nearly every state has enacted credit union legislation; and the federal government, as well, passed a somewhat similar Act in 1934, so that even at that time if any state did not have legislation it was possible for persons in that state to band themselves together and form a union.

The movement in Canada has had a phenomenal growth, particularly in the last fifteen years. In 1935 there were perhaps not more than 200 or 300 credit unions in Canada, most of which were in Quebec, a few in Ontario and a few in Nova Scotia. By 1940, however, there were approximately 1,000; by 1944 there were approximately 2,000, and at the present time there are more than 3,000, perhaps 3,200 credit unions across Canada. Their record has been exceptionally good; the losses have been negligible, and there are some locals that have grown to very substantial proportions.

This brings me to what might be called the second phase in the development of the credit union movement. Naturally, some credit unions may have a heavier demand for loans than others. Some accumulate surplus funds which, instead of being lent to their members, which is their primary function, they invest. About 1932 the need for some larger central body became apparent, and Quebec in 1932 formed its first provincial federation, a second tier, so to speak in the credit union organization. That began a movement which has expanded ever since, to the point now where every province has one of these provincial federations or leagues or centrals, as they are called.

There are nearly a dozen in Quebec, and there is at least one in every province. These provincial centrals, leagues, or federations have as their members, not natural persons, but local credit unions and some of the so-called non-banking cooperatives within the province.

Their primary function is to enable funds arising in one place to be lent elsewhere, where there is a greater need.

The leagues or federations also perform other services of an educational nature. They provide accounting forms, instructions how to form credit unions, and other things, but these functions are not relevant to this bill.

Continuing with provincial centrals, some of them have now grown very large. The Saskatchewan central has assets of over $7 million; and some of the centrals with the backing of the Cooperative Union of Canada, have for some time been of the view that in order to accomplish their full purpose they need what might be called a third tier in their organization, namely, a Dominion central.

Last fall, seven of the provincial centrals, and three of the non-banking cooperatives doing an inter-provincial business, petitioned Parliament for incorporation of a Dominion central, and that is really what prompted this bill.

The CHAIRMAN: Would you care to give a broad outline of the contents of the bill, or would you rather do it a section at a time?

The WITNESS: Mr. Chairman, before discussing the bill in detail, I should like to stress a few points.

First of all, when the government received the petition last fall, they took the view that supervision would be essential if any Dominion central were to be incorporated.

The cooperatives themselves subscribed to that view. In fact, both the provincial centrals and the government went a bit further and took the view that not only should the Dominion central be supervised but also such of the provincial centrals, included amongst the petitioner, as might become members of it.

Thus the petition has this paragraph included in it:

> Those of your petitioners who are incorporated as cooperative credit societies, leagues and centrals under provincial legislation desire to be made subject to any such general statute of the Parliament of Canada

in so far as they can be deemed to be incorporated under legislation of the Parliament of Canada and to become subject to such supervision as is provided for by such general statute.

I would stress also the fact that this bill, if enacted, would have no application whatsoever to the local credit unions. It would have no application whatsoever, except in a very incidental way, to non-banking cooperatives. It would apply only to the proposed Dominion central and to the provincial centrals which become members of the Dominion central. That is the reason that I say this bill has a very limited application within the credit union field.

Now, if I might turn to the bill itself, the hon. members of the committee will notice that it has four parts. The first three parts are designed primarily to provide for the organization and the supervision of the proposed Dominion central. Part four is designed to clothe the provincial centrals which become members of the Dominion central with Dominion status for the purposes of this Act.

There was no precedent that we could readily turn to as a guide for this Dominion bill relating to this "third tier" kind of organization, so to speak. In its preparation, the various statutes in the United States have been studied as well as those in the provinces; also the special Acts of some of the provincial centrals. (Some are incorporated under special Acts and some under general Acts.) In addition, regard has been had for appropriate provisions in the Loan Companies Act, the Bank Act, the Quebec Savings Bank Act, the Canadian and British Insurance Companies Act, the Companies Act, the Credit Union Act of Ontario, the New York State Credit Union Act, and there are several clauses in it that are new.

I should not care to say that the bill is perfect, but I believe that on the whole its provisions are appropriate for what seems to be the main purpose of the Dominion central. After all, it remains to be seen what the Dominion central will actually do.

Primarily its purpose is to enable funds, that is, surplus funds, if you will, arising in some of the provincial centrals to be lent to other members.

The CHAIRMAN: Thank you very much, Mr. MacGregor.

Are there any general questions based on what the committee has heard up to date, or would you rather start with the bill.

By Mr. Quelch:

Q. I am not very well versed on this question, but I understood you to say that the passage of this bill would not affect the operation of local credit unions?—A. That is correct.

Q. Am I to take it that those local credit unions will be affected after the passage of this bill?—A. Not the locals.

Q. You say not the local credit unions?—A. No.

Q. Only the provincial centrals will be affected?—A. That is right.

By Mr. Smith (Moose Mountain):

Q. Mr. MacGregor stated that they would be lending to their members "by law", and that that was a regulation. Is that a regulation made by each local, or is that a regulation under provincial regulations?—A. It is a primary principle of the entire credit union movement that the union is formed for the benefit of members only who subscribe the shares and make the deposits providing the funds to be loaned to members. In most statutes, I believe, it is provided that loans shall be made to members only, and it is always so provided in the regulations or by by-laws except that in Nova Scotia they have a special situation, and there they make some mortgage loans to non-members.

Q. That is fairly common throughout all the provinces?—A. That is true. It is not the function of credit unions to lend to non-members.

Q. You have answered my question. But suppose a local credit union decided that they would lend to other than members of the union?—A. I know of no credit union that lends to non-members.

Q. Of course I suppose anyone who wants to borrow money from a local credit union would simply have to become a member.—A. He purchases a share and becomes a member. As long as an applicant for membership falls within a common group, whether it is a particular employment, or a parish or a locality, membership is virtually unrestricted.

Q. Then I presume it would be the directors, if that is what you would call them, of that local, who would decide whether that loan would be granted. —A. The organization of every credit union provides for three committees, a management committee, a credit committee and a supervising committee. It is the function of the management committee to say whether a member would be accepted, but it is the function of the credit committee to say whether a loan would be granted.

By Mr. Brooks:

Q. Did I understand you to say that the central organizations can loan money to other parts of the province?—A. Primarily to local credit unions within that province.

Q. I take it then that a fisherman's local union does not lend to any other local union in any other part of the province except perhaps another fisherman's local union.—A. In the main, a local union does not lend to another local union. The need for so doing was one of the reasons for the formation of these provincial centrals to facilitate the transfer of funds from one local to another.

By the Chairman:

Q. Is the loan made from the local union to the central and in turn a loan made from the central to the local union that requires the money, or is it a direct exchange of funds between the two locals?—A. The local credit unions join the provincial central and natural persons join a local credit union. The local credit union purchases shares in the provincial central, and makes deposits with the provincial central just as natural persons do in a local.

By Mr. Brooks:

Q. Well take a fisherman's local union, and a dairyman's union. Would there be a different central for each union, one for fishermen and one for dairymen?—A. Generally speaking there is only one central in every province except Quebec, where there are several.

By the Chairman:

Q. I understand correctly that the movement of funds is from one credit union to the credit union requiring the funds. Do I understand Mr. MacGregor that that movement is made directly to the central union, and then loaned out by the central union to the local union requiring the funds.—A. That is correct. It is routed through the central union but not just as the need for the loan arises. It is part of the philosophy of the whole cooperative movement that everybody will help everybody else, as far as they can; thus the local credit union with surplus funds would ordinarily deposit them with the provincial central, so that the provincial central could in turn lend them wherever the need arises.

By Mr. Smith (Moose Mountain):

Q. One more question. Mr. MacGregor spoke about the rate of interest. Is the rate of interest in all the provinces about uniform?—A. On the share capital?

Q. Yes.—A. In most provinces it is limited by law to about 5 per cent. One or two provinces do permit a higher rate, but roughly speaking 5 per cent is the maximum.

Q. But then again each local credit union would not have the right to set out the rate of interest. It would come under the regulation of the provincial central.—A. The provincial laws in general require that the rate of interest on the share capital shall not exceed 5 per cent. It is left to the by-laws of the individual union to set a lower rate.

Q. They could set it down?—A. Yes. For example, in 1952 I think the Saskatchewan central, which is by far the largest, paid 3½ per cent on share capital.

By the Chairman:

Q. What is the normal interest paid to depositors?—A. It varies a great deal Mr. Chairman. In the Saskatchewan central it was only 2 per cent in 1952.

By Mr. Dumas:

Q. Can you tell us the total credit capital assets of all credit unions in Canada.—A. In round figures I should say about $400 million.

Mr. FRASER: I asked before regarding income tax.

The CHAIRMAN: Pardon me just a moment, Mr. Fraser, I wish to follow through a question already asked. When you said $400 million is that the total subscribed capital or the total assets.

The WITNESS: The total assets.

By the Chairman:

Q. And the assets would include money on deposit?—A. It would include share capital, deposits, the guarantee fund, surplus, etc.

By Mr. Dumas:

Q. And the members, Mr. MacGregor, are all automatically shareholders. They become a member when they buy a share.—A. One must buy at least one share to be a member.

Q. But you said that the dividends were distributed some time in a bigger proportion. Is the reason for that that these members are giving more business to the organization?—A. That is correct. The profits of cooperatives in general are not, as I mentioned before, paid to the shareholders. The shareholders receive only a nominal rate of interest on the capital. Profits are distributed to members in proportion to the business the members give to the cooperative. That is their primary philosophy.

By Mr. Fraser:

Q. Are locals and provincials exempt from income tax, including income tax on their accumulated income, at least their accumulated moneys?—A. I am afraid I could not give you an answer to that.

Q. I just wondered if under the Co-op Act they would be exempt.—A. The president of the Cooperative Union of Canada, Mr. Staples, is here and Mr. Melvin, the national secretary of the Cooperative Union of Canada; perhaps one of these gentlemen could answer that question.

Mr. STAPLES: So far as the local credit unions are concerned Mr. Chairman, it is my understanding that they are totally exempt from income tax.

Mr. FRASER: The locals?

Mr. STAPLES: Yes.

Mr. FRASER: And how about the provincial.

Mr. MELVIN: They are in the same position as the local credit unions.

Mr. FRASER: There are no exceptions.

Mr. MELVIN: They are exempt.

The CHAIRMAN: You pay municipal, but not provincial or dominion taxes.

Mr. MELVIN: That is right.

By Mr. Macdonnell:

Q. I am very interested in the answer you gave to Mr. Quelch that the coming in under this Act of the provincial centrals would involve the inspection of that provincial central, according to the terms of the Act, but not of its member bodies. I take it one of the reasons for this is the feeling or desirability that, as is the case with other financial institutions which are regulated and inspected, so that the members of this organization should have some kind of protection. Now, what is the regulation broadly speaking, under the provincial Acts that incorporate the provincial centrals. Do they provide for inspection?—A. The provincial Acts provide for inspection of some kind, and there is usually an inspector appointed under provincial Credit Union Act. In Quebec the situation is a little different. There is a federation formed in Quebec which is subsidized by the Quebec government, and the responsibility for the supervision of the caisses populaires is the responsibility of that federation. But in all other provinces they have an inspector or registrar, or both, whose function it is to oversee the operation of the credit unions within that province.

Q. I was interested in the figure you gave as to the total assets. Have you the figure showing the way these assets are made up. You mention the largest one was in Saskatchewan. Would there be any powers of investment. Here they are limited to about 60 securities. What would be the nature of the assets. I take it that when we are considering inspection, which is of the greatest importance to all concerned—and you gave a figure of growth, an astonishing figure of growth, and I take it we are all reminding ourselves that these excellent figures, and they are excellent figures, have been brought about in a time when we had a most extraordinary run—I do not know if you would call it prosperity but—

The CHAIRMAN: I thought you were going to call it good government.

Mr. MACDONNELL: I leave that to others.

By Mr. Macdonnell:

Q. Seriously speaking I am very interested in this question of regulation because all banks and insurance companies and trust companies not only have it but recommend it, and I take it—now I am through asking questions—that this Act will set up a structure under which a provincial union, if it desires to do so, can come in and seek incorporation, but it does that of its own volition and there is no obligation to do so?—A. That is right.

Q. And when it comes in then it becomes subject to the regulations of this Act.—A. Yes.

Q. But, on the other hand, its members have nothing to do with this Act and are subject only to whatever is in the provincial Act.—A. Yes.

Q. And in order to make sure this thing carries through and we do not wake up one day and find out it is not what we intended it to be, are you satisfied that the provincial Acts which by and large affect the local cooperative unions have something of the same kind of inspection you are providing here for what you call the second tier? Would it be reasonable to assume the

lowest tier should have at least as careful an inspection as the second tier in the interest of the whole movement?—A. I am not intimately familiar with the practices of each province in supervising its local union. I know, as I mentioned, that the provincial Acts require the appointment of an inspector, but I do not know in actual practice how extensive his examinations are. Of course, the primary responsibility for supervision rests with the credit unions themselves, their supervisory committee, and that committee is really the supreme committee within each credit union and is saddled with very serious responsibilities.

Q. Perhaps the president could tell us. No one is more interested in it than he is.—A. Could you say, Mr. Staples, how detailed is the examination of the local by the various provincial authorities?

Mr. STAPLES *(President of the Cooperative Union of Canada)*: I can only speak with certain knowledge of my own province of Ontario, and in Ontario the credit union movement, as was suggested, is rapidly growing up; it is reaching you might say a new stage of its development. It is true there has been certain supervision provided by the government, but the supervision in most cases has been adequate on the part of the supervisory committee. The credit unions now are increasing so rapidly, sometimes in size and sometimes in number, that the situation takes on a new light, and just this year the Credit Union Act from this year on will be administered in Ontario by the Department of Insurance. I do not know what provisions the Department of Insurance in Ontario is making for the inspection of credit unions, but those of us who are connected with the credit unions certainly hope they are adequate. That is all I can say at this stage.

The CHAIRMAN: Of course, Mr. Macdonnell, if the assets of the centrals are in proper shape then no harm can come to the federal association. Your suggestion really is almost that in discussing the Bank Act we should inquire into the financial position and set-up of the shareholders of the bank.

Mr. MACDONNELL: I submit not. The president has pretty well answered my point and agrees with my concern because he says they are increasing their inspections. I am only raising that point, and I think I have been answered. After all the dominion government cannot exercise the functions of the provinces, but no doubt the provinces are concerned in this.

The CHAIRMAN: You asked for a breakdown of the assets and it is available.

The WITNESS: So far as the credit union field as a whole in Canada is concerned, at the end of 1951 the assets were distributed roughly as follows: Cash 14 per cent, loans 24 per cent, mortgage loans 29 per cent.

Mr. MACDONNELL: What are the other loans that are not mortgage loans?

The WITNESS: Personal loans, on promissory notes.

By Mr. Quelch:

Q. Are there usually endorsements of individuals?—A. Broadly speaking they are endorsed, I think, but not always.

Q. It is not a compulsory feature.—A. I think not. Investments 28 per cent, real estate 1 per cent, other assets 4 per cent, total 100 per cent.

By Mr. Macdonnell:

Q. Have you any breakdown of the 28 percent?—A. The investments?

Q. Yes.—A. No. In the main they are dominion and provincial bonds and the bonds of some cooperative organizations, non-banking cooperatives. Of course, that is one desire that the cooperatives have, namely to lend some of the money from the credit unions to the non-banking organizations or to purchase their debentures.

By Mr. Gibson:

Q. You said losses have been negligible over the years. I always was under the impression from the deference we pay bankers that they had some specialized knowledge of loans, and I am rather amazed to see that people who are not bankers have been able to make such fortuitous loans and run their business this way.—A. That was the fear in the early stages, that these people ought not to be doing this kind of business and that the losses would be large. But there are many safeguards throughout the organization. The common tie, so to speak, whether it is in the form of residence or whatever it may be, provides a kind of family basis in which no one member wants to see his friends lose money and they all have a stake in the organization. It is their own money, and naturally there is great pride in seeing to it that they do repay their loans and do not fall down in the eyes of their friends.

By Mr. Quelch:

Q. Is the general limitation 30 days, 3 months or 1 year?—A. There are various terms.

Q. They are all time deposits, are they—no current?—A. Some of them do take demand deposits.

Mr. GOUR: I have a little knowledge of these things. Sometimes in the same district the organizations are too much related together and they need money. I think that is the only time it is dangerous. They are too much related together when they need money.

The CHAIRMAN: Family compacts.

Mr. GOUR: Yes. I would like to know what protection the local union of Caisse Populaire have when they transfer money to the local provincial body? What does the province give them back in guarantee?

The WITNESS: When they make a deposit there is no guarantee any more than when a depositor puts his money in the bank; he puts it there on faith.

By Mr. Quelch:

Q. What is the highest and lowest rate of interest charged on these loans, 1½ per cent or 1 per cent?—A. Dominion laws respecting interest limit the maximum to 12 per cent per year.

Q. For credit unions?—A. Broadly speaking, for everyone.

Q. Well, how is it that some companies charge 2 per cent per month? Some do, do they not?—A. Yes.

Q. Does that apply to credit unions?—A. Not at all. The 2 per cent per month that you refer to is permitted to licensees under the Small Loans Act, which is a Dominion Act—licensees which are permitted to make cash loans of $500 or less. For loans above $500 there is no limit—I am speaking of the Small Loans Act—and no licence is needed. If persons make loans of less than $500 and charge less than 12 per cent a year, they are not required to obtain a licence, but if they want to make cash loans of $500 or less and charge more than 12 per cent a year, they must obtain a licence under the Small Loans Act, in which case they may charge up to 2 per cent a month.

Q. I remember when that bill was before the committee a lot of the members of the committee felt that 2 per cent per month was too high, and I was wondering why it is necessary to have it that high when these credit unions don't come anywhere near that.—A. Well, the expenses of the small loan companies are very different from those of the credit unions. Their expenses are very much less than the expenses of a small loan company. Naturally, those companies do extensive advertising and have expenses like that.

Mr. FRASER: They would not have the collection troubles that the small loan companies have.

The WITNESS: Quite right. The small loan companies have not the protection of the common tie, so to speak, they are lending to strangers on every kind of security.

By Mr. Brooks:

Q. I see that the real estate owned by these credit unions is not more than one per cent.—A. In credit unions it is not the practice to purchase real estate.

Q. The banks have more than one per cent of their assets tied up in real estate.—A. Yes, but credit unions do not require large buildings. They operate usually in a small office.

The CHAIRMAN: If there are no further questions, I shall call clause 2.

Mr. MACDONNELL: Before you do that, Mr. Chairman, have you a figure showing what percentages of the investments are in mortgage loans, real estate loans, as distinct from loans on personal security?

The WITNESS: At the end of 1951 the percentage in regular loans was 24, and in mortgage loans about 29. I think the fact is that there are some mortgage loans included under the head of "loans"; I think some credit unions did not separate them. The proportion, I should say, is a little larger than 29 per cent, perhaps 30 per cent or some percentage in the low thirties. I would mention this point with respect to mortgage loans, that under the bill now before the committee the Dominion central will not be permitted to make any direct loans on real estate. They will follow the Bank Act in that respect.

By Mr. Gibson:

Q. Does a co-operative not pay any income tax whatsoever?—A. I do not believe the locals do, Mr. Gibson.

Q. I was thinking of the centrals. Do they not pay any income tax whatever?

Mr. QUELCH: The recipient of the dividends from the credit unions pays income tax on that money.

Mr. FRASER: When it is on their accumulated income—I was wondering.

The CHAIRMAN: If they plow back any of their earnings, they would have to pay the tax.

Mr. FRASER: That is what I was wondering about.

The CHAIRMAN: But if they distribute it, no.

By Mr. Gibson:

Q. Once again, I was wondering if any of these credit unions are allowed to invest in common stocks on which they could claim 20 per cent of the dividens as deduction from their income tax?—A. The investments in common stocks are entirely negligible. I know of no instance, offhand, where a co-operative has invested in common stocks, except for the purpose of obtaining membership, or substantially that, in another cooperative. Mr. Humphrys reminds me that in the Nova Scotia league they have apparently some bank stocks, but, broadly speaking, it is not the policy of the cooperatives to invest in common shares or in corporate securities at all, except in some co-operatives.

Q. I was just thinking that if they did have income from common stocks they could deduct 20 per cent of that income from their income tax.—A. Bank shares owned by the Nova Scotia league would fall under that provision.

Q. And they would be allowed that deduction of 20 per cent of their common stock dividends from their tax?

Hon. Mr. GARSON: They have no income tax to deduct it from.

Mr. FRASER: Mr. MacGregor, you were explaining that in the set-up of this bill there were several clauses in it that were new and which do not appear in the other Acts. Now, I just wonder when you come to these if you would mention them.

The WITNESS: I will be glad to indicate them. I will give you the origin or derivation of every clause in the bill, if you like, as we go along.

By The Chairman:

Q. What is the yardstick that is used by a cooperative to measure the amount of that member's contribution to the business of the company? It is the amount that he borrows?—A. If he were a consumer?

Q. No, I am talking about credit unions.—A. Broadly speaking, it would be the amount of the loans that the member obtains, but some credit unions do, nevertheless, pay excess interest, so to speak, in reference to the deposits of a member rather than the amount of the loan.

Mr. MACDONNELL: If a customer is both a depositor and a borrower?

By The Chairman:

Q. I wonder how these different features were weighed. How would a depositor's contribution be weighed vis-a-vis a borrower's contribution to the earning of profits?—A. I think in most cases, Mr. Chairman, the unions follow one practice or the other, that is to say, some distribute their profits in proportion to their deposits, as I think the local civil service cooperative does in Ottawa.

Q. In relation to the deposits, and not in relation to the loans?—A. That is right.

Mr. QUELCH: Have you received any submissions from any provincial central credit unions?

The CHAIRMAN: I have received none.

The WITNESS: Seven of them are petitioners for a private bill at this session, the provincial centrals of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Prince Edward Island. The other three, Newfoundland, New Brunswick and Quebec, are not petitioners at the present time. I think that the provincial centrals in both New Brunswick and Newfoundland are in a very embryonic state.

Mr. QUELCH: Have they all received copies of the bill?

The WITNESS: I cannot say, but I would assume so, through the Cooperative Union which has been backing this proposal.

Mr. RILEY: You say, Mr. MacGregor, that the centrals in the provinces of New Brunswick and Newfoundland are in a very embryonic state. Just what do you mean by that? I had in mind New Brunswick where we have a directorate set up under the Department of Agriculture, and we have a large number of individual unions under the New Brunswick Credit Unions Federation, in the south, and in the north a French section, and I think they are far beyond the embryonic stage, because their movement is quite extensive.

The WITNESS: I did not mean to imply that the credit unions are in an embryonic state; I meant the provincial central in New Brunswick is in an embryonic state. Perhaps Mr. Melvin or Mr. Staples could enlarge on that. I myself am not sure how long ago it was incorporated. It is not a petitioner to this bill and, frankly, we have not looked into its status.

Mr. STAPLES: We are not quite sure, but we think that a provincial central has not yet been incorporated in New Brunswick. Perhaps I am speaking with reference only to the English speaking areas, and there may be some central in the French speaking areas. Perhaps someone from New Brunswick may be able to enlighten us on that point, but as you point out, we have no provincial organization which could become a signatory to a petition.

The CHAIRMAN: Shall clause 1 carry?

Carried.

The CHAIRMAN: Shall clause 2 carry?

Carried.

Shall clause 3 carry?

By Mr. Macdonnell:

Q. No. This clause reads as follows:

Application

3. Unless otherwise expressly provided in the Special Act, the provisions of this Act apply to every co-operative credit society incorporated by Special Act.

Do you mean that you could have a special Act as an act incorporating a union which is under this Act?—A. The Dominion central, for example.

Q. Could it be incorporated and by an express provision not be subject to the provisions of this Act?

By the Chairman:

Q. There might be some special reservation in that special Act.—A. A special clause only was the thought, Mr. Macdonnell. I know very well that it is a poor legislative principle to make an exception in a special Act as against a governing general Act, but that clause appears pretty generally in other Dominion legislation, and it was copied almost verbatim from the Loans Companies Act.

Mr. MACDONNELL: Well you have a precedent for it.

The CHAIRMAN: Shall clause 3 carry?

Carried.

Shall clause 4 carry?

PART I

Incorporation and Organization

4. (1) Membership in an association shall be confined to

(*a*) co-operative credit societies incorporated by Special Act;

(*b*) any co-operative credit society declared by Parliament to be eligible to become a member of an association;

(*c*) not more than ten co-operative corporations (not being co-operative credit societies) carrying on business in two or more provinces; and

(*d*) not more than fifteen natural persons.

(2) No association shall be a member of any of its incorporated members.

The WITNESS: Would you like me to indicate the origin of these sections? Mr. Fraser asked for the ones that are new.

By Mr. Fraser:

Q. Yes, the ones which are new.—A. I can comment on them as we go along, indicating where they came from.

Q. In would not take much longer for you to do it now.—A. Will you please look at clause 4?

The CHAIRMAN: Yes.

The WITNESS: One sees that the membership includes four possible classes, "(*a*) any co-operative credit society incorporated by Special Act; (*b*) any co-operative credit society declared by Parliament to be eligible to become a member of an association." The (*b*) clause is included in order to make provision for those provincial centrals that come voluntarily to Parliament wanting to be made subject to this Act.

Mr. MACDONNELL: That is the people who are actually incorporated?

The WITNESS: That is correct.

By Mr. Riley:

Q. When they do become incorporated, they come under the provisions of this Act. Would there be any conflict between the provisions of this Act and the directorate which is set up as it is in the province of New Brunswick?—A. So far as supervision is concerned?

Q. Yes.—A. I must admit that the provincial centrals which do become members of the Dominion central will be, in a sense, hybrid creatures. They were originally incorporated by the provinces, and if upon their own initiative they come voluntarily to Parliament seeking to be made subject to this Act, and to be clothed with the essential powers required to accept deposits and to make loans, they will be hybrid creatures. I would expect,—certainly I hope—that there will be no conflict of interests between the provinces and the Dominion so far as the provincial centrals are concerned. After all, the objective is the same, to keep them in the soundest possible condition. And I do not think there is the slightest disposition on the part of the centrals themselves to oppose supervision. In fact, they are asking for it now.

By the Chairman:

Q. But they definitely must keep up to your requirements?—A. They will continue to enjoy some of their provincial powers. Some of them have powers, beyond what might be called banking powers, to assist in the establishment of local credit unions, to provide instruction and forms, and all that sort of thing.

All this Act will do will be to clothe them with their essential banking powers to accept deposits and to make loans to their members. So far as the powers that may be conferred by this Act upon the provincial centrals are concerned, one need look only at clauses 6, 8, and 10, for by one of the later clauses in part 4, those particular sections alone in Part I are named.

By Mr. Riley:

Q. Is there any restriction imposed upon credit unions in this Act, or is there any provision which will impose a restriction in respect to their insurance or bonding?—A. No, that is left to the by-laws of the association.

Q. You say it is left to the by-laws?—A. Of the central itself. No, there is no detail of that kind. As a matter of fact, so far as the Dominion central is concerned, it is, you might say, a new venture in a new field. And for that reason it has been thought wise in the first instance at least not to attempt to set out in too great detail all the various administrative rules and practices that they may adopt, or that they may find necessary to follow in practice.

I referred to clauses 6, 8, and 10; and if we look at clause 79 which is on page 26, we will see, in line 34:

79. (1) Every organization that—(*a*)—(*b*)—(*c*)—etc."— —

That means every provincial central which comes to parliament seeking to be made subject to this Act—

> . . .is invested with all the powers, privileges and immunities conferred on associations by sections 6, 8, and 10, and is subject to the limitations, liabilities and provisions set forth in Parts II and III and in this Part.

So far as their powers are concerned, all that this Act will do is set forth in clauses 6, 8, and 10.

The CHAIRMAN: In exchange for the powers, they are subject to limitations, liabilities and provisions?

The WITNESS: That is right and some of the limitations go considerably further than the limitations they are now subject to under provincial law.

By Mr. Gibson:

Q. What worries me about these cooperatives is this: It is a very wonderful movement, but what worries me is the fact that perhaps a group of farmers would all band together in a credit union and they might also be associated in a farm distributing cooperative, or perhaps in a manufacturing plant or some thing like that, and would necessarily, in order to make one enterprise successful, have to put all their eggs in one basket, or in one industry, for instance. Consider the average commercial bank. It is pretty well diversified. I am thinking of the safety of its depositors in this case. The average commercial bank cuts right across the whole field of Canadian commerce. It is in every line of business. But what concerns me is perhaps that a farm group would be necessarily loaning most of their funds, in good faith, of course, to their own organization which was an operating entity. I am wondering if there is enough diversification, or if there is anything we could put in the bill along that line to try to seek diversification.

The CHAIRMAN: If you look at the Act you will find as we go along there are a lot of restrictions.

The WITNESS: I appreciate your point, Mr. Gibson, but I think it applies more particularly to the locals.

By Mr. Gibson:

Q. You mean that danger I was speaking of?—A. Yes. In the provincial centrals in the second tier and in the Dominion in the third tier there are dangers, undoubtedly. There is some danger throughout the movement. They are a family within themselves.

Q. Yes.—A. That of course is one of the main reasons for giving them a little greater latitude than would be given to an organization which is dealing with the public. I think, so far as danger is concerned, there may be more danger from the credit union point of view in making loans to the non-banking cooperatives.

Q. Yes.—A. Perhaps too much in one spot.

Q. Or in one interest?—A. In their enthusiasm.

Q. That is right.—A. Than there is a danger in making loans to other credit unions.

Q. I think, as a safety feature, this might be a good thing, because really they get more diversification if they do put some of their surplus funds down here, or they might go into another industry and there is less interest there. I think that is a good feature.

By Mr. Macdonnell:

Q. I agree with Mr. Gibson and for the very reason that the great strength of the credit union consists in the fact that so long as things are going well—but that that might prove to be a weakness if you had a series of bad crops. It is not merely the question of the safety of the investments. There is a question of liquidity and being able to get your money if it is needed. I was glad to hear the president speak about it. That concerns me because we must remember—going back again to what you said—that they have been travelling on a rising market ever since the movement obtained any size and I do think that at this moment we should consider the possibility of something which is not so buoyant.—A. I quite agree with you Mr. Macdonnell. Locals of course have been tested over a long period, and they have stood up wonderfully well. The provincial centrals I must say have not as long a record as the locals. The locals have a record of 100 years, and 50 years in this country, but the provincial centrals only go back to 1932, and most of them more recent than 1938, which is a relatively short history, and covering a period of remarkably good times.

By Mr. Riley:

Q. Is not it true that these locals have developed very cautiously and under careful supervision, and that for the most part— —A. I think you might add primarily under their own supervision for a very long time.

Q. Have they not generally speaking been proceeding in a very sound manner from their inception, and there is very little record of any substantial losses suffered by the groups, or individuals who make up the groups, as the thing has developed.—A. That is quite correct.

Q. And that since the provincial supervision has been set up, they have been proceeding in many cases in such a fashion that many of the members think that they are too closely supervised, and that even before they can even get a charter a unit must be tried and tested, and the membership carefully scrutinized, and when they do start out, they spread their loss as widely as possible, and do not over extend themselves, and they do not let any member over extend his credit.—A. I think that is a fair statement on the whole, Mr. Riley.

The CHAIRMAN: Could you elaborate on paragraph (c)?

The WITNESS: Paragraph (c) of clause 4 permits not more than 10 cooperative corporations (not being cooperative credit societies) carrying on business in two or more provinces to become members. In other words, the Dominion central may have as members, not only provincial credit union centrals, but also not more than 10 non-banking cooperatives doing business in each case in more than one province.

The idea is of course that any non-banking cooperative doing business only in one province is essentially a provincial organization that should properly look to its own provincial central for any financing that may be required.

By Mr. Macdonnell:

Q. Why 10?—A. It is an arbitrary number Mr. Macdonnell.

Q. Why do you want to keep it down?—A. Looking to the future it is a guess as to how many Dominion centrals we may have. We may have only one,

the one in prospect now. If so, the number of the provincial centrals that may be members of it may never perhaps exceed 10, one from each province, and I think it is wise that the number of non-banking cooperatives that may become members should be kept down. One of my greatest fears in this whole set-up is the loans that may be made to non-banking cooperatives.

Q. You state 10, but you are not limiting it to one from each province?—A. No.

The CHAIRMAN: It is an answer in part to the point raised by Mr. Gibson. Is it not that you are afraid that the enthusiasm of these banking credit unions might lead them to lend their funds for other business enterprises?

The WITNESS: That is the greatest danger. I think it is one of the greatest potential weaknesses.

The CHAIRMAN: I was pleased to see that limitation.

The WITNESS: At present there are three non-banking cooperatives which are petitioners. In other words, three non-banking cooperatives doing business in more than one province that will probably be members of the Dominion central. Certainly, if everything works out well and it seems desirable to enlarge the number, it could be enlarged.

By Mr. Macdonnell:

Q. What about paragraph (*d*) not more than 15 natural persons?—A. That again is an arbitrary number.

Q. What is the limitation on natural persons in one of the credit unions? —A. There is no limitation. Looking at the locals the members are in the main natural persons. Some locals do permit some corporate bodies to become members, but then, moving on the provincial centrals, they have as their members not natural persons in the main, but the local credit unions, and some non-banking corporations. In the main, corporations are members of the provincial centrals, and, in the main, the Dominion central will have as members only corporate bodies. However, we thought it desirable to make some provision for natural persons, because in the very first instance the incorporators, the provisional directors, will be natural persons, but after the first organizational meeting they will cease to be provisional directors and likely cease to be members under the by-laws, because all of these centrals envisage only corporate bodies as members, not natural persons; and even though the bill makes it permissible or leaves it open to them to have some natural persons as members, the main purpose of (*d*) is to provide for the incorporation of the Dominion central, and perhaps later on to provide a continuing core of natural persons, if they want it that way, as the corporate body, but the bill specifically provides that no loans may be made to natural persons.

Q. But I understand that anything up to 15 natural persons can themselves become incorporated?—A. Under the bill it will be left to the by-laws of the Dominion central to specify whether and to what extent natural persons may become members at all.

Q. I think I must be reading this wrong. Clause 4 reads:

> Membership in an association shall be confined to cooperative credit societies incorporated by special Act: (*b*) any cooperative credit society declared by parliament to be eligible to become a member of an association (*c*) not more than 10 cooperative corporations carry on business in two or more provinces: and (*d*) not more than 15 natural persons.

Apparently I read that wrong, but I took it that any group up to 15 natural persons were entitled to membership.—A. They are, so far as this bill is concerned, but I know that in practice the by-laws will undoubtedly confine membership, so far as natural persons are concerned, to the early days of incorporation, and after they begin business, they will cease to be eligible for membership.

The CHAIRMAN: It is simply qualifying shareholders.

The WITNESS: The intention is to permit it, Mr. Macdonnell, but if the Dominion central so wishes, in practice, natural persons may be excluded under the by-laws from membership in the central.

By Mr. Macdonnell:

Q. I do not think I understand the point, but I do not think it matters.—A. It appears to be simply a technical provision as a step to something else.

By Mr. Gibson:

Q. We are on the third tier now, and we started with one tier, and then we got two tiers, and now we have three tiers. I have an idea this may develop into four tiers, into an international sort of body?—A. I hope it is not in my day.

The CHAIRMAN: Shall Clause 4 carry?

Carried.

Clause 5 (special Act) carried?

Carried.

Clause 6 (Objects and powers) carried?

Mr. MACDONNELL: Clause 6 line 2 "every association is a body corporate capable of exercising all the functions of an incorporated company. . . ." I take it that is just a descriptive term? In other words it is a body corporate. You are not suggesting that is all the functions of an incorporated body.

The CHAIRMAN: Yes, that is correct.

Clause 6 carried?

Carried.

Clause 7 (restrictions) carried?

Carried.

The WITNESS: When we come to consider clause 8, there is a small amendment I should like to propose.

The CHAIRMAN: Would you indicate it?

The WITNESS: At the end of line 34 of paragraph (c) of clause 8 (objects and powers) after the word "from" we should like to insert the words "an association of which it is a member or from".

The CHAIRMAN: Mr. Quelch so moves. Shall the amendment carry?

Carried.

The WITNESS: The purpose is to enable a provincial central to borrow from the Dominion central.

The CHAIRMAN: Perhaps it would be a good time for us to adjourn. It is five minutes to one. We will meet not at 3.30, but at 4.00 o'clock.

AFTERNOON SESSION

The CHAIRMAN: Gentlemen, we have a quorum.

We are on clause 8 of the bill. At the time of the adjournment we were asking Mr. MacGregor to elaborate on 8 (c), (d) and (e).

Mr. K. R. MacGregor, Superintendent of Insurance, recalled:

The WITNESS: So far as paragraph (d) is concerned, Mr. Chairman, the purpose is simply to confer upon the Dominion central and each provincial central that may be a member of it the power to deposit money in chartered

banks or with an association of which it is a member. Perhaps it would have been better to have said the latter part, namely the words "or with an association of which it is a member" are to enable the provincial centrals to deposit money with the Dominion central because they are members of an association.

Paragraph (*e*) relates to the investment powers of the Dominion central and the provincial centrals that are members of it. In this connection it must be remembered that the primary purpose of all credit unions, including the provincial centrals, is to make loans, to lend money—that is their primary function, not to make investments. They accept deposits for the primary purpose of making loans and extending credit to their members.

Mr. LOW: Before you leave (*d*), may I ask a question. Suppose that a certain provincial central presently has its funds deposited not in a chartered bank, but in a treasury branch, that is a branch of the provincial treasury—I might explain that in the province of Alberta the branches of the provincial treasury would naturally be the depository for the funds of the central credit system within the province and I am just wondering if this would interfere with their present arrangements?

The CHAIRMAN: Your question is as to whether a deposit in a treasury branch of a provincial government would not be the equivalent to a deposit in a chartered bank?

Mr. LOW: That is right.

The WITNESS: I am not sure offhand, but any provincial centrals that are declared eligible to become members will have a period of at least two years in which they may make up their minds to take up membership, so there will be ample opportunity for them to consider any questions of that kind.

The CHAIRMAN: In parts of the province of Ontario they have province of Ontario savings bank branches, and I think a deposit in a province of Ontario branch bank would be as safe as a deposit in a chartered bank.

The WITNESS: If the provincial centrals now have the power to make deposits of the kind you mention I do not think the provisions of this bill would debar them from continuing.

Mr. LOW: We might pass an Act here that upsets the present arrangements in the provinces.

The CHAIRMAN: I think the point is well taken.

The WITNESS: I have overlooked a provision that appears in clause 83 which relates to deposits and that clause would have the effect of confining the provincial centrals to deposit powers as set forth in the Act.

Mr. LOW: I feel it would be well for us to give careful consideration to (*d*) before it is passed finally.

The WITNESS: They would not have the power in the bill as it stands to go beyond chartered banks or the Dominion central.

Mr. LOW: Mr. Chairman, would you mind letting that stand.

The CHAIRMAN: I think we should have a definite amendment right now.

Do you think, Mr. Macdonnell, that a province of Ontario savings bank is as secure as a province of Ontario chartered bank?

Mr. MACDONNELL: I have no doubt of the security of a province of Ontario savings bank, but I am wondering if it is as simple as that. I am interested in the point Mr. Low makes and I take it the provincial centrals in Alberta now unquestionably use the provincial treasury branch.

Mr. LOW: Which are in the same category as the province of Ontario savings banks.

The WITNESS: I hesitate to see the amendment made without a great deal of thought. Any deposits made under paragraph (*d*) now will be in institutions subject to supervision by the Dominion, namely, the chartered banks or the Dominion central. In saying that, I certainly do not wish to cast any reflection on any of the other banking institutions like that of the province of Ontario, or Alberta, but in the other cooperative legislation with which I am familiar, I am quite sure there is no reference to other depositaries of the kind you mention.

The CHAIRMAN: Shall clause 8 (1) (*d*) stand?

Mr. LOW: I would suggest it stand, Mr. Chairman.

The CHAIRMAN: And in the meantime perhaps you might consider that, Mr. MacGregor.

Any further questions on clause 6?

Carried.

Clause 7. You asked that clause 7 be recalled.

Mr. MACDONNELL: We are on clause 8 now, are we not?

The CHAIRMAN: Yes, we are now on clause 8 (1) (*e*).

The WITNESS: I referred a moment ago to the primary purpose of all these organizations, namely, to lend money rather than to invest it. Nevertheless, they do of course make some investments, depending on the surplus funds available. Paragraph (*e*) relates to their investment powers and distinct from their lending powers and (*e*) says that they may invest in effect in Dominion bonds, in provincial bonds, bonds of Canadian municipalities or Canadian school districts, public securities, in other words. Then the latter part of paragraph (*e*) is what might be described as an open area where these centrals may make investments in their own discretion up to, in the aggregate, 10 per cent of the paid-up capital and deposits of the association, or the provincial central, as the case may be, and subject also to the approval of at least two-thirds of the full board of directors in each individual case. The primary purpose of that kind of provision is to enable these centrals to buy the debentures or bonds of other co-operatives, non-banking institutions, institutions within the family, so to speak. This provision is a good deal more restrictive than that found in most other co-operative Acts. For example, in Saskatchewan, the special Act of the provincial central authorizes that central now to invest up to 50 per cent of its paid-up capital and deposits in this way.

The CHAIRMAN: You feel that the 10 per cent ceiling is as far as you can go?

The WITNESS: That is correct, sir.

By Mr. Macdonnell:

Q. Notwithstanding what you said about the general practice, I take it that that phrase 'negotiable securities' would authorize them to invest in 50 per cent of capital stock, if they want to.—A. Yes.

Q. Let us consider a picture of what could happen. In the case of a union with $100,000 deposits—let us leave the capital stock aside for the moment. Am I right in thinking that you could have that invested up to 90 per cent in loans on personal security, and 10 per cent of those loans in other categories? —A. Looking at those two provisions, yes, but there are provisions later that would circumscribe them. They must at all times, under clauses 44 and 45, keep five per cent of their deposits in cash and at least 20 per cent of their deposits in government bonds or cash.

Q. Then I have to correct what I said a moment ago by saying you can have 75 per cent in personal loans, 5 per cent in cash, and 15 per cent in trustee securities?—A. Twenty per cent in such securities or cash.

Q. What percentage may an insurance company have outside of the trustee securities?—A. There are no limits within the prescribed clause; 3 per cent of their total assets, outside.

Q. That is to say, 3 per cent outside of their trustee securities.—A. Outside of the regularly prescribed classes.

Q. The prescribed classes are not trustee securities but they are very strictly prescribed companies, companies that have paid dividends for so many years and so on?—A. Yes.

Mr. QUELCH: This is wide open is it? They can invest in anything at all up to 10 per cent of the aggregate of its paid-up capital?

The WITNESS: As it stands, yes. In the practice it is not. I have no doubt it will be used mainly, if not entirely, to purchase securities of other co-operatives.

By Mr. Macdonnell:

Q. But 8 (1) (*b*) is the widest one: "to lend money to its members upon such terms as to interest, security and time of repayment as may be agreed upon;"—A. There is no limitation that I am aware of in any Act relating to a credit union. There are limitations later in this bill that we have included, relating to the maximum amount that may be lent to any one member.

Q. Yes, I realize that.—A. But as to the security, it is wide open, as far as paragraph (*b*) is concerned—and it is in every case within the credit union movement.

The CHAIRMAN: May I ask this question, then—that having full regard for the fact that you have no supervision over the local credit unions, but that your supervision only extends in the second groups, are you content with the supervision and the restrictions contained in the bill?

The WITNESS: I am reasonably content, Mr. Chairman. It is a new field and it remains to be seen how the Dominion central may carry on its business. I feel that the restrictions and limitations in the bill go as far as it is practicable to go without seriously curbing the objects of these centrals. In fact, in discussions with them they have very clearly and forcefully expressed the view that if the restrictions were more severe they might as well close up shop. They would not be able to operate and fulfil the functions that they want to fulfil within their organization. I feel we have gone as far as we can apparently go and still permit them to carry out their purpose.

Mr. MACDONNELL: Am I permitted at this time to take a moment or two to get a close-up of what can or cannot be done by way of inspection?

The CHAIRMAN: Yes.

By Mr. Macdonnell:

Q. You explained to us earlier in answer to a question by Mr. Quelch that the regulations which are here won't apply to the credit unions but only apply to the people that incorporated under them, but the important question that arises here is, how far can inspection go to determine whether or not the judgment of the people who lend under 8 (1) (*b*) "to lend money to its members upon such terms as to interest, security, and time of repayment as may be agreed upon;"—is it possible for you, even if these credit unions were directly under your supervision, could you without an enormous staff undertake to express an opinion of the judgment exercised by the directors of the association? Is that not something that has to be in the control and judgment of the union? I would feel that here we do not want to fool ourselves into thinking we are setting up a security which we are not setting up. I am sure the president would agree with you too. That is why I would like to ask you for your opinion.—A. I think it is impractical to do it. In the first place, it would

be such an enormous task of supervision to look into each loan that certainly our department is in no position even to think of it; it would be impracticable from the point of view of the size of our staff.

Q. You will understand that I am not suggesting it.—A. Quite. It is very difficult for an outsider to appraise the security of each individual loan, more particularly when they are personal loans.

Q. Here you are relying on the judgment of these men far beyond what the public is asked to rely upon in relation to the judgment of a loan company manager, or a trust company manager or an insurance company manager, because they are restricted in a very very complete manner. We know that most of their securities or investments have to be in what are called trustee securities, with all the safety that goes with it, which, while it is not complete is yet substantial. When you come to investments you are very strictly held in that regard, as you say, allowing only for a three per cent limitation. So I do not see any way of avoiding it. It is true their record up to the present has been good, but it does seem to me that we are not able to carry on this business with anything like strict regulations with which you carry on this other business.—A. I quite subscribe to your statement, Mr. Macdonnell.

By Mr. Gibson:

Q. I am afraid that Mr. Macdonnell feels that the sanctions which follow the passing through the House of Commons of such a bill as this might lead a person to feel there was a special measure of security thereby.—A. I would not suggest for a minute that this bill provides fool-proof security. After all the whole business is pretty much in their own hands.

Q. Yes.

By the Chairman:

Q. May I ask this final question, if the other members are through: Certain reports are to be made to you, I notice, under the Act. Should you at any time be of the opinion that the investments are getting out of hand, what power have you to act?—A. There is no specific power in the bill, but they cannot make investments in volume larger than the 10 per cent which is mentioned in paragraph (*e*). Our only power would be that of criticism of the particular investments which they have made.

Mr. Low: It is more advisory than it is supervisory?

By the Chairman:

Q. I am referring particularly to clause 46-3.—A. That relates to loans, as well as to investments. Mainly, it relates to loans.

Q. Yes, but if pursuant to that subsection you got a report of a loan which you thought was badly off-colour, what power have you to act?—A. Well, we would simply write to them. Presumably in a case like that we would have been in correspondence with the central itself which made the investment. But we would certainly ensure next that every member of the association was fully conversant with the investment which had been made, and of our views about it. Primarily it would be a matter which would have to be left to the members themselves to put the pressure on.

Q. You mean to put pressure upon their own directorate?—A. After all, it is their money, and we would have no specific power under the Act to tell them to sell the investment. That might be unwise anyway.

Q. But you would inform all the membership?—A. Under clause 46 they are required to know, and we would see to it that they did, and that the entire membership understood the circumstances surrounding that investment.

Q. I take it that you feel that you have provided about every safeguard which could be provided and still permit these institutions to carry out their

objects?—A. Having regard to the freedom which they have enjoyed over a long period up to date, yes, I feel that this bill goes as far as it is practical to go consistent with the powers which they now enjoy and the functions they desire to perform.

By Mr. Macdonnell:

Q. Do you think it would be possible, feasible, or wise to consult with the provincial authorities, or with your opposite numbers in the provinces in order to make sure whether there is an entire meeting of the mind on this question, because they are the only people who will really come into contact with the bulk of the work as it stands now. You will be having increasing contact with the work, but at the moment you do not.—A. I have no doubt that in practice we shall consult with the provincial authorities from time to time.

Q. I mean more than that. I mean whether—I think Mr. Staples said this morning that he was anxious to have the province of Ontario—if I understood him correctly—would that be true in the case of the other provinces. Would it be possible to have a sort of common approach to them on the part of everyone who is concerned, because it seems to me to be of very great importance.—A. I think it remains to be seen to what extent supervision may be carried out jointly, so to speak, by the Dominion and the provincial authorities. But so far as the powers are concerned that the provincial centrals now enjoy, they are very much wider, on the whole, than in this bill.

Q. Could you give us an example?—A. The Saskatchewan central is one, and the Ontario central is another. I think the Ontario central has the same investment powers as any ordinary corporation under the Companies Act; and so far as the local credit unions in Ontario are concerned, they may invest without limitation in any securities that an insurance company may invest in, and they may invest up to 25 per cent unrestricted as compared with 10 per cent here.

By Mr. Gibson:

Q. Do you feel that we perhaps learned anything from the difficulty or the embarrassment that the Civil Service Credit Union got into temporarily? Do you think that we learned anything from that as to what we might have done with this legislation? That was a first tier one again, while this is a third tier one that we are working on.—A. Frankly, I have not seen the report that is being prepared, or that has been made concerning the difficulties of the local cooperative credit society. But one thing we have endeavoured to do in this bill is to ensure proper auditing. It is not left merely to the credit union to appoint its own supervisory committee or anything of that kind. We have followed the procedure of the Bank Act which requires the auditors for the provincial centrals, or for the Dominion central to be chosen from the panel compiled and filed with the Minister under the provisions of the Bank Act. The same provisions are being made use of here. That, I would say, is one measure that we have taken in the light, partly, of what seems to have happened right here in Ottawa; these provincial centrals and the Dominion central will have proper auditing at all times.

Mr. QUELCH: What about the auditing of local unions?

The WITNESS: This bill has no application to them at all.

Mr. LOW: They are governed entirely by provincial legislation.

The WITNESS: Yes, that is right. This will have no effect on them at all.

By Mr. Macdonnell:

Q. I think you are right when you say that there is some security. It is the judgment of the people who are loaning money. It boils down to this in

most cases even where we go to great pains to stipulate which investments may be made.—A. Take mortgage loans for instance. It is very difficult to provide any limitation for them except perhaps the proportion in reference to the appraised value.

Q. If they do make real estate mortgage loans, are they limited in the same way in that respect as the insurance companies?

The CHAIRMAN: To 60 per cent of the value of the property?

By Mr. Macdonnell:

Q. No, as to the value?—A. I am afraid that raises a question unnecessarily in your minds. People can throw away money in lending on mortgages quite easily. The Dominion central will have no power to lend money on mortgages under this bill.

Q. What about the others who are incorporated under this in the second tier, will they have that power?—A. If they already have the power to lend money on mortgages, then that power will not be taken away from them.

Q. Is it limited in any way, for example, as it is by the regulations affecting insurance companies?—A. In many cases the power to lend on mortgages is as defined now in the Trustee Acts in the provinces, which in most cases stipulate 60 per cent, I think.

Q. That is our own option.—A. Yes.

Q. And no provincial requirements affect that?—A. In that Trustee Act there is.

Q. Let us take Ontario. In the case of a cooperative union lending money in Ontario, is there any limit except their own good judgment as to the percentage?—A. I am not aware of any limit. The situation in Ontario is a bit confusing. They had two acts passed, one in 1928 which was repealed in 1935 and another in 1940.

Q. But it has been explained to us already that this is a group of friends coming together to help each other.

Mr. GIBSON: It is their own money.

Mr. MACDONNELL: Yes, it is their own money.

The WITNESS: That is the main feature. They are dealing with themselves, not with the public.

Mr. LOW: There is no public liability.

The CHAIRMAN: After this Act is passed and parliament incorporates a company pursuant to the Act.

The WITNESS: By special Act.

The CHAIRMAN: Yes, by special Act. Do you include in that special Act any sanctions.

The WITNESS: In the main there would be no special provisions made.

By Mr. Macdonnell:

Q. Will that special Act not be in a prescribed form, or will it be varied from time to time?—A. No model bill was included in this bill Mr. Macdonnell. We did not think it desirable to include a model bill because the model bills which are included in most of our Acts are so elementary; they state little more than the capital and where the head office is to be. In practice any special Act passed for this purpose is certain to be quite simple.

Q. They will have powers and responsibilities.—A. It will state in the special Act that the corporation so incorporated will be subject to the general Act. I have just had handed to me a draft of the special Act that will likely be introduced in Parliament for the purpose of incorporating the Dominion central now envisaged. There are not many clauses in it: the preamble; the

list of incorporators; the cooperative organizations that one declared to be eligible to become members are listed in the schedule; (3) relates to provincial directors; (4) capital; (5) requirements before an association may commence business; (6) head office, and (7) the general Act which applies.

Q. But there is nothing here that refers to its powers at all?—A. Clause 7, states that the Cooperative Credit Associations Act shall apply.

By the Chairman:

Q. Do you have anywhere the power to revoke the charter for an infraction of the Act.—A. Not the charter, Mr. Chairman, but the procedure that will be followed where a Dominion central is incorporated will be somewhat similar to that followed for insurance companies and banks. They will not be able to commence business until, as this bill provides, they receive a certificate from the Treasury Board, and there are provisions in this bill for including appropriate limitations or restrictions in the certificate from time to time, or for the complete withdrawal of the certificate.

Q. The certificate has a provision providing for revocation or withdrawal of the certificate.—A. The Act so provides, or rather the bill before us.

Mr. LOW: If any of the prerequisites for the granting of the charter were to fall below the specified ones in this bill, then of course the charter could be invoked, would automatically be invoked.

The CHAIRMAN: The certificate would be withdrawn and the revocation would be automatic.

The WITNESS: It would be the certificate that would be revoked rather than the charter.

By Mr. Macdonnell:

Q. Referring to the bona fide subscription, can you say what has to be paid up.—A. In clause 4 the authorized capital stock of the association is $1 million. In clause 5 it states: "the association shall not accept money on deposit, or lend money or otherwise carry on business until (*a*) the board of directors has been duly elected or appointed; (*b*) not less than $250,000 of its capital stock has been bona fide subscribed;" and so on. That is the standard requirement for incorporation of loan companies, trust companies, and insurance companies doing only one main class of business.

The CHAIRMAN: Are there any further general questions. Shall we carry on then?

By Mr. Macdonnell:

Q. Under 9 (*a*) it states: "No association has the power to make a loan upon the security of a mortgage;" and so on. Supposing the provincial body has power now, does it take it away from it? I suppose it does.—A. I think not sir. Clause 9 is not one of those named in clause 79 which I mentioned this morning, as being made applicable. Clauses 6, 8 and 10 are. It was not intended to withdraw their mortgage lending powers now, but I may say that so far as these provincial centrals are concerned, the trend now is to get out of mortgage lending altogether. They realize that their main function is short term lending, leaving to insurance companies and trust companies and others the business of lending on mortgage, and the fact is that not many of the provincial centrals have any substantial proportion of mortgages at all. Nova Scotia has, but the specific policy there is to reduce their proportion and the expressed intention of all of them is virtually to get out of mortgage lending altogether; hence there seemed to be no compelling need, as we saw it, to force them out, so to speak.

Q. Would you not agree that under 9 (*a*) you will have some difficulty. Is there not need for an amendment to make that quite clear. If you agree that there is an apparent contradiction that no association has power to make—A. But clause 9 does not apply to provincial centrals.

Q. But an association means a cooperative credit society incorporated by a special Act.—A. Clause 79, subclause 1 says That: "every organization that is carrying on the business of a cooperative credit society (*b*) is declared by parliament to be eligible to become a member of an association—", and so on, "Shall, for the purposes of Parts II and III, be deemed to be a cooperative credit society incorporated by Special Act, and, except as provided in this part, every such organization is invested with all the powers, privileges and immunities conferred on associations by sections 6, 8 and 10, and is subject to the limitations, liabilities and provisions set forth in Parts II and III and in this part."

Only clauses 6, 8 and 10 of Part I apply to these provincial centrals. In other words they are clothed or invested only with primary banking powers to accept deposits and to lend money, but clause 9 is not one of the clauses made applicable to provincial centrals.

Q. I am silenced but not convinced. Under that wording in 9 (*a*) and 2 (*a*) under the interpretation clause, there appears to be some difficulty, but if you will promise to have a look at it, I will say no more about it. I still feel there is a possible ambiguity there.

Mr. Low: I think you could avoid these difficulties if it was understood that a special Act means an Act passed by parliament, and it simply could not possibly refer to provincial associations.

The Witness: I think when we come to discuss Part IV, which includes provisions specifically designed to accommodate these provincial centrals, it may be a little more clear that the whole of this Part I, with the exception of clause 6, 8 and 10, do not apply.

The Chairman: Perhaps it might clarify it if you put on the record now the positive distinction between "association" as defined in 2 (*a*) and "co-opertative credit society" as defined in 2 (*b*).

Mr. Macdonnell: I still draw attention to the fact that in 2 (*a*) it says "association" and says it also in 9 (*a*).

The Witness: That is quite correct, but nevertheless if you look at 79 (1) these provincial centrals are deemed to be a co-operative credit society incorporated by special Act. I agree that means by definition an association, but it does not say that they are an association. However, clause 9 does not apply to any provincial central covered by Part IV.

By the Chairman:

Q. Would you care to put on the record now the distinction between "association" 2 (*a*) and "co-operative credit society" 2 (*b*)?—A. I doubt whether I can improve upon the definition in paragraph 2 (*a*). "Association" means a co-operative credit society incorporated by special Act of Parliament. Paragraph 2 (*b*) relates to a co-operative credit society really without any further limitations, being one that has the power to accept deposits and lend money.

Q. But not incorporated by special act of parliament?—A. That is right.

Clause 9 carried.

Clause 10 carried.

Q. Clause 11, Directors. What are the qualifications of a director? —A. It is left by the bill to the by-laws of the association.

Q. Must he be a shareholder?—A. Not necessarily within their set-up.

Q. Must he be one on the delegates appointed with voting powers for the company he represents?—A. Usually I think the by-laws provide that he must be a member of a member of the association, that is to say he must be a member of the family. He need not necessarily be a shareholder. In fact in the case of the Dominion central, natural persons will not likely hold shares at all.

Q. That is why I ask must he be a delegate of one of those stock holding member companies?—A. It will be left to the by-laws. In many cases I would say he would be or might be, but not necessarily. Mr. Staples, would you care to amplify that statement or make any correction?

Mr. STAPLES: I am sorry I did not hear you clearly.

The CHAIRMAN: The question is as to the qualification of a director. In this clause we are providing for now, practically all if not all of the stock of the company—the capital stock—will be corporately held. Now, there is no proxy voting and so I assume that stock corporately held will be voted by a delegate owning stock. Does the director have to be one of the delegates or not, or can you take him right off the street without any shareholding and make him a director?

Mr. STAPLES: I am not sure that I can answer the question. I doubt whether the members would like an election of the directors restricted to delegates. I think they would restrict them to members of members of the shareholders, if I make myself clear.

Mr. QUELCH: The only restriction must be that he must be a Canadian citizen.

The WITNESS: That is in the bill; the rest is left to the association to determine by by-law; and of course they have a peculiar system of voting, namely, their delegate system as against the proxy vote.

The CHAIRMAN: It is just a single vote for each shareholder no matter how large a shareholder he may be?

The WITNESS: That is right.

Mr. BLACKMORE: Clause 11 pertains only to that kind of association and would there be a special Act of parliament—

The WITNESS: That is correct. None of the provisions of this Part I we are dealing with now, except clauses 6, 8 and 10, apply to provincial centrals.

The CHAIRMAN: Shall clause 11 carry?

Carried.

Clause 12?

The WITNESS: Mr. Chairman, there is a slight amendment in clause 12.

The CHAIRMAN: It is moved by Mr. Quelch that subclause (2) of clause 12 of bill 338 be amended by adding thereto immediately after the word "five" the following words: ", a majority of whom shall be a quorum."

Shall the amendment carry?

Carried.

Shall section 12 as amended carry?

Carried.

Clause 13: "Organization meeting." Shall the clause carry?

Carried.

Clause 14: "Officers." Shall the clause carry?

Carried.

Clause 15: "Presiding officers at board meetings." Shall the clause carry?

Carried.

Clause 16: "Vacancy in office of president or vice-president." Shall the clause carry?

Carried.

Clause 17: "Branch offices and local boards." Shall the clause carry?

Carried.

Clause 18: "General powers of directors." Shall the clause carry? Are there any questions on that clause?

Carried.

Clause 19: "Treasury board certificate." Are there any questions on that clause?

Carried.

Clause 20: "Delegates." Shall the clause carry?

Carried.

Clause 21: "Meetings." Shall the clause carry?

Carried.

Clause 22: "By-laws." Shall the clause carry?

Carried.

Clause 23: "Effect of by-laws." Shall the clause carry?

Carried.

Clause 24: "Powers of directors to make by-laws."

The WITNESS: That is the same as in the Loan Companies Act.

Carried.

The CHAIRMAN: Clause 25: "Copy of by-laws to be filed with superintendent." Shall the clause carry?

Carried.

Clause 26: "Capital stock." Are there any questions on capital stock? You mentioned something of interest being paid on capital stock. Would you care to elaborate on that at all?

The WITNESS: I doubt whether I can add much to what I said this morning, Mr. Chairman. One of the basic principles of cooperatives is to distribute their profits not primarily to the shareholders but to the members in proportion to the business that each member gives to the organization; so, instead of paying dividends in the usual sense or share capital, interest at an average prevailing rate is usually paid instead, and by subclause (5) of clause 26, the maximum rate that may be paid is fixed at five per cent, which is consistent with the practice throughout the credit union field.

The CHAIRMAN: Shall clause 26 carry?

By Mr. Macdonnell:

Q. I have a question on clause 26: "(5) not more than 10 per cent of the issued shares of an association may be redeemed pursuant to this section in any financial year and no such redemption shall be made when the association is insolvent . . ." Is there any provision for publicity in the case of redemption? What is the relevant provision in the case of the Companies Act, do you recall?—A. I cannot say offhand, but in this case or in the case of any credit union, of course, the shares are held by members and it is their privilege to withdraw if they desire to cease to be members.

Q. Yes, but these provisions about redemption have regard to creditors always?—A. Yes.

Q. And that is recognized here when you say it cannot happen if the company is insolvent?—A. They cannot redeem shares at any time beyond the minimum amount required to be subscribed when they commence business.

The CHAIRMAN: Yes.

Shall clause 26 carry?

Carried.

Shall clause 27 carry—calls.

Carried.

Shall clause 28 carry?

Carried.

Now we come to books. We have already referred, Mr. MacGregor, to the audits. What is the appropriate section in regard to the audit?

The WITNESS: That is in Part II, because naturally any such provision as that must apply to the provincial centrals as well as to the Dominion central.

The CHAIRMAN: Shall clause 29 carry?

Carried.

Shall clause 30 carry?

Carried.

Shall clause 31 carry?

Carried.

Shall clause 32 carry?

Carried.

Shall clause 33 carry?

Carried.

Shall clause 34 carry?

Carried.

Shall clause 35 carry?

Carried.

Shall clause 36 carry?

Carried.

Shall clause 37 carry?

Carried.

The WITNESS: Those are all pretty standard clauses from the Companies Act.

The CHAIRMAN: Yes, I notice that.

Shall clause 38 carry?

Carried.

Shall clause 39 carry?

Carried.

Shall clause 40 carry?

Carried.

Shall clause 41 carry?

Carried.

Shall clause 42 carry?

Carried.

Now we reach Part II.

Shall clause 43 carry?

The WITNESS: I might emphasize at this point that Part II and Part III apply not only to the Dominion central but to every provincial central that may be a member of the Dominion central.

The CHAIRMAN: Shall clause 43 carry?

Carried.

Clauses 44, 45 and 46.

Shall we discuss them together, and are there any questions? This refers to loans and investments.

The WITNESS: Perhaps I might make a few comments, Mr. Chairman. Clauses 44 and 45 are designed to ensure a reasonable measure of liquidity in reference to the deposits that any central may have on hand, and the principles set forth in clauses 44 and 45 are taken from the Quebec Savings Bank Act and from the Loan Companies Act. They say in effect that each central must at all times maintain at least five per cent of its deposits in cash and at least another 15 per cent in top grade government securities. Clause 44 relates only to the cash provision and clause 45 relates to an overall minimum of 20 per cent in government securities or cash.

The CHAIRMAN: Should you decide to accept an amendment in regard to treasury branch's or provincial savings banks, these clauses also should be amended?

The WITNESS: I have just been handed this note. Mr. Melvin, secretary of the Co-operative Union of Canada, has telephoned to the Alberta co-operative central and they say that they have no objection to clause 8 (1) (*d*) as it now stands and do not ask for any amendment along the lines that were suggested. I understand that Mr. Melvin has mentioned that to Mr. Low.

The CHAIRMAN: That is out, then.

Shall clauses 44 and 45 carry?

Carried.

By Mr. Macdonnell:

Q. I suppose I should have asked this question under clause 8. It is wide open under clause 8 for unions to invest, I suppose, all their funds in school corporations?—A. Yes. There is no distinction between governments and schools.

Q. I suppose it is impossible to put in a distinction on that, but if my memory serves me right, there have been times when some school corporation bonds were not salable at par. I imagine it is something that cannot be touched. You considered, I suppose, whether there could be any proportion set out between Dominion government and provincial and other securities? Would it be going too far to say that there would be cases where there would be strong local loyalties and perhaps strong local reasons for investing perhaps more than they otherwise would have liked to do in school bonds which might turn out not to be 100 per cent. Would it be against the wishes, or perhaps with the wishes of the unions if they were limited a bit there?—A. I should think that danger, Mr. Macdonnell, might arise more in the locals than in the Dominion or provincial centrals.

Q. I suppose that is true.—A. We hesitated to suggest any internal limitation within the group of public securities since there is nothing of that kind now in any of our Dominion legislation relating to insurance companies, banks and loan companies. I am afraid it is almost impossible to legislate wisdom into the minds of the managers. I am afraid it is impossible to spell out in legislation safeguards in too great detail.

Q. Yes, I think probably that is right.

The CHAIRMAN: Shall clause 8 as amended carry?
Carried.

Shall clause 46, loans to any one member, carry?
Carried.

Shall clause 47 carry?
Carried.

Shall clause 48 carry?
Carried.

Shall clause 49 carry?
Carried.

Shall clause 50, distribution of earnings, carry? Any questions?
Carried.

By Mr. Low:

Q. Will you revert to clause No. 48, Mr. Chairman? I am just wondering if you might not be limiting an association here a little unnecessarily. There are often opportunities for making a nice capital gain for the association, if they are able to invest a bit in securities on which there may be some default.—A. That is the standard provision in every one of our Dominion Acts. I am aware of a little gambling that has been attempted sometimes that way, but I think it is a risky kind of an investment to make and I should certainly feel happier with a strict prohibition against it; sometimes one has inner knowledge but that may not be too dependable.

Mr. MACDONNELL: It is instinct, not knowledge.

Mr. LOW: Most corporations which have decent securities eventually are going to be pretty careful to see that they are brought back to par. I was thinking that perhaps an association might feel like picking up some of those depressed securities and making a capital gain on them when they are brought back.

The WITNESS: They might make some capital gain, but I think they should be investing from a sounder point of view, free of any speculative element. I think any investments they do make should certainly be top grade investments because of the fact that their lending powers are so broad. Certainly any investment they make should be first class and liquid. I would be very reluctant to see the door left open to permit them to purchase securities in default, even in a narrow way.

The CHAIRMAN: We shall leave that for Members of Parliament.

Shall clause 51 carry?
Carried.

Shall clause 52 carry?
Carried.

Shall clause 53 carry?
Carried.

Shall clause 54 carry?
Carried.

Shall clause 55 carry?

By Mr. Macdonnell:

Q. Clause 55 reads as follows:

Superintendent

55. (1) The Superintendent may visit personally, or cause a duly qualified member of his staff to visit, the head office of any association, whenever he deems it necessary as the result of an examination of the statements filed by the association or of the auditor's report, or as the result of information coming to his attention from any other source, and examine the condition and affairs of the association, and report thereon to the Minister as to all matters requiring the Minister's attention and decision.

(2) The officers of such association shall cause the books of the association to be open for the inspection of the Superintendent, and shall otherwise facilitate such examination so far as it is in their power.

(3) For the purpose of such inquiry, the Superintendent may examine under oath the officers, clerks or servants of the association.

(4) The Superintendent may if he deems it necessary nominate an auditor from the list referred to in section 53 to make a special audit, and the auditor so nominated may audit the books, accounts and securities of the association and shall report thereon to the Superintendent.

(5) The expenses of a special audit made under subsection (4) shall be borne by the association, and the auditor's account therefor when approved in writing by the Superintendent is payable by the association forthwith.

Is that limited, or is that the end of it? Can he go further, if he wants to?—A. He may. First of all, of course, he has the annual statement which is required to be filed under clause 51, on or before March 1 of each year.

Q. Yes?—A. Then, on the basis of information that he may get from that or from any other source, or from a personal examination at the head office as often as he wishes, I think that the superintendent should be in a reasonable position to know what is going on.

Under subclause 4 of clause 55 the superintendent is empowered, if he deems it necessary, to nominate an auditor from the panel prepared under the Bank Act, to make a special audit. Clause 53, which was passed over rather quickly, relating to auditors—I should have said clause 54 subclause (3), reads as follows:

(3) The auditor shall make a report to the Superintendent with respect to the accuracy of the statement required by section 51 to be deposited in the Department, and shall also report to him upon the adequacy of the procedure adopted by the association to safeguard the interests of its creditors and members and as to the sufficiency of his own procedure in auditing the affairs of the association.

Subclause (4) reads:

(4) The auditor shall disclose to the Superintendent any matters or circumstances that have come to his knowledge or attention during the course of the audit that would in his opinion assist the Superintendent in the administration of this Act; and the Superintendent may enlarge or extend the scope of the audit and direct that any other or particular examination be made or procedure established.

So you see that the superintendent has a number of sources of information, the statement, the audit, a personal examination, and by direct correspondence.

The CHAIRMAN: And you report to the minister if you deem that a special report is necessary?

The WITNESS: Under clause 56 the superintendent is required to report as follows:

> 56. The Superintendent shall prepare for the Minister an annual report giving particulars of the condition and affairs of each association.

As you will see, the superintendent is required to make an annual report to the minister setting forth any comments which he may think appropriate. And later on, if conditions are bad, the superintendent is required to make a special report to the Treasury Board, and it may go to the Governor in Council if the situation is serious enough and the certificate may be withdrawn altogether, in which case the central is deemed to be insolvent.

By Mr. Smith:

Q. In connection with clause 56, what does that cover? Does it cover each association?—A. The Act is written as though there may be a good many. But as matters stand, there will be probably be the one Dominion association plus the provincial centrals which are members of it and come under this Part.

Q. They would not go on down to the locals?—A. Oh, no, sir.

The CHAIRMAN: Does clause 56 carry?

Carried.

Does clause 57 carry?

Carried.

Does clause 58 carry?

Carried.

Does clause 59 carry?

Carried.

Does clause 60 carry?

By Mr. Macdonnell:

Q. Just a second. Is that clause 60 a new provision or is there any other place where you have an appeal to the Exchequer Court?

Clause 60 reads as follows:

> 60. (1) An appeal lies in a summary manner from the ruling of the Superintendent as to the admissibility of any asset not allowed by him, or as to any item or amount added to the liabilities, or as to any correction or alteration made in any statement, or as to any other matter arising in the carrying out of the provisions of this Act, to the Exchequer Court of Canada, which court has power to make all necessary rules for the conduct of appeals under this section.
>
> (2) For the purposes of any appeal the Superintendent shall at the request of the association concerned give a certificate in writing setting forth the ruling appealed from and the reasons therefor, but the ruling is binding upon the association unless the association within fifteen days after notice of the ruling serves upon the Superintendent notice of its intention to appeal therefrom, setting forth the grounds of appeal, and within fifteen days thereafter files its appeal with the

Registrar of that court and with due diligence prosecutes the same, in which case action on such ruling shall be suspended until the court has rendered judgment thereon.

A. In the Canadian and British Insurance Companies Act it appears as section 74, and we have had appeals to the Exchequer Court.

The CHAIRMAN: Does clause 60 carry?

Carried.

Does clause 61 carry?

Carried.

Does clause 62 carry?

Carried.

Does clause 63 carry?

Carried.

Does clause 64 carry?

Carried.

Does clause 65 carry?

Carried.

Does clause 66 carry?

Carried.

Does clause 67 carry?

Carried.

Does clause 68 carry?

Carried.

Does clause 69 carry?

Carried.

By Mr. Macdonnell:

Q. Just a minute, Mr. Chairman. Clause 69 reads as follows:

69. If any loan is made by an association in violation of the provisions of this Act, all directors and officers of the association who make the loan or assent thereto are jointly and severally liable, up to the amount of such loan with interest, to the association and also to creditors of the association, for all debts of the association then existing or contracted from the time of the making of such loan to the time of the repayment thereof.

A. That was taken from the Companies Act and from the Insurance Act. It appears there, I think, almost verbatim, but I am sorry that I do not understand your question.

Q. Your only point is that you are making them liable, but in practice they would be only liable for the actual loss. Suppose the loan did not turn out to be so bad?

The CHAIRMAN: Does clause 69 carry?

Carried.

Does clause 70 carry?

Carried.

Does clause 71 carry?

Carried.

Does clause 72 carry?
Carried.

Does clause 73 carry?
Carried.

Does clause 74 carry?
Carried.

Does clause 75 carry?
Carried.

Does clause 76 carry?
Carried.

Does clause 77 carry?
Carried.

Does clause 78 carry?
Carried.

Does clause 79 carry?

PART IV

CO-OPERATIVE CREDIT ORGANIZATIONS

79. (1) Every organization that

(*a*) is carrying on the business of a co-operative credit society,

(*b*) is declared by Parliament to be eligible to become a member of an association, and

(*c*) is registered on the books of the association as a shareholder thereof, shall, for the purposes of Parts II and III, be deemed to be a co-operative credit society incorporated by Special Act, and, except as provided in this Part, every such organization is invested with all the powers, privileges and immunities conferred on associations by sections 6, 8 and 10, and is subject to the limitations, liabilities and provisions set forth in Parts II and III and in this Part.

(2) Subsection (1) shall not come into force with respect to an organization until the organization has been granted a certificate by the Treasury Board under this Part.

The WITNESS: Clause 79, Mr. Chairman, in Part (4), is designed to accommodate the existing provincial centrals which become members of the Dominion central and become subject to this Act. Clause 79 subclause (1) sets forth the primary qualifications which they must have. They must be a cooperative credit society. It does not say they are incorporated by a special Act or anything else, but they must be a cooperative credit society. Subparagraph (*b*) reads:

> is declared by Parliament to be eligible to become a member of an association, and

In the special Act the provincial centrals that have now come forward are named and listed in the appendix, and they are declared, or they will be declared in the special Act to be eligible to become members.

By the Chairman:

Q. And they must hold a certificate from the Treasury Board?—A. Later.

Q. And that too is subject to being withdrawn.—A. The same as with the Dominion central. They must have the primary qualifications which are set forth in clause 79 subclause (1): and then clause 80 sets forth the requirements which they must meet before the Treasury Board may grant a certificate to any of them.

The CHAIRMAN: Shall clause 79 carry?

Carried.

Shall clause 80 carry?

Carried.

Shall clause 81 carry?

Carried.

Shall clause 82 carry?

Carried.

Shall clause 83 carry?

Carried.

Shall clause 84 carry?

Carried.

Shall clause 85 carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill as amended?

Carried.

Thank you, gentlemen. We have been working this committee rather hard lately. May I have a motion to print? How many copies do you think we should print, Mr. MacGregor? Have you any idea of what demand you will have for this record?

The WITNESS: I do not think there will be any large demand for it.

The CHAIRMAN: Mr. Quelch moves that we print 750 copies in English and 200 copies in French. Does the motion carry?

Carried.

Thank you.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: HUGHES CLEAVER, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

Bill No. 316 (Letter R-3 of the Senate),

An Act relating to Trade Marks and Unfair Competition.

TUESDAY, APRIL 28, 1953

WEDNESDAY, APRIL 29, 1953

WITNESSES

Mr. Harold G. Fox, Q.C., Chairman; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. J. C. Osborne, and Christopher Robinson, Q.C., representing the Patent Institute of Canada, and Charles Stein, Q.C., Under Secretary of State, all members of the Trade Mark Law Revision Committee.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Hughes Cleaver, Esq.

Vice-Chairman: C. A. D. Cannon, Esq.
and Messrs.

Adamson	Fulton	Maltais
Argue	Gibson	McCusker
Arsenault	Gingras	McIlraith
Ashbourne	Gour *(Russell)*	Nickle
Balcom	Harkness	Nowlan
Bennett	Hees	Picard
Blackmore	Hellyer	Quelch
Brooks	Helme	Richard *(Ottawa East)*
Cameron	Henry	Riley
Cannon	Hunter	Smith *(Moose Mountain)*
Carroll	Jeffery	Stewart *(Winnipeg North)*
Cleaver	Laing	Thatcher
Crestohl	Leduc	Viau
Dumas	Lesage	Ward
Fleming	Low	Weybourn
Fraser	Macdonnell *(Greenwood)*	White *(Hastings-Peterborough)*
Fulford	Macnaughton	

R. J. GRATRIX,
Clerk of the Committee.

ORDER OF REFERENCE

TUESDAY, April 21, 1953.

Ordered,—That the following Bill be referred to the said Committee:

Bill No. 316 (Letter R-3 of the Senate), intituled: "An Act relating to Trade Marks and Unfair Competition".

Attest.

LEON J. RAYMOND,
Clerk of the House.

REPORT TO THE HOUSE

WEDNESDAY, April 29, 1953.

The Standing Committee on Banking and Commerce begs leave to present the following as an

EIGHT REPORT

Your Committee has considered Bill No. 316 (Letter R-3 of the Senate), intituled: "An Act relating to Trade Marks and Unfair Competition", and has agreed to report the said Bill with amendments.

A copy of the evidence adduced thereon is appended hereto.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, April 28, 1953.

The Standing Committee on Banking and Commerce met at 11:30 o'clock a.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Blackmore, Brooks, Cameron, Cannon, Crestohl, Dumas, Fleming, Fraser, Gingras, Gour (*Russell*), Helme, Jeffery, Leduc, Macdonnell (*Greenwood*), McCusker, McIlraith, Quelch, Richard (*Ottawa East*), Smith (*Moose Mountain*), Ward, Welbourn.

In attendance: The Hon. Gordon Bradley, Secretary of State, and members of the Trade Mark Law Revision Committee, as follows:

Mr. Harold G. Fox, Q.C., Chairman.

Mr. J. P. McCaffrey, Registrar of Trade Marks.

Mr. J. C. Osborne, and Christopher Robinson, Q.C., representing the Patent Institute of Canada.

Mr. Charles Stein, Q.C., Under Secretary of State.

The Committee commenced consideration of Bill No. 316, An Act relating to Trade Marks and Unfair Competition.

The Chairman called clause 1 of the said Bill.

Messrs. Stein, Fox and Osborne were severally called and questioned on the main features of the bill, including the changes of princple proposed in the existing law.

At 1:00 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. this day.

AFTERNOON SESSION

The Committee resumed at 3:30 o'clock p.m. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Blackmore, Dumas, Fraser, Gingras, Gour (*Russell*), Helme, Hunter, Jeffery, Leduc, Macdonnell (*Greenwood*), Richard (*Ottawa East*), Viau, Ward.

In attendance: Same as at the morning session.

The Committee concluded the discussion on the main features of Bill No. 316, An Act relating to Trade Marks and Unfair Competition: Mr. Fox being further examined thereon.

Mr. Robinson was also called and questioned.

Thereupon the Committee commenced a clause by clause consideration of the said Bill.

Clause 1 was adopted.

Clauses 2 to 5 inclusive were severally considered and adopted.

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After discussion clause 6 was allowed to stand.

Clauses 7 to 9 inclusive were severally considered and adopted.

Clause 10 was called and the debate still continuing thereon, the Committee adjourned at 5:30 o'clock p.m. to meet again at 11:30 o'clock a.m., Wednesday, April 29, 1953.

R. J. GRATRIX,
Clerk of the Committee.

WEDNESDAY, April 29, 1953.

The Standing Committee on Banking and Commerce met at 11.30 o'clock a.m. this day. Mr. Cleaver, Chairman, presided.

Members present: Messrs. Ashbourne, Bennett, Cannon, Dumas, Fleming, Fraser, Fulford, Gour (*Russell*), Helme, McCusker, Richard (*Ottawa East*), Viau, Welbourn.

In attendance: The Hon. Gordon Bradley, Secretary of State, and members of the Trade Mark Law Revision Committee, as follows:

Mr. Harold G. Fox, Q.C., Chairman.

Mr. Willis George, representing the Canadian Manufacturers' Association.

Mr. J. P. McCaffrey, Registrar of Trade Marks.

Mr. J. C. Osborne, and Christopher Robinson, Q.C., representing the Patent Institute of Canada.

Mr. Charles Stein, Q.C., Under Secretary of State.

The Committee resumed the clause by clause consideration of Bill No. 316, An Act relating to Trade Marks and Unfair Competition.

Clauses 10 to 68 inclusive were severally considered and adopted.

Clause 6, allowed to stand at the previous meeting, was called.

On clause 6:

Mr. Fulford, on behalf of Mr. Jeffery, moved:

That clause 6 be amended by substituting the words *would be* for the word "is" where it appears in the third line of each of subclauses (2), (3) and (4).

After discussion, and the question having been put, the said amendment was adopted.

The clause, as amended, was adopted.

The Title was considered and adopted, and the Chairman ordered to report the said Bill to the House, with amendments.

During the course of the proceedings Mr. Fox and Mr. McCaffrey answered questions specifically referred to them.

On motion of Mr. Fulford.

Resolved:—That the Committee print 750 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence in respect of Bill No. 316.

At 12:35 o'clock p.m., the Committee adjourned to meet again at the call of the Chair.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

APRIL 28, 1953
11.30 a.m.

The CHAIRMAN: Gentlemen, we have for consideration this morning Bill R3 of the Senate, an Act relating to Trade Marks and Unfair Competition. The Secretary of State, Mr. Bradley, is with us and we also have several members of the Trade Mark Law Revision Committee: Mr. Harold G. Fox, Q.C., chairman; Mr. J. P. McCaffrey, Registrar of Trade Marks; Mr. J. C. Osborne and Christopher Robinson, Q.C., representing the Patent Institute of Canada; and Mr. Charles Stein, Q.C., Under Secretary of State. I shall call clause 1.

Mr. RICHARD: Mr. Chairman, I suppose that someone on behalf of the committee, or either the minister or the under secretary, could make a brief statement as to the contents of this new Act to acquaint members generally with it.

The CHAIRMAN: What I had in mind was calling on the Under Secretary of State first. Members of the committee have copies of the report of the Trade Mark Law Revision Committee dated January 20, 1953.

Mr. MACDONNELL: Today we have it. I do not know if anyone feels as I do, but I feel that I need a lot of education on this matter if I am not going to be a mere rubber stamp. I see a battery of experts here on this subject and I hope we will get from them some education on this.

The CHAIRMAN: Our views are strictly parallel, Mr. Macdonnell.

Mr. CHARLES STEIN, Q.C. (Under Secretary of State): Of course, first of all this is a bill to revise the law relating to trade marks and unfair competition, which is now contained in the Unfair Competition Act of 1932. Now, if I may, I would like to just give you the main features, the changes this bill would make in the existing law, and then Mr. Fox and Mr. Osborne will give you any additional explanation you wish and answer any questions you may want to ask.

The first point in the bill is the elimination of the arbitrary division into word marks and design marks which was introduced by the Unfair Competition Act of 1932, and in that connection you will find comments and explanations at pages 13 and 14 of the advisory committee's report.

The second point is a more adequate definition of what constitutes a trade mark in the light of modern commercial practice. On that, I would refer you to pages 6 and 10 of the report.

The third point is the applicability of trade marks to services in addition to wares. Just now it applies only to goods or wares, but if the bill becomes law it will extend to services in addition. In that connection, I would refer you to pages 14 and 15 of our report.

The fourth, relaxation of the rigid rules presently governing the assignment, transfer and licensing of trade mark rights. You will find explanations of that on pages 38 and 39 of the report.

The fifth, clarification of the principles governing ownership of trade marks in Canada and the persons entitled to registration, including a new provision giving the right to file an application for registration prior to commencing actual use. In that connection, I would refer you to pages 27 and 30 of the report.

The sixth, provision for publication of trade mark applications and for oppositional procedure. Page 32 of the report.

Seventh and last provision, with respect to the use of marks in export trade as a basis for trade mark rights in Canada. I would refer you to pages 16 and 17 of the report on that.

Now, having said that, I think I cannot do better than let the members of the committee ask questions, which Mr. Fox, Mr. Osborne or Mr. Robinson can answer.

The CHAIRMAN: May I have your memo, please. I would suggest it might be helpful if we would call these different subjects in the order outlined by the under secretary, and I will first call the first point, elimination of the arbitrary division of trade marks into word marks and design marks.

Mr. RICHARD: I think we should have some comments on that, maybe from Mr. Fox, Mr. Chairman, in order to explain to other members of the committee maybe what word and design marks are, and what is being done now. Some members do not know the difference between a word mark and a design mark. Or perhaps, Mr. Chairman, Doctor Fox will, no doubt, start by the beginning and tell us what is a trade mark at present and how they are divided at present, and what will be a trade mark in the future and how they will be constituted in future. That is the broad question, is it not?

Harold G. Fox, Q.C., Chairman, Trade Mark Law Revision Committee, called:

The WITNESS: Under the present Act, the Unfair Competition Act of 1932, trade marks are divided into two mutually exclusive classes. Prior to 1932 under the Trade Mark and Design Act, which was the statute then in force, a trade mark consisted of any word, symbol, device, numeral, and so on, whatever its form, which was used in association with goods to indicate a connection in the course of trade with the manufacturer or seller. In 1932 the arbitrary separation that I have mentioned took place, in which you had two distinct types of trade marks; one was a word mark, which was defined in section 2 (o) of the Unfair Competition Act as depending for its distinctiveness upon the idea or sound suggested by the sequence of letters or numerals. Then, as opposed to that, you had a design mark defined in section 2 (c) of the Unfair Competition Act as follows:

> "Design mark" means a trade mark consisting of an arbitrary and in itself meaningless mark or design, or of a representation of some object or objects, or of letters or numerals in series or otherwise, or of a combination of two or more of the foregoing elements, and depending for its distinctiveness upon its form and colour, or upon the form, arrangement or colour of its several parts, independently of any idea or sound capable of being suggested by the particular sequence of the letters and/or numerals, . . .

Now, the result of that was that a great many trade marks which were really composite marks—as, for instance, a triangle with the word "Bass" written across it for a commodity which some of you may know about. The trade mark as really used was the triangle with the word written across it, but according to the statute that could not be registered. You had to register the word "Bass" by itself and then you had to register the triangle, and go into some sort of a metaphysical description by sayiny, 'letters of the alphabet written thereacross'. The Supreme Court of Canada held, in the Magazine Repeating Razor case, which is referred to in the committee's report, that when looking at a design mark, which was composed in part of any letters of the alphabet forming a word or otherwise, the words had to be emptied

of all meaning, so that if you had a word written in a distinctive form registered as a design mark only, anybody else could come along and use the same word in ordinary block printing without infringing the design mark. I may add, Mr. Chairman and gentlemen, that Canada is the only country in the world that made that artificial distinction between word marks and design marks. In all other jurisdictions, including the United States and the United Kingdom, a registration applies to the trade mark as actually used and to all its essential features, and these composite marks were registerable in their essential particulars.

By Mr. Macdonnell:

Q. Why do you use the phrase: the words have to be emptied of meaning? I understand by that they had to have something more than their ordinary significance?—A. Perhaps I have not made myself clear, Mr. Macdonnell. What I am speaking of is a trade mark consisting of letters or, in part, of letters registered as a design mark, and that is registered in respect of their particular form rather than any idea suggested by the sequence of letters. The mark in the Magazine Repeating Razor case was the word "Schick"—you all know the Schick razor—the word "Schick" in a distinctive form. The question came up as to its protection as a design mark, and Chief Justice Duff pointed out, and the words he used were something as follows: "That in examining the protection to be accorded to a word written in a distinctive meaning you must look only at the design and form of arrangement and that the letters of the word had to be emptied of all meaning."

I cannot explain what he meant by that other than, that it only was the arrangement and the script or particular form of the letters which could be regarded and not the meaning of the word itself.

Q. What did the judgment turn on in that case?—A. The judgment really turned on a question of licence.

Mr. JEFFERY: I think there is one question that we might have settled, so that we will be able to evaluate what is being set. Is this legislation going to be retroactive in any way to upset any marks, etc., that are now registered or any trade marks now being processed?

The WITNESS: No, no. All marks previously registered whether under the old Trade Mark and Design Act or under the Unfair Competition Act, and in effect, are preserved in the status they have up to the time of the passing of the bill. There is no retroactivity here at all.

The CHAIRMAN: And will registration under the new Act give them additional benefits?

The WITNESS: I would not say additional benefits, Mr. Chairman. There may be some of these composite marks that people may like to re-register in one single mark rather than two as they had them before, but it is not necessary for protection.

Mr. RICHARD: Under this new Act will the old trade marks be renewable under the old provisions?

The WITNESS:: Yes, they will be renewable under the old provisions, which are imported into the present bill. Mr. Stein calls my attention to that provision in the bill, which you will find in section 26 (3) of the bill.

> (3) The register kept under *The Unfair Competition Act, 1932,* of the *Unfair Competition Act,* chapter 274 of the Revised Statutes of Canada, 1952, forms part of the register kept under this Act and, subject to subsection (2) of section 43, no entry made therein, if properly made according to the law in force at the time it was made, is subject to be expunged or amended only because it might not properly have been made pursuant to this Act.

The CHAIRMAN: Have you any further questions, Mr. Jeffery, on that point?

Mr. JEFFERY: No.

By Mr. Richard:

Q. Is Dr. Fox going to explain to the committee—I am not speaking for myself so much—but I think it would be a good thing is some members of the committee could know exactly what a trademark is under the present law and what it will be in the future.—A. I was trying to keep clear of that, Mr. Richard, but I am perfectly willing to do so.

Q. I think it is a first point.

The CHAIRMAN: I think that will come up under point No. 2. Shall we clear point No. 1, "The elimination of those arbitrary divisions"?

By Mr. Macdonnell:

Q. I have one question on that. You have explained that there is nothing restrictive. I thought that a man who is getting a trademark registered under the principle of division—supposing he comes along and starts to register it under the new principle. Will the new proposal have to be considered entirely on its own merits under the Act as it is now, or will the fact that he had two elements before, in the double form, permit him to coalesce them under one?—A. The fact that he did have two before will prevent anybody else from registering any part of it in the interim; so there will be a clean slate for him to go ahead and register them as a composite mark.

By Mr. Cameron:

Q. Do you consider the amendment is distinctly important?—A. Yes, definitely. The committee considered all the provisions of the bill to be definite improvements over the law presently existing. Before the committee commenced its labours, it sent out comprehensive questionnaires to all those people and organizations that it considered would be interested in trademarks and in trademark law. The Canadian Manufacturers' Association took that questionnaire and reprinted it and sent it out to all of its members across Canada. We have had a great many representations from individuals, lawyers, and organizations in Canada such as the Patent Institute of Canada, the Canadian Manufacturers' Association, the Toronto Board of Trade, and from foreign bodies such as the United States Trademark Association, the Chartered Institute of Patent Agents of London, England, and the Patents, Designs and Trademarks Federation of London, England. Unhesitatingly they all recommended the abolition of the distinction between design marks and word marks. Nobody was in favour of it at all.

By Mr. Quelch:

Q. Has any opposition been expressed by any of these organizations with respect to any of the provisions of this bill?—A. Oh yes.

Q. Are you going to mention as we go along the cases where opposition has been met with?—A. I doubt if I can do that, Mr. Quelch. I can only say that opposition has been expressed all the way through.

This is a seventh printing of the bill which has been circulated. Several of them have been circulated to each person who made representations to us at any time. He would receive a copy of each printing of the bill. A great number of representations or objections died out as we took care of the representations that were made. I think it is fair—and I do not think I am leaning backward—when I say that today there is no substantial opposition,

and no substantial quarrel with this bill except in one particular. That was a matter which was urged before the Senate committee, and it may not be necessary to discuss it here today, but I do not know.

The CHAIRMAN: What was that objection?

The WITNESS: The Blue Cross Hospital Association desired to have incorporated in the bill a prohibitory subclause protecting their mark in exactly the same manner as the Red Cross symbol was protected under the Geneva Convention. But the Senate committee did not see fit to go along with that recommendation, and I might say that my committee is also in accord with them.

By Mr. Macdonnell:

Q. I am interested in Mr. Quelch's suggestion and I am happy that Dr. Fox has answered almost wholly his question by saying that the objections have been eliminated. But I think it is only right and proper for us to know if there are any sections as to which there was any substantial objection from responsible people.—A. To answer you specifically, Mr. Macdonnell, I would say that to the best of my knowledge, outside of this Blue Cross matter which I have mentioned, I know of no substantial objection to any clause in the bill. My colleagues agree with that statement.

The CHAIRMAN: Shall I now call the second paragraph "More adequate definition of what constitutes a trademark in the light of modern commercial practice"?

Would you care to elaborate on that?

Mr. RICHARD: That includes pages 6 to 10.

The CHAIRMAN: Starting out by defining what is a trademark, as suggested by Mr. Richard.

The WITNESS: Gentlemen, if you will look at the old definition of a trademark—perhaps I should not say "old", but the present definition, as found in the Unfair Competition Act, section 2(*n*), you will notice that it defines a trademark as a symbol which has become adapted to distinguish particular wares falling within a general category from other wares following within the same category; and the statute then goes on to add certain things to the definition. It is to those words "adapted to distinguish" that I would like to draw the attention of the members of this committee. The words "adapted to distinguish" have received very unhappy treatment at the hands of the courts. I hope not to be too legal when I talk, but I will have to give you a slight amount of history in order to explain what I mean.

About 1910, in England, in the Court of Appeal, there came for decision an appeal relating to the right of Joseph Crosfield and Son to register the word "Perfection" as applied to soap. There was a good deal of use back of it and the evidence showed that the mark had become, in fact, distinctive of the applicant's soap. The Court of Appeal pointed out that the statute not only required the mark to be in fact distinctive of the applicant's goods, but it also required the mark to be one which was adapted to distinguish those goods: in other words, that it had to have certain inherent characteristics.

The Master of the Rolls pointed out that there were some words which could never become adapted to distinguish, no matter how long they were used. Those would be such words as "good", "best", "super-fine", and "perfection". And on that basis, the application for the registration of the word "perfection" was refused.

Quite recently the matter came up in our own courts when an application was made to register "Superweave" as a trade mark applied to textiles.

Under the Unfair Competition Act presently existing, and under the old Trademark and Design Act, the law substantially was this: that in order to register a trademark it had to have a distinctive character. Among the bars to normal registration was that the word was descriptive of the character or quality of the goods to which it was applied, or was geographic in origin, or consisted of the name of a person. So you had a lot of words which in the first instance were refused registration because they did nothing more than to describe the characteristics and the quality of the goods. For instance, you could not take a refrigerator and call it a "cold air" refrigerator, because, after all, that is all that a refrigerator is. And also you could not take a stove and call it a "warm heat" stove, because that is what it is.

Under the old law—and also under the presently existing Unfair Competition Act—there was a procedure whereby you could establish that, through long and continued use, your trade mark had become so known all across Canada that the average purchaser would disregard that descriptive meaning and would immediately say "Well, this represents the goods of so and so." For example, the trade mark "Ford" is only the name of a man called Ford. Normally, "Ford" refers to an individual by the name of Ford but today and for many years past, everybody in speaking of a Ford knows that it means an automobile manufactured by the Ford Motor Company down at Windsor, or in Detroit in the United States. So it has always been felt that those highly publicized names, surnames, should be registrable and that descriptive words should also be registrable on the same basis because they had lost their primary significance and acquired a secondary trademark significance, describing or denoting the person who was responsible for the goods being on the market.

By Mr. Macdonnell:

Q. Yet you have said that the word "Perfection" was refused?—A. Yes. It was refused on the basis that it was nothing more than a mere laudatory epithet. It was like saying "best" soap, or "super fine" soap. Those were words which the court held that everybody should be free to use. It did not matter how long you used them.

By Mr. Crestohl:

Q. Do you think that the word "Hotpoint" would be a case in point?—A. That was decided in England not to be in the same class as "perfection", but in the first class I spoke of, namely, descriptive, and therefore a word which could acquire a secondary meaning.

Q. That is right.—A. Some three or four years ago the word "Superweave" was submitted for registration as applied to the sale of textiles and the registrar quite properly, under the statute, refused registration. The applicants then went to the Exchequer Court under the procedure outlined in section 29 of the Unfair Competition Act, and brought proof that the trade mark had acquired a distinctive secondary meaning by the long and widespread user which I have mentioned. The Exchequer Court then ordered its registration. Thereupon the department appealed to the Supreme Court of Canada and that court held that the word mark "Super weave" was nothing more than one of those laudatory epithets such as "super fine", "perfection" and so on, and that no amount of user could ever make it a distinctive trade mark in the sense of becoming adapted to distinguish. The committee feels that that situation ought not to be permitted. If a trademark in the commercial life of this country does in fact distinguish a trader's goods, no matter what the character of the words are and even if the word is descriptive in fact, then we ought to get away from this artificial rule of its not being adapted to distinguish.

By Mr. Crestohl:

Q. Who will be the authority to determine that?—A. You mean to decide whether it is adopted to distinguish?

Q. Yes.—A. In the first case, it will be the registrar, but upon appeal, it will be the court. We feel that the doctrine of being adapted to distinguish is purely an artificial doctrine.

By Mr. Macdonnell:

Q. Is it a well accepted doctrine in England?—A. Yes, and over here.

Q. And what about the United States?—A. No, not in the United States. It never did exist in the United States. As long as a mark was descriptive in fact, then it was registrable and protected.

Q. Might I interject one question: Would you also say something about how far it is important to have uniformity? How much confusion or difficulty is caused if you have one law here, and they have another law in England?—A. I think the only thing I can say is that we draw on the experience of our friends in England and in the United States. I do not think there is any clash if you have different laws so long as the procedure under the International Convention is adequately taken care of, which it is by this bill.

Mr. RICHARD: You are not saying that in the United States today you could register the word "perfection" for soap?

The WITNESS: I do not see why not; if it is distinctive you can register it.

By Mr. Cameron:

Q. Do you not think that anyone who wanted to use one of those words, which had a primary significance and which now have a secondary significance such as "Ford", would have a great deal of difficulty in getting registration under this Act? Take your "Super weave". Why did you state that it was a good word? Did they have any past history of having used it?—A. "Super weave" had a very long past history.

Q. This may not be good legislation. But suppose some one coins what he thinks is a good word as being descriptive of his product. He would have no past record of having used it.

By Mr. Jeffery:

Q. Some mention was made of the fact that it could be registered before use. How will that fit into this question?—A. I did not understand your question.

Q. You mentioned that a word could receive registration before use under this Act. How will that fit in with Mr. Cameron's question?—A. A trade mark statute ought as much as possible to discourage registration of descriptive words which are drawn out of the general pool available to traders—words which are purely descriptive of the character and quality of the goods. A man who merely adopts such a trade mark and now applies to register it ought not to have the right to register it. That is what we are trying to do in this bill. It is the same as the law which has always existed and which exists in the United Kingdom and in the United States. No one should be able to extract merely descriptive words from the general pool which is available to traders to describe their goods. But these things do happen. Traders do adopt descriptive words and they go on for years and years using them, and nobody else seems to bother or wants to use the same word. But after 10, 15, or 25 years the particular trader who has selected that word knows that, if anybody else were to use that word as a trade mark for his similar wares, it would be a fraud on the public as well as upon the first trader himself.

By Mr. Cannon:

Q. I have had some experience with trade marks, and it seems to me that if we say that purely laudatory words or adjectives can be adapted to serve as trade marks it is going very far, because jurisprudence always so far has been that you cannot take these words out of general use. They are words that belong to the public, and that anyone should be allowed to say his product is best, and to register that as a trade mark, seems to me to be going very far. —A. I entirely agree with you, sir. May I point out with great respect the safeguards that are in this bill on that particular point. I agree with Mr. Cannon that if a person could extract a word from the general field of descriptive words, and immediately register it as a trade mark, it would be going much too far. But when a man has extracted that word, let us say 20 or 25 years ago, and has been the sole person to use that word—and I must emphasize that—because he must have been the sole person to have used that word applied to that type of ware or the mark is not distinctive, then we think he ought to be able to register it. None of these words that I am talking about, such as "Superweave", can ever be registered, according to this bill, except upon proof that it has been so used as to become distinctive, in fact, to mean that particular traders' goods, and nobody else's, so that the word itself would be impossible to refer, as a trade mark to anybody else's goods.

Q. In others words there is a heavy burden of proof on the applicant?— A. A very heavy burden of proof, and the Act is designed to protect the availability for general use of words of that type. For instance, you will find that, despite the fact of registration of a descriptive word as a trade mark, there is a provision—if I may take a moment to find it—if I may read the limited protection that is given to such a registered trade mark. You will find it in clause 20 of the bill, and you will note that the owner of a trade mark when registered has a right to its exclusive use, subject to this, that no registration of a trade mark prevents a person from making any bona fide use of his personal name as a trade name, or, any bona fide use, other than as a trade mark, of the geographical name of his place of business, or, of any accurate description of the character or quality of his wares or services in such a manner as is not likely to have the effect of depreciating the value of the goodwill attaching to the trade mark.

By Mr. Richard:

Q. Does that mean that if someone had registered after long use a word like "superfine" that someone else, in his descriptive advertising, could say "we have a very superfine type of linen?"—A. That is right. Anybody is entitled to do that. May I point out this, in regard to that point, that the extension that we propose under this Act is very little, because you can get registration of all these descriptive words now under the procedure I have outlined. It is only this very, very limited class that fall within the doctrine of the "Perfection" case of the "superweave" case, and the step parliament is being asked to take is a very, very small one. It is not designed to cover all descriptive words by any means, because they are registerable now in substantially the same way as proposed in the bill.

Mr. MACDONNELL: Does that go into the wording of the sections now.

The CHAIRMAN: I think it would be just as well to go into the wording of the sections.

By Mr. Macdonnell:

Q. As I understand it you are proposing to make a change whereby, to take the English illustration, the word "perfection" may be used, provided

you can discharge the heavy onus of establishing that it had come to be synonymous with your goods over a number of years. Then you say that this is protected in clause 20, and I read from clause 20:

No registration of a trade mark prevents a person from making

(*a*) any bona fide use of his personal name as a trade name, or

(*b*) any bona fide use, other than as a trade mark,

(i) of the geographical name of his place of business, or

(ii) of any accurate description of the character or quality of his wares or services,

Well now, supposing he comes along and says it is an accurate description of the character or quality of his goods to say they are perfection goods.—A. I think there is a trade mark for motor oil known as Perfection. It is not registered, but you see it on the billboards. Assuming nobody else has used the word "Perfection" for motor oil for the last 25 years, it would seem to me quite proper that the word ought to be registered, and no one else ought to register Perfection as a trade mark for automobile oil, and at the same time any other company ought to be able to say "if you want perfection in motoring use Shell automobile oil."

By the Chairman:

Q. In this case they could use the word "perfection" in all their advertising, but must not use it in their actual trade mark?—A. That is the position exactly Mr. Chairman.

By Mr. Crestohl:

Q. You have a firm called The Perfection Rug Company—A. There must be dozens of them.

Q. I do not doubt it, but I do not think they have a distinctive trade mark if they use the trade name.—A. No "Perfection" is a trade name. The bill does not strictly relate to trade names. Trade names are not registerable, and the protection of trade names is left in most cases to common law, apart from unfair competition features.

By Mr. Richard:

Q. Perhaps you can explain how the Act will give authority to the department or to the courts to register these descriptive words as distinctive from the present Act.—A. The rocedure for registration of words of this type, is set out in clause 12 (2) of the bill. Of this type of word there are three, if I may indicate them. The first concerns personal names or surnames. In other words it is not right that a person of the name of Smith should be able to to monopolize that name by registering it unless he has a great deal of use back of it, so that it identifies his goods.

Mr. FRASER: That is a long list.

The WITNESS: Let me give you some better examples then. I mentioned "Ford" for automobiles, and you know "Chivers" for marmalade, and you know "Fox" for the puttees that the army once used, and you have words like "Melachrino" for cigarettes—names that became household words. If anybody were to use the word "Melachrino" you would instantly think of a certain brand of cigarettes. It is right that they should be registered. Then, secondly, when you get descriptive words, you get into a difficult situation where, again, before you can register that word it has to have this secondary meaning in the same way as, in the third case, where you have a geographical word. For example, no one could use the word "Ottawa" by applying it to a soap, (if you have a soap factory here), so that everyone else making soap in Ottawa would be prevented from using it, or, for example, in the case of giner ale, they might say, "Niagara Dry ginger ale" and so on.

Mr. FRASER: The Peterboro canoe has been in existence for years.

The WITNESS: It would seem quite proper that it should be registered as applying to canoes, but that ought not to prevent anybody else saying "this is Joe Doakes' canoe made in Peterboro, Ontario." And that is what we have tried to do in this bill.

Under the old Trade Mark and Design Act, there was a procedure—you will not find it in the statute book—but it was prior to the early 1920's—by means of which you went to the Exchequer Court and, under its inherent jurisdiction the court could make an order for registration of a descriptive word. Then in the early 1920's that was changed, and the jurisdiction was vested in the trade marks office under the authority of the Trade Mark and Design Act whereby you could adduce proof of long continued use as establishing secondary meaning, and you could get on the register these descriptive words or surnames.

But in 1932 that was changed and now, under the Unfair Competition Act, section 29, proof is required to be adduced before the Exchequer Court. We have seen fit to recommend that the procedure obtaining before 1932 be restored and that this proof be adduced before the registrar rather than before the court. We have had many representations both ways. Some feel that, in extracting words from the public domain and getting, in a sense, a monopoly privilege in respect of descriptive words, surnames or geographical words, it is only a court that ought to take the responsibility of making an order of that type. As against that, we did recognize that it was not right to put traders and commercial men to the expense of the full procedure before the court. The registrar, in trade mark matters, has departmental counsel to advise him, and the registrar is fitted to handle these matters himself, and there is always appeal from his decision to the Exchequer Court if anybody so desires.

By Mr. Jeffery:

Q. Is there any limit of time on that appeal?—A. There is a time limit for that, as Mr. Stein (Under Secretary of State) has indicated. Further, we now, for the first time, provide a procedure by way of opposition to registration, so that, taking everything into account, it has seemed to us that simplicification of the procedure and the cutting down of expense by vesting this jurisdiction in the registrar is proper, rather than having the necessity of going, to the Exchequer Court.

Q. What about the opposition. Who are notified?—A. Everybody.

The CHAIRMAN: By what form of advertising are the public informed.

The WITNESS: I am going to ask one of my colleagues to speak on that if you want it now.

By Mr. Richard:

Q. Before that perhaps you could tell us under this new procedure—I suppose that it would not be just because a proposed mark, or because a mark was used for a short time. Would there not be a time set wherein the applicant has used that trade mark for at least so many years before he can apply to the registrar to register it, that is a mark that is descriptive, geographical, or a surname. It would have to have a certain amount of established use. A. Yes, but it cannot obviously apply to a proposed trade mark that has never been used; it must be in relation to a mark that has been used and has been used for such a long time that it has acquired this distinctive character. Now, you ask if any time limit is set. The answer is no, and we think it would be very unwise to endeavour to set a limit, because some marks would obtain this secondary meaning much more slowly than others. There might be a mark, for example, that had been used for thirty years and it really had never acquired this

secondary meaning because it was used in a minor business, and perhaps in a restricted area. There may be, on the other hand, another mark that would obtain this secondary meaning in seven or eight years on account of the tremendous amount of sales all across Canada and the tremendous amount of advertising back of them. Those are variables.

Q. I would think that there should be a minimum, say, a period of five years.—A. Well, that cannot very well be done because, in a case like that, the minimum tends to become the maximum, and there again it seems to me that once you vest the registrar, and, on appeal, the court, with the discretion of answering this question, "Has it acquired that type of meaning?," with respect, I think he ought to have that discretion exercisable without any particular statutory limitation.

Q. This would involve some machinery that will be set out in the rules, I suppose? It will have to be something comparable to court procedures?—A. Quite. Always have been rules under the Trade Mark and Design Act and under the Unfair Competition Act.

Q. Will the power of the registrar extend to taking evidence in the form of depositions or questioning?—A. It must be an affidavit tendered to him—the proof that he requires to be made is to be by affidavit or declaration.

By Mr. Crestohl:

Q. I am in hearty agreement with the procedure you are outlining, which gives the registrar original jurisdiction to make a decision, but will he also have a similar original jrisdiction to expunge?—A. Only in the case of non-use; only where there has been proof of abandonment of the use of the mark.

Q. He is given some jurisdiction, but if the question arises on a protest or opposition he will then have to sit in some capacity as a gentleman who will render a decision. His decision can be appealed. Assuming that opposition might have been made if the party had been aware of the application, and he then goes to the registrar and says, "Now, I should have made opposition, but I did not know about it and I would like to have that trade mark expunged". Could the registrar not be given a similar original jurisdiction which he could exercise following representations and either order the expunging of the trade mark or not, and if the decision is not satisfactory then appeal in the same way could be made as one can appeal from his judgment to register?—A. Well, we think that, with respect, would be unwise, for two reasons. The first is, your whole procedure of opposition would, in a sense, be set aside for the time element would be meaningless. It would mean that anybody could come in de novo, at any stage you wished. The second reason is that, in all the legislation we have had on trade marks in this country in the past, there has been no jurisdiction given to expunge entries from the register except at the instance of the Exchequer Court, and we think it is important that the Exchequer Court should continue to have exclusive jurisdiction over the register to that extent.

Mr. JEFFERY: Mr. Chairman, can I get an answer as to the time of appeal, and also a further question as to what advertising is done in connection with the application?

The CHAIRMAN: Yes, I think this discussion leads up to that, Mr. Jeffery. Mr. Fox, can you give us information on that?

The WITNESS: I am sorry, Mr. Chairman, I did not get the question.

The CHAIRMAN: Could you give an answer in regard to the time for appeal and the extent of the publicity?

Mr. STEIN: Section 55 is the general section in connection with appeal, and it gives the right of appeal to the Exchequer Court from any decision

of the registrar within two months from the date upon which notice of the decision was dispatched by the registrar, or within such further time as the court may allow, either before or after the expiry of the two months.

Mr. JEFFERY: Well, what publicity is given to this procedure which does not take place in a court but takes place before the registrar?

Mr. OSBORNE: With respect to the position generally, the procedure is this: In devising the procedure we have set out in the bill, we followed the procedure appearing in the United Kingdom trade mark legislation and it is patterned after similar provisions in the United States statute. So we are not suggesting anything novel. You will find in section 37 of the bill that within a month of the advertising of the application, any person, upon payment of the prescribed fee, may file a statement of opposition with the registrar. I think perhaps it will be necessary to go back a stage. The registrar has the right to examine an application filed and to object to it on certain grounds. Those grounds are somewhat limited. They are broad grounds, but they are more limited than those that can be dealt with on opposition. If he then decides that his examination is such that the application should be allowed, he advertises the application in the Patent Office Record, which is the official journal of the Patent Office and of the Trade Marks Office. At the present time it is only after registration is granted that any entry with respect to trade marks appears in the Patent Office Record. What we propose in this bill is that, after the registrar has decided as a result of his preliminary investigation that the application should be allowed, he will then cause to be published in the Patent Office Record a notification of the filing of that application. The Patent Office Record is published every week and it is widely distributed. It will probably be more widely distributed in future among those interested in trade marks.

Mr. CANNON: What section is that?

Mr. OSBORNE: Section 37. I was explaining the circumstances under which the advertisement appears. At that moment, the public is notified that there is pending an application for registration and they are given the details of that application—the trade mark, the wares to which it may be applied, the name of the applicant, and so on.

Mr. CANNON: Will that advertisement be published once or several times?

Mr. OSBORNE: Once only, and that is in accordance with the procedures followed in the United Kingdom and the United States.

Mr. JEFFERY: Does it enter into the mind of the speaker that if we extend this Act to cover a greater group of words descriptive, and so on and so forth, that although the technical notice may be pretty poor notice, yet if you are going to limit it to, say, two months to appeal after the decision, that it will be a pretty short time?

Mr. CANNON: One month. You have to make your opposition within one month; two months after decision.

Mr. OSBORNE: Mr. Jefferey, I think I can answer that question in this way. In the opposition procedure, we are introducing something which is quite new to this country, although, as I said earlier, it is not novel in trade mark law. Similar procedures have been available in the United Kingdom and in the United States, and in all of the larger countries, for a great many years. The present position is that there is no notification whatever while the trade mark application is pending. There is no opportunity for the public or for interested parties to learn that there is an application before the Registrar of Trade Marks unless a constant watch is being kept on the index files in the Trade Marks Office. That is done by some people, but it is an elaborate and expensive procedure. It is one in which error can arise, so

that we are making a very substantial advance on our present practice by acquainting the public by notification in a public document. Now, the practice followed by most companies, in many cases through their representatives, lawyers or otherwise, is to keep close watch over the publication of the official gazettes in the United Kingdom and in the United States and to arrange for a regular search so that they will be informed if there is anything that interests them. That work is taken on by companies as a fixed procedure, which can be followed easily. I agree that a notification, say, in the Canada Gazette is often not very adequate because in a great many instances, unless you have occasion to be watching these things you will not check every issue of the Canada Gazette as it is issued. I am thinking at large, not in reference to trade mark matters, but where it is known that the publication of applications will appear in the Canadian Patent Office Record, I think it is reasonable to assume that those interested will watch the Record very carefully.

Mr. JEFFERY: Just one more question. Aren't you making it more important under this Act, extended as it is, for companies to file applications for copyrights or trade names?

Mr. OSBORNE: I think, sir, there is a danger of overemphasizing the measure of the extension that we are proposing. As Doctor Fox has explained, we are making it possible to register certain words which could not have been registered because of technical rules applied by our courts in such cases as the Perfection case and the Super Weave case. That will be a narrow group. We are extending the right of registration so that trade marks applicable to services as well as wares will be registrable. Those two things come quickly to my mind, but apart from that, the situation is much the same as it is now with respect to the types of trade marks that can be registered. We gave very careful consideration to what notification should be supplied, and we thought on this point that we could not do better than to follow the long-established procedures in the two large countries which I have mentioned.

Mr. RICHARD: At present there is some form of opposition provided, where the registrar finds that a mark is similar to a mark which is already on the register. He notifies the applicant and there is some form of procedure.

Mr. OSBORNE: That will be continued.

Mr. RICHARD: You say it will be continued. My next point is on this publication. The circulation of the "Patent Office Record" is very limited. Do you know how many are circulated?

Mr. OSBORNE: No, I do not know.

Mr. RICHARD: It is a very limited publication.

Mr. J. P. MCCAFFREY: I think it is roughly about 400.

Mr. RICHARD: You say that only about 400 people receive the Patent Office Record?

Mr. CANNON: Why should we not advertise it in the Canadian Gazette?

Mr. RICHARD: If I may continue from there, my next point is this: would it not be a good thing to have the trademark advertisements separate from Patent Office Record, because there is no relationship in most cases between patents and the publication of registrations.

Mr. OSBORNE: Well . . . .

Mr. RICHARD: Whether they are doubtful or not.

Mr. OSBORNE: Yes. The registrar may reject out of hand any cases, let us say, where the application is defective as to form or there has been failure to pay the fees. He can reject on his initial examination. It is only when he has come to the conclusion, following his own investigation, that the application should proceed, that it is published.

Mr. RICHARD: You say everything will be published?

Mr. OSBORNE: That is right, sir. There is no real obstacle that I know of to prevent publication in a separate journal. If it is felt desirable to publish a separate trade mark journal, that could be done. Whether there would be any great advantage to it, I am not prepared to say. But I think we would bear in mind that notices respecting trade marks have for many years past been printed in the Patent Office Record. However, they were notices of registrations and not of pending applications.

Mr. RICHARD: I suggest there should be a separate trade mark journal, because the two things, patents and trade marks, are altogether different. We should get away from the confusion which exists in looking at the end of the Patent Office Record.

Mr. OSBORNE: I would like to refer to your question with respect to the extent of distribution of the Patent Office Record. Viewing the matter from the standpoint of trade marks, it has been literally valueless for any person to consult the Patent Office Record because by the time he sees the notices of the trade marks, they are already registered trade marks. Thus, anybody who would be interested in opposing them will have no opportunity to do so. There is a further reason why the distribution of the Patent Office Record will not necessarily reflect the number of persons who are actually interested. In a good many cases, as you know, it is the task of representatives of companies, of lawyers, patent attorneys and of others to check the records and to advise their clients. Those clients may be very extensive in number. That is a practice which has been followed, so far as I know, in all the great countries.

Mr. RICHARD: I still think we should have a separate trade mark journal if we want to have better distribution.

Mr. OSBORNE: The Act simply provides for advertisement. Within one month of the advertisement any person who wishes to oppose the application may do so.

Mr. CANNON: Does the Act provide for any particular form of advertisement?

Mr. OSBORNE: As to form, no, Mr. Cannon. It will be left to the rules. This and several other points which will be much more extensive.

Mr. CANNON: That would not come in the Act in any way. Suppose we wanted to provide that notices should be given two or three weeks in succession and that they should be in the *Canada Gazette,* because we think that the *Canada Gazette* has a wider circulation and that better notice would thereby be given. That would not be a matter for the bill but for the rules?

Mr. OSBORNE: That is right; and the committee on rules, if one is appointed, will certainly take that under consideration.

Mr. CANNON: I am of the same opinion as Mr. Jeffery. I wonder about the notice, due to the fact that we are widening the scope, or widening the field of words that can be registered. I wonder if we could not give more adequate notice so as to provide for an appeal. You say that certain lawyers make it a custom to look up these things on behalf of their clients and advise their clients. That is all right if it is the case of a big corporation. But how about the little fellow? He has not got a lawyer working for him to look up the records?

Mr. CRESTHOL: Well, he should have.

Mr. JEFFERY: This Act is extended to services to a wide extent.

Mr. OSBORNE: I said that the two things which are now being dealt with by way of extension are the small group of words which Dr. Fox has discussed and the extension of trade marks to include those relating to services.

Mr. JEFFERY: I am wondering if it is explained what services mean? Will it mean for instance that the London Life Insurance Company are going to have to register the trademark "life" in order to sell life insurance?

Mr. OSBORNE: I think there is no doubt that life insurance is a service within the meaning of this proposed statute. We have deliberately kept the meaning of service wide open. It will have to be interpreted. Under the legislation I would say that it would include all services wherein work is performed or offered to be performed for hire.

Mr. RICHARD: This Act also extends in this case, that is, to proposed marks, marks that have not yet been used.

Mr. OSBORNE: That is correct.

Mr. RICHARD: I believe there should be some explanation of what this proposed use means.

Mr. OSBORNE: That is perhaps outside the task which I have been asked to perform. Perhaps Dr. Fox might prefer to proceed with it. Let me complete the story with respect to opposition.

Notice of opposition may be filed within a month of the advertisement. Then provision is made under clause 37 for the grounds on which opposition may be based. They are, first of all, that the application does not comply with the requirements of the Act. Clause 29 is a formal provision. The second ground is that the trade mark is not registrable. This relates back to clause 12 and that includes such things as a trade mark being not registrable by reason of it being descriptive, or by reason of it being geographic, or by reason of it being a surname and so on. The third ground is that the applicant is not the person who is entitled to register. It may be that the person opposing the application will say: "This trade mark was not established by the applicant but by me", and he can oppose it on that ground. The statement of opposition will set out the grounds on which opposition is being based.

Now, we know from experience that it is possible to file a frivolous opposition. A man may make a wholly unwarranted objection. The registrar has the right to refuse an opposition if it is frivolous, when he gets such a statement of opposition. That would arise, however, in very few cases.

If he does not reject the opposition at that stage, he sends a copy to the applicant, and the applicant is entitled to file a counter statement.

The section proceeds by providing that an opportunity will be given the interested parties to file their evidence. That will be done by way of statutory declaration or by way of affidavit. Then it is provided that an opportunity be given to the parties to be heard, and you have in fact a tribunal in which the parties can appear before the registrar.

The registrar, having heard the parties and examined the evidence, will then reach a decision as to whether the application should be allowed or rejected. There is provision for an appeal on the part of either the applicant or the person who is opposing the registration. That is a matter of some interest because under the present informal practice, on which Mr. Richard touched, the person who objects to the registration of the application has no status to appeal. The reason is that the whole procedure is informal, as Mr. Richard has said.

Under the Unfair Competition Act, if the registrar is in doubt as to whether or not an application should proceed, by reason of the existence of a prior registration, a notice may be issued to the prior registrant and he may object to the allowance of the application. The registrar will make his decision in the light of the evidence which he has before him.

There is, in addition, a very informal right of objection. I may go to the Trade Marks Office and ascertain that there is an application for registration in which I am interested. If I want to prevent its registration, I file a statement with the registrar. Under this informal practice, there may be an exchange of correspondence through the Trade Marks Office between the applicant for registration and the objecting party.

But in no case does the objecting party have an appeal against the allowance of the application.

The applicant, if the application is rejected, can appeal because he will be appealing from a refusal of his own application.

Under the bill, if there is a conflict in the Trade Marks Office, the interested parties are entitled to go to the Exchequer Court.

Mr. RICHARD: But under your proposed Act the procedure in section 38 will remain?

Mr. OSBORNE: The procedure in section 38 of the present Act will remain. If I may refer back to clause 36 which immediately precedes the clause we are considering: it will be found to deal with the right of the registrar to refuse an application in what I have described as the initial investigation. A ground on which he may refuse is that the application does not meet the requirements of clause 29 which contains formal provisions. He may refuse registration on the ground that the trade mark is not registrable under clause 12 which I have already explained. It defines what a registrable trade mark is, and provides that some marks cannot be regarded as being registrable. Finally, the registrar may refuse on the ground that the applicant for registration is not the person entitled to registration if a co-pending application discloses an earlier date of first use.

Now, clause 36 says that where the registrar is not satisfied that the application should be rejected, he shall cause the application to be advertised in the manner prescribed. It leaves it entirely open as to what manner will be prescribed.

Mr. CANNON: I hope, when making a ruling, the committee will consider the observations made by Mr. Jeffrey and myself.

Mr. OSBORNE: I think the committee of the House of Commons can rest assured that it will be given earnest consideration.

Mr. CANNON: There is one question on the matter of appeal that I wanted to ask. I see under clause 55 there is an appeal to the court from any decision of the registrar. Under clause 37, I think you said, the registrar can dismiss an opposition as being frivolous. Is there an appeal from that?

Mr. OSBORNE: Yes, there would be an appeal.

Mr. MACDONNELL: You said, as I understand it, that in one case, the objector had no right to appeal.

Mr. OSBORNE: That is under the present law.

Mr. CANNON: My point concerns the case where a man or a company is making opposition and files it, and it is rejected by the registrar as being frivolous. Now, there is no dispute engaged there. If he rejects it, is not actually filed, so there is no dispute, and no actual decision under the Act.

Mr. OSBORNE: I think, with respect, that the statement of opposition has been filed at that stage. Subsection 4 provides that if the registrar considers that the opposition does not raise a substantial issue for decision, he shall reject it, and give notice of his decision to the opponent. That is the decision that would then be subject to appeal under clause 55.

Mr. JEFFERY: I still do not feel that this committee realizes, under services, what a big new field is being covered, and I can see considerable dangers, and

I think somehow we should have some publicity that services are coming within this, so that everybody will be alerted to the fact that they have got to watch this thing which they have not had to watch before.

Mr. OSBORNE: As a matter of fact, what we consider this bill accomplishes with respect to services is that it confers a very substantial advantage upon those people who are using trade marks in association with services. It is not creating obligations so far as they are concerned. For the first time in the history of this country it is giving them the right to obtain a registration, with the benefits that such registration confers.

Mr. JEFFERY: That is why I think they should be alerted to the fact that they must register these trade names in connection with the services they render.

The WITNESS: May I interject. The fact is that services are to be now subject to trade mark registration if desired, and anyone who has not registered a trade mark, if he does not want to, can still go on using the trade mark under the common law. If he desires to register a trade mark with respect to services, he now can do so. That has been publicized throughly all across Canada during the five years that this committee has been sitting. It is mentioned in the questionnaires, and in the draft bills which have been circulated.

Mr. JEFFERY: Let us do more.

The CHAIRMAN: But if he wants to be sure to retain his existing rights he must register, that is the rights acquired by usage.

The WITNESS: Quite so. May I add too, that it is because of the representations we received that we have presumed to read into the bill the registerability of trade marks with respect to services because the public wants it.

Mr. MACDONNELL: Are these services subject to the same rights in the United Kingdom?

The WITNESS: In the United States but not Britain.

Mr. RICHARD: But this Act or any other Act does not cancel the right of any person as far as common law is concerned. You do not have to register, but it is added protection.

Mr. OSBORNE: Mr. Richard has put exactly the point of view I was trying to express. The position is that you can continue, as you have in the past, to use an established mark of identification in association with your services and you will have in the future all the rights that the common law confers upon the user of such a mark.

Mr. JEFFERY: But are they not destroyed. Take the personal case that I gave. Supposing somebody gets in and registers for services of life insurance using the words "London Life" and they are not aware that is going on. They have not been used to researching for services, and this application is granted. Supposing the office do not know that "London Life" is being used by an insurance company. Would not that refer to the one that is granted?

Mr. OSBORNE: No sir, for a number of reasons, but primarily this: Basically, the right to register a trade mark, whether it be applied to wares or services, rests in the first user of that mark. He who has first applied it to his wares, or first used it in association with his services, has a primary right. If registration is obtained adversely to that right, it is a ground for cancellation of the registration. In any event, the first user would be in a position to rely on the common law for his rights against the second user. Suppose you have a situation where registration is granted to "Ajax" for use in association with life insurance and the registrant is a person who is, in fact, the second user.

If such a registration is granted, an application to expunge it can be made, and it can be based by the first user on the ground that the second user is not entitled to use it.

Mr. JEFFERY: There is a further appeal, and the limit?

Mr. OSBORNE: It is not an appeal, it is an application for cancellation.

Mr. CRESTOHL: We will have an opportunity of discussing these questions of services at a later session.

The CHAIRMAN: Yes. While we are on the present clause, why do you consider it necessary to have clause 38 (2). Why should not the registrar have some discretion?

Mr. OSBORNE: There is a general blanket provision providing that the registrar may extend all times unless his right to do so is specifically excluded.

The CHAIRMAN: But this specifically excludes that right.

Mr. OSBORNE: The reason we did it in this case is the following: an application for registration is filed, and it has to be processed in the trade marks office with reasonable dispatch. If a satisfactory procedure is to be devised, it cannot be kept sitting there in suspense for an indefinite period of time. Now, we felt that it was essential that the right to file a statement of opposition should be restricted to a specific period of time. Otherwise it would be difficult to proceed wih the next stage, which would be the allowance of the application for registration and the granting of registration. It would lead us into all kinds of difficulty if the registrar could allow an application for registration and then be faced with a statement of opposition. Supposing a mark were registered, would that put an end to the right to oppose it?

Mr. MACDONNELL: But we all know of cases in respect of applications. Somebody would miss it, and you would have cases of great hardship, and it seems to me you have shut the door tight. Put as big an onus as you like on the man who comes up, but still there should be a possibility for check.

The WITNESS: He can move to expunge.

Mr. CRESTOHL: But then he has to take it to the court. There is another question I would like to put. The motivating reason for reverting to the new procedure to give the registrar the latitude so you said, of having business men—

The CHAIRMAN: Before members leave the room I would like to announce that we meet this afternoon in room 497 at 3.30.

Mr. CRESTOHL: —was to save business men and merchants the expense of having to go to court, which is a very plausible excuse for giving the registrar this additional jurisdiction. Can it be reasoned by the same process of economy that the registrar should also have the jurisdiction to expunge for the very reason that Mr. Macdonnell just suggested, that undue hardship may develop. Why should a business man be compelled to go to the courts when there are clauses in this Act which do give the registrar authority to expunge under certain circumstances. Why should he not have that same authority to expunge if there is hardship which develops from clause 38, that the Chairman referred to.

The CHAIRMAN: Shall we give the witness time to think that question over Mr. Crestohl.

AFTERNOON SESSION

The committee resumed at 3.30 p.m.

The CHAIRMAN: Would you care now to answer the question which Mr. Crestohl was asking at the time of our adjournment?

Mr. STEIN: There was an agreement with Mr. Crestohl that we would defer answering the question until he was present.

The CHAIRMAN: Any other questions on the subject of a more adequate definition of what constitutes a trade mark?

Mr. MACDONNELL: You mean you are considering the actual words used in the interpretation section?

The CHAIRMAN: No.

Mr. MACDONNELL: Because I had a point I wanted to raise when we come to the actual wording.

Harold G. Fox, Q.C., Chairman, Trade Mark Law Revision Committee, recalled:

By Mr. Richard:

Q. There was only this question which I discussed at the adjournment at noon. We were talking of trade marks and some of the members had said that if a trade mark was used and not registered, and that it was not filed, that someone might take it over by registration. I was going to ask Mr. Fox to confirm what I know to be the fact now, that our trouble under section 4 will not exist in the revised Act because a person who has not registered a trade mark will not have concurrent rights with a person who registers his right later.—A. Under the present section 4?

Q. Yes.—A. No. We have had in front of us very vididly the problem that had arisen under present section 4, and for the benefit of the other members of the committee I might briefly explain that section 4 of the Unfair Competition Act provides in the first subsection that the person who has used or has made known a trade mark in Canada is entitled to its exclusive use provided he registers it within a certain delay, and then section 4(3) provides that if the first user applies after the period of the delay specified in (1), he can register that mark if a similar mark has not in the meantime been registered by another person. Now there is a great deal of confusion in those words, as you can see, because the right to register in subsection (1) is given to the person who first used or first makes known. That was the only right. The third subsection says that if that mark had not been registered by another —now it did not define who "another" was—the net result was that the jurisprudence has held that the rights of a person other than a first user, who registered first, were paramount on the register but that he could not stop the first user from continuing to use that mark, and there you had a complete departure from what we have always considered to be the proper law of trade marks—that a trade mark should be distinctive as indicating only one source of goods. Now that was the situation that arose and the court so interpreted it, and of course we must pay respect to that interpretation. But we felt that it was either an erroneous interpretation or an erroneous provision, and we have endeavoured to make it quite clear that such a position cannot arise. It is the first user who is entitled to registration. You do not get that double right.

By the Chairman:

Q. Well, then, how do you resolve the problem as to who gets the right to use the trade mark, the first user or the man who first registers the trade mark?—A. I think you will find that covered in section 16 of the bill, subsection (2):

> (2) Any applicant who has filed an application in accordance with section 29 for registration of a trade mark that is registrable and that he or his predecessor in title has duly registered in his country of origin and has used in association with wares or services is entitled, subject to section 37, to secure its registration in respect of the wares or services in association with which it is registered in such country and has been used, unless at the date of filing of the application in accordance with section 29 it was confusing with
>
> (*a*) a trade mark that had been previously used in Canada or made known in Canada by any other person;
>
> (*b*) a trade mark in respect of which an application for registration had been previously filed in Canada by any other person or
>
> (*c*) a trade name that had been previously used in Canada by any other person.

In other words, the idea is that the registrant, who is entitled to exclusive use, shall be the person who makes use of the mark in Canada or the first person to make it known in Canada.

Q. Let us say an error is made and the registration is granted to the second user. What then?—A. There is provision for the setting aside, the expungement, of the first registration if that action is taken within five years of the registration. We feel that there should be—and this, gentlemen, is a new provision of the law in Canada but not elsewhere, as my friend Mr. Robinson points out—we feel that there should be a reasonable period after which a registration becomes incontestable on the ground of first use. If a person who is not the first user has been registered for five years, then the first user of a trade mark cannot come thereafter and expunge it on the ground of first use, in the absence of fraud.

Mr. JEFFERY: What happens once it has been expunged? May the person who has it expunged then apply for that trade mark?

The WITNESS: Of course. It is the first user who then registers his claim and there is no bar under the statute for the registration of the first user.

The CHAIRMAN: Any further questions under this heading?

By Mr. Jeffery:

Q. May I ask one more question. Supposing there is a registration wrongly by somebody and there is some other first user, and then that person does not use that trade mark for the five-year period, but rather waits for that to expire and then enters into competition with the person who has used that for years. Does that mean that it cannot be expunged by a person who did use that before? I mean, it would be a smart dodge to take out somebody else's trade mark and hope they would not notice it, get it registered and not use it in competition at all and then wait for the five years to elapse.—A. That mark could be in fact taken off the register for non-use, and I think also for fraud.

Q. Could that be done after five years if he hid it by not using it?—A. I do not know that I would like to answer that question, Mr. Jeffery. Perhaps my friend Mr. Robinson can answer it.

Mr. ROBINSON: I think perhaps what you were assuming, sir, is that one man has been using the trade mark of another man, knowing that, and wanting to—

Mr. JEFFERY: I was reading that section—knowing. You have to prove that somebody knew something, and that is pretty impossible. You might be able to infer it from the circumstances, or you might not.

Mr. ROBINSON: But I was wondering whether that was the assumption you were making, that this was a deliberate act.

Mr. JEFFERY: It may be, but you might not be able to prove it.

The WITNESS: I did not understand your question, Mr. Jeffery.

Mr. ROBINSON: There is always the difficulty of proof, but it is only in the case of a good faith registration by a person other than the first user that the limitation would apply.

Mr. JEFFERY: Would it not be possible to make a further protection in there, that that trade mark must be used during that five years?

Mr. ROBINSON: It is there, indirectly, in this sense that under section 44 a registrant may be required by the Registrar to give evidence that he is using the trade mark, and if he does not give that evidence his registration may be struck off.

Mr. JEFFERY: Now then, if during that five years he has not used it, may I after the five-year period take it up?

Mr. ROBINSON: You may expunge registration on the ground that the adoption was a knowing adoption.

Mr. JEFFERY: Then you come to the word "knowing".

Mr. ROBINSON: I quite agree there is that difficulty, but it is a difficulty that we felt you have to face.

Mr. JEFFERY: Could it not be covered—if I may interrupt for a minute—by making this person using it prove that it must be in use for the five years? In other words, if you change that section to provide that if that mark has been registered and in use for five years, then it becomes absolute.

The WITNESS: I think that might, with respect, make it difficult. For instance, in the case of war, where trade marks do stand aside in non-use for some years, and quite properly so.

Mr. JEFFERY: Well, that could be protected when you define "use".

Mr. ROBINSON: I was thinking that any registration can be struck off on the ground of abandonment quite apart from the provision under section 44.

Mr. JEFFERY: But suppose it comes to nobody's attention in your department to strike it off, have you any authority to strike it off?

Mr. ROBINSON: No, but in the case that you put, in the first place this is a deliberate adoption of somebody else's trade mark and in the second place a deliberate absence of use. In that case there would be two attacks on the registration, one that it had been abandoned and another that it had been made fraudulently. In the first instance, with those two attacks I would judge and think that the members of the revision committee would agree that the chances of the man succeeding in what is, by hypothesis, a fraudulent case are exceedingly small, because we have had experience with this whole question of knowing adoption to a considerable extent over the past twenty years under the Unfair Competition Act, which has distinguished between the case of a knowing adoption of the trade mark and the case of an unknowing adoption. The way the courts have ruled, as you suggested a little while ago, is that they have drawn the inference of knowing adoption even if the man does not say "Yes, I did know". There are a substantial number of cases of that sort that have arisen under the Unfair Competition Act, and there is a fair amount of jurisprudence on that.

Mr. JEFFERY: You think under the section as written the court will always infer that it was fraudulent?

Mr. ROBINSON: Yes.

Mr. JEFFERY: Now you say I could take it off for non-use. Could I take it off at any time for non-use?

Mr. ROBINSON: Yes, there is no limitation to time.

The WITNESS: And you can take it off for fraudulent registration at any time. There is only one circumstance that has any concern with the realm of incontestibility, and that is prior use.

By Mr. Jeffery:

Q. Prior use plus registration.—A. You can attack a registration on the ground that some other person did use it before.

Q. But only for the five years?—A. Yes, but that is the only point on which a trade mark becomes incontestible. I am perfectly satisfied, Mr. Jeffery, that in the case you mentioned the registrant would have a very slim chance in the Exchequer Court.

Q. I would not like to let him have any chance and I would like to cover that in the legislation.—A. With respect, as much as you can button up every hole in legislation, my own view is that it is adequately covered in this.

Q. I guess we can consider that when we come to the section.

By Mr. Richard:

Q. Under this Act when must the user start?

The WITNESS: In the case of a proposed trade mark, you must file a declaration that use has commenced within six months of the date of allowance, and it is only registered when that proof is filed with the registrar. We might explain perhaps for the benefit of those members of the committee who are not familiar with this subject that in the past the law has been that a trade mark is only valid if it has been used. A registration that is made in respect of a trade mark that has not been used or made known in Canada is invalid. Now, in business a lot of businessmen like to try the market out with a trade mark before they go through the motions of registering. They would like to see whether it is a good mark that will be seized on by the public, and they try it out. Now, if it happens that they have to register first, you can see there is a conflict as to which they want to do first. They do not want to put their goods out without registration, without some type of protection. So we have provided that a person can apply to register a proposed trademark. He will have all the procedural matters cleared out of his way and he will find that his mark is registrable. He will have had, in a word, everything up to registration. He will have his allowance. Then, within six months he must use it in order to establish his trademark rights, and within those six months file with the registrar proof by affidavit that such use has commenced, and upon that proof, his mark is registered.

Mr. JEFFERY: That does not apply to trademarks which have been used?

The WITNESS: No. Not to a trademark that has been used. As soon as you have used you are entitled to register your mark.

By Mr. Fraser:

Q. Suppose a party applied immediately and gave an order to a lithographer for labels to go on such and such an article with the trade mark on them?—A. Yes?

Q. That would be proof that he was proposing to use it, but did not put out those goods?—A. No. You would have to show that they were used in

the course of trade. Used is defined as being use of the mark in association with goods at the time of the transfer of the property therein or the possession thereof.

Q. He would have to show that he sold trademarked goods in the market?—A. That is right.

By the Chairman:

Q. To what extent do you recognize existing trademarks in other countries? Take a type of goods, for instance, with a trademark in another country and the name becoming quite well known. Can a Canadian then come along and apply for that name and get registration of it?—A. The answer to that, Mr. Chairman, is substantially no. Let me put it this way: If a trademark is used in a foreign country—let us take the United States because that is the closest and has a great deal of use. This same situation applies in the Unfair Competitions Act as it does in Canada. We make very little change in it. If, let us say, a corporation down in the United States is selling goods under the trademark "Ajax", there are two ways in which those goods can be known and in which the trademark can be made known in Canada. One is that the goods are distributed in Canada. The other is that the trademark is advertised in journals, periodicals, newspapers and so on, that have a circulation among potential dealers or users in that particular type of product in Canada. Those periodicals circulate in the normal course in Canada so that the average person or the average dealer in that particular field will come to know or can be constructively assumed to know of the trademark. The American Corporation is the only person entitled to register that trademark in Canada. No Canadian can look at the *Saturday Evening Post*, for example, and say to himself: "My, that is a marvellous trademark for my goods. I shall search for it at Ottawa and if it is not registered, then, I shall slip in an application and get it." That he cannot do!

Q. Does the declarant have to take an affidavit negativing the fact, that that name is not in use in other countries?—A. No.

Q. All right. Let us say the registration is Canadian and a United States firm ultimately finds out that name is being used. What is the remedy?—A. If their trademark was made known in Canada in the way specified in the section, the company can come in and say: This trademark was registered in fraud of our rights, and they can get it expunged.

Q. At any time?—A. At any time, providing there is knowledge, providing there is knowing adoption by the second user. And once you have proved that that trade mark was extensively advertised, let us say, in the *Saturday Evening Post* or in *Colliers* and so on, obviously the situation is taken care of.

By The Chairman:

Q. My Jeffery asked what about the five year period?—A. After the five year period, if he knew—of course it has to be knowing adoption—it can surely be construed against him when you have advertisements to a large extent in periodicals which circulate like that.

Q. We now come to "The applicability of trade marks to services in addition to wares". We are first taking up the paragraph No. 3 indicated by Mr. Stein.—A. I may say that, in the representations which we received in answer to our questionnaire were unanimous on this point. I think it was the only one on which we had complete unanimity, that trade mark rights ought to be extended to services and not be restricted merely to wares. And

I may say that follows what has been done in the United States. I do not think there is any person engaged in trade or who has intimate knowledge of trade mark law who has any other idea save that trade marks ought to be so extended.

Q. Are there any further questions?

By Mr. Richard:

Q. What about association trade marks such as "GE" and "Mazda"? Would it be that certification marks remain?—A. Yes, certification marks remain, definitely.

Mr. STEIN: They will be extended as well to services.

By Mr. Jeffery:

Q. Is it a similar service that it has to be used in connection with? I am thinking of somebody in the banking business, and somebody in the bedding business decides that the bank's name has a good reputation in the area and decides that he will use their name in his bedding business and he goes ahead and uses it.—A. The answer to that, I think, lies in the section prohibiting the use of a trade mark in any manner which would depreciate the goodwill of the registered trade mark. May I read the section? Section 22 reads as follows:

> 22 (1) No person shall use a trade mark registered by another person in a manner likely to have the effect of depreciating the value of the goodwill attaching there to.
>
> (2) In any action in respect of a use contrary to subsection (1), the court may decline to order the recovery of damages or profits and may permit the defendant to continue to sell wares marked with such trade mark that were in his possession or under his control at the time notice was given to him that the owner of the registered trade mark complained of such use.

That raises a broader question than one merely relevant to services. I think I can explain the meaning back of it if I refer to goods rather than to services, and you will understand that my remarks apply mutatis mutandis to services. Take for example a trademark such as "Kokak". I think that if anybody were to go into a store and see a radio set or a television set or a washing machine with the word "Kodak" on it, the average purchaser would take it for granted that the photographic company, the Eastman Company, had gone into the business of manufacturing and selling radios, television sets, washing machines, and so on. We have therefore felt, in submitting this bill for your consideration, that there ought to be a wider extension of the ambit of protection of trade marks.

I think that under the Unfair Competition Act we have been rather artificial in dealing with the section defining similar wares. The gentlemen of this committee will find a discussion of this in the report. For example, in one case, rubber and leather shoes were held to be not similar, so that the use of a similar trade mark would not constitute in infringement in association with those two different classes of wares. You have another case where blade razors and mechanical razors were held not to be goods of the same class and were held not to be similar. There was another case in the Supreme Court which held that some kind of jellies, pickles, and condiments, and so on were not the same as canned chicken products, and things of that type.

We feel that these things are getting away from the theory of unfair competition which ought to apply to trade marks. Trade marks should not

be construed as rigidly as the courts have been doing—although I say that with respect—under the Act as it now exists. There ought to be a wider ambit of protection so that, if the public should feel that the second user of the trade mark, even though on different goods, was getting the public to believe that they were the goods of the first user, he ought to be prevented from so using the trade mark.

(At this point discussion continued off the record.)

The CHAIRMAN: I take it then from your remarks that if anyone, or any firm wanted to register the name "Packard" for refrigerators, that in view of the fact that Packard is already a well known motor car, and that the assumption might arise that Packard was not making refrigerators, would you register that name or not?

The WITNESS: That would be a matter for the registrar in the first place and for the court at a later stage to say whether, in his opinion, or in its opinion, as the case may be, such use would depreciate the value of the trade mark.

Consider the case of "Quaker" as applied to breakfast food. It is very probable that, if someone came along and asked to register "Quaker" as applied to hatchets, or to motor cars, or pencils, there would not be the possibility of confusion. "Packard" is used on motor cars and then if you used it on refrigerators there might well be confusion, although I would not like to say. But the question is open to be decided upon the proper showing. It is a question of fact under the statute whether the use of the second trade mark on goods, even though not of the same general class, would cause confusion and lead the public to believe that the person secondly using the trade mark on his goods was causing confusion and leading the general public to believe that they were in fact purchasing the goods of the first user and not of the second.

The CHAIRMAN: Would you mind giving me the section?

The WITNESS: It is clause 6 subclause (2), Mr. Chairman. I think, Mr. Chairman, you should first of all turn to clause 12, subclause (1)(*d*) which reads as follows:

> 12. (1) Subject to section 13, a trade mark is registrable if it is not
>
> (*d*) confusing with a registered trade mark; or

Then in clause 2 subclause (*b*) you have a definition of the word "confusing" which reads as follows:

> 2. In this Act,
>
> (*b*) 'confusing' when applied as an adjective to a trade mark or trade name, means a trade mark or trade name the use of which would cause confusion in the manner and circumstances described in section 6;

And then if you will look at clause 6 subclause (2), it reads:

> 6. (2) The use of a trade mark causes confusion with another trade mark if the use of both trade marks in the same area is likely to lead to the inference that the wares or services associated with such trade marks are manufactured, sold, leased, hired or performed by the same person, whether or not such wares or services are of the same general class.

By Mr. Jeffery:

Q. What does that phrase "in the same area" mean?—A. It is notional in this sense that, if they are both used together, you must assume that they are

both used in the same area. They may not be, in fact, but in order to arrive at a decision whether or not they are confusing, you must assume the notion that they are used in the same area.

Q. Could not somebody pass off his goods as being my goods, although my name was known in another area, but I was not competing in that area?—A. That is the very point we are trying to solve. It may be a fact that your mark is known, although there is somebody else who is using a similar mark in another area. We do not want that person to escape. Therefore we import the notion that they were using this mark in the same area, and that would cause confusion. So we import the idea. We do not want a person to escape because he is not a territorial competitor of yours.

By Mr. Richard:

Q. I can quite understand that. But now, the provisions of this Act allow opposition. Is it necessary to give all the added protection to marks which are registered? Take for example the word "Packard" which is registered for motor cars and so on. Under this new bill there is a provision for opposition if somebody wants to register it for a refrigerator. It is not up to them to oppose it?—A. Yes, of course, but it must be on valid ground that they oppose it. They must be able to oppose it on the ground of saying "This would be a confusing use or registration". If clause 6 were not in there, they would have no ground.

Q. But if they did not oppose it, would the registrar go to any more trouble than that?—A. No, he does not.

By Mr. Fraser:

Q. In the case of "Quaker" and the hatchets, there would not be any similarity there?—A. I would think not.

Q. But you take other firms like that. The use of the world "Philco" would create confusion.—A. Exactly, and it has already been held in the courts, for example, in the Superior Court of Quebec, that the word "Philco", when applied to men's neckties, was an act of unfair competition and it was stopped. And again, if I may say so, that is one of those shabby little tricks of business and, with respect, the court was right. We have tried to put that idea in this Act and, if I may say so with a little emphasis, we feel quite strongly on this point, that these confusing uses of trade marks ought to be stopped.

Mr. FRASER: Of course they should be, because these firms have spent millions of dollars in advertising.

The WITNESS: And the mere fact that you cannot take these two categories of wares and place them in the same tub ought not to be the means of allowing an unfair trader to escape. That is what we have been trying to do in this situation, which is set up in these three sections I have read.

The CHAIRMAN: Our next heading is relaxation of the rigid rules presently governing the assignment and licensing of trade marks.

Mr. RICHARD: I would suggest that we start with ownership and registration, and then discuss assignments which usually follow ownership of trade marks.

The CHAIRMAN: All right. I will call paragraph 5, clarification principles governing ownership of trade marks in Canada and the persons entitled to registration, including the new provision giving the right to file application, to file a registration prior to commencing actual use.

Mr. ROBINSON: Mr. Chairman, the position on point 5 is this clarification of the principles governing ownership of trade marks in Canada and the persons entitled to registration has to do with what Mr. Fox was speaking of a few minutes ago, namely, the difficulties that have arisen under the

present statute under section 4, which have resulted in this situation: A the first user of a trade mark who did not register, B the second user, not knowing of the first use, who did register. In the first place it was held that notwithstanding that B was not the first user, A, the unregistered first user could not expunge the registration. Then in a later case it was also held that B, the registered second user, could not prevent continued use by A, the unregistered first user, but the question of what rights B might have against other users, say C, was left completely open, and that has never been decided. Now that is a most unsatisfactory position because, as Mr. Fox pointed out, the whole theory, the whole basis of trade mark law is that a trade mark is, I suppose I may put it, the identifying signature of the manufacturer and there should be only one signature for one manufacturer. It is important in any trade mark statute to legislate in such a way that there will be as much certainty as possible as to what the rights of various people are to a trade mark. Now there are two extremes of principles that you can proceed on. One is to proceed entirely on the principle of first use. That is to say, that the person who first uses a trade mark is the person who, in all circumstances, has the rights to that trade mark regardless of registration. Registration may be simply a means of more easily proving your title, but unless you are the first user, then even if you have a registration you cannot enforce exclusive rights on the mark. That is one principle of going at the thing, but the difficulty with that principle which was the principle of the earlier legislation, the Trade Marks and Design Act, which was in force up to 1932, is that it leads to a flood of uncertainty about people's rights. You can very well have a situation such as this. A man Smith starts to use a trade mark in a small way in Vancouver and he is doing a small local business. Sometime later a man Jones starts to use the same trade mark in Quebec. He has never heard of Smith, and is completely innocent of what the other is doing, and neither party has ever heard of the other. Jones in Quebec develops his business in a big way and that may go on for ten or fifteen years, with the result that the Jones' trade mark is a trade mark that becomes very well known, let us say in eastern Canada and on the prairies as well.

At some stage or another, the two come into conflict and it is only then that Jones knows that there is a first user, and that Smith knows that there is a second man at all. Now it would be a most wrong thing from the public point of view if Smith, that first user in Vancouver were able to say to the second man, Jones, "Now you must stop and I will have the exclusive rights to the trade mark throughout the country", because the result would be the greater part of the public of the country would think they were buying the goods of the Quebec man, whereas they were actually buying the goods of the Vancouver man.

Now the other principle is that trade mark rights will depend entirely on registration, but that leads us to all kinds of frauds, because somebody who knows a trade mark is being used goes to the registry office, gets a registration and then holds up the actual use of the trade mark. What we have tried to do in this bill is to reach a half-way house between those two principles, those two extremes I have mentioned. The principle we have proceeded on is that essentially the basis of rights to a trade mark is first use, but it is subject to certain modifications in order to reach certainty after at least a certain lapse of time. Now, the definition of what people are entitled to registration of trade marks is contained in section 16, and essentially what the section provides is that you cannot get a valid registration of a trade mark unless you are either the first to use or the first to make known in Canada, or you are the first person to apply for registration if at the time you do apply nobody had used the trade mark in Canada or made it known in Canada at all. The section splits up into three. Subsection (1) deals with the case of there being a user or a

maker known, but let us take use as the ordinary case. If somebody has used a trade mark, then he is entitled to its registration if at the time when he began its use nobody else had used the trade mark or made it known in Canada and nobody else had applied for its registration, and nobody else had used a confusing trade name.

The CHAIRMAN: Using your illustration—if it does not interrupt your chain of thought—of the two men, Smith and Jones, the small producer in Vancouver and the producer in eastern Canada whose business is growing very rapidly. Let us say neither of these registers until the man in British Columbia decides to register, and he does register. What is the situation then?

Mr. ROBINSON: In that case he has the rights.

The CHAIRMAN: And he can stop the large producer from using it?

Mr. ROBINSON: He can, yes. I can see what is perhaps in your mind, that there is a difficulty. There is inevitably some difficulty under any system. Any system is going to lead to some possible injustice, but what we felt is that the system which we have proposed in this bill is the one least likely to lead to bad injustices of any one of either the two extreme principles or any compromise between them.

Mr. JEFFERY: Does this not point up what I was trying to say this morning about going into this new field and adopting this new principle, that a lawyer advising his client would be well advised to tell him, "You better get registered before anybody else does." In other words, this is a whole new field and everybody has to be advised, all these companies have to be advised to get registered and get registered quickly.

Mr. ROBINSON: I quite agree with you, sir, but I would make this qualification, that that has been true for the last twenty years under the Unfair Competition Act.

Mr. JEFFERY: Except as to services?

Mr. ROBINSON: Except as to services.

Mr. JEFFERY: I am talking about a new field that we should publicize.

Mr. ROBINSON: As to services, I agree, but that has been the position as to wares during the last twenty years, the registration has been the most important thing.

The CHAIRMAN: May I carry my question one point further. Let us say that the man in the east, who has the big business, started to use the name first. The man in Vancouver being the second user, decides to register. If he registers and in a small way uses the name for five years, then is he in the paramount position even though he is the second person to use the name and only in a small way?

Mr. ROBINSON: If he were innocent, yes, sir, but I think that that is not a very serious practical case because what I think is of some importance is this, that once a man has registered then there is public notice of his application. The real difficulty comes the other way when the man who has used first has not registered.

The CHAIRMAN: You would anticipate that the first user in eastern Canada would notice the registration of the small man in the west and contest it?

Mr. ROBINSON: Yes, sir, and particularly I think because most people today who are going into the use of trade marks in a big way, and even many who are going into it in a small way, that one of the first things they do is to look at the register in the Trade Mark Office now.

Mr. JEFFERY: Except as to services.

The WITNESS: Except as to services. What we have been trying to do by this bill is to encourage people to register, that is to encourage the enlargement of this public register of applications so that people will know much better where they stand.

The CHAIRMAN: Are there any further questions on the clarification of the principles governing ownership of trade marks from Canada and the persons entitled to registration?

Mr. RICHARD: We are dealing with subsection 2?

Mr. ROBINSON: That simply deals with the case of a man who has registered his mark abroad. And he is entitled to register it in Canada unless at the date he files in Canada there was an earlier use or making known in Canada or a confusing trade name, and subclause 3 deals with the case of a proposed trademark. The three subclauses are parallel, but they are all within the principle I have discussed.

Mr. RICHARD: Are you dealing with who is entitled to apply?

Mr. ROBINSON: Yes.

Mr. RICHARD: I am talking about a company in England which is using a tobacco trademark, and another company in Canada wants to make use of it. Does the English company have to apply for it, or can it assign its right to a Canadian company to apply for it in Canada?

Mr. ROBINSON: Leaving aside the question of assignment, and letting me make certain assumptions: I assume that the English company and the Canadian company are competitors. They are not people who are going to be working together.

Mr. RICHARD: I am talking about their working together.

Mr. ROBINSON: If you are talking about their working together, then the English company would be entitled to assign to the Canadian company whatever rights it might have in Canada, and the Canadian company may then apply.

Mr. RICHARD: Prior to the application?

Mr. ROBINSON: The assignment part of it, yes sir. But I think if we bring in an assignment, it may perhaps complicate the situation. If we take the case of an English company which has been using a trademark in England, that company may apply in Canada on one of two bases: if it has advertised its trademark in publications which circulate in Canada, then it has made its trademark known in Canada, and it will be entitled to registration unless at the date when it first made its trademark known in Canada somebody else had used that trademark in Canada. Assuming somebody else has not, then the English company would be entitled to get registration.

Even if they do not make their trademark known in Canada, they would still be entitled to register it in Canada if at the time they applied there had been no use of that trademark in Canada. In other words, if the field was clear at the date of application, then they are entitled to register.

The CHAIRMAN: Does that registration lapse through non-user?

Mr. ROBINSON: Yes, but perhaps "lapse" is not quite an accurate word. I said yes, but I check myself. The position is that the Registrar is entitled at any time, in respect of any registered trade mark, to require the registrant to furnish him with evidence that the trade mark is in use, and if he fails to do so, then the registration may be struck out.

The CHAIRMAN: Would it be evidence of use? The foreign producer who is not producing in Canada takes out a registration in Canada, and then goes right to a distributor in Canada or to some other firm in Canada and starts production here. Would the production here of a Canadian licensee qualify the maintenance of the original registration?

Mr. ROBINSON: Yes sir. The Canadian licensee would then become what is termed a registered user under this bill, and his use would accrue to the benefit of the owner.

The CHAIRMAN: Perhaps Dr. Fox would be prepared to elaborate on the relaxation of the rigid rules preventing a Canadian association from registering its trade mark.

The WITNESS: Here again perhaps a little history is necessary. According to trade mark law in the past, a trade mark could only be assignd together with the goodwill of the business—the whole of the business—in association with which it was used. There was no such thing as assigning a trade mark apart from the business. That went so far that if you had a trade mark used as one of a number of trade marks in a business, you could not assign even that part of the goodwill to which that particular trade mark applied.

Now, modern commercial life, it seems to us, has made such a situation unrealistic in today's markets. The great majority of the submissions we received were definitely opposed to the continuation of that rigid system. Therefore this draft bill was prepared, and we recommend to you that the classic concept of trade mark law should be set aside and that a trade mark shall now be able to be assigned, apart from the goodwill of the business, and with only a part, or all of the goodwill. You can have either situation. You can have it with no goodwill, or with part of the goodwill, or with all of the goodwill.

The CHAIRMAN: Does that also apply to the assignment of a trade name?

The WITNESS: No, because a trade name attaches to the business. There is no such thing, it seems to us, as passing on a trade name apart from the business. But a trade mark applies to goods, and it seems to us to be in a different situation.

The CHAIRMAN: I am thinking now of several apple growers in my community who have built up a very substantial goodwill in the marketing of dessert apples. They have registered the words "Srathcona Orchards", and "Ravenwood Orchard". Do they actually have to sell their orchards in order for the trade name to be assigned?

The WITNESS: I think so, yes.

The CHAIRMAN: If the present operator of the orchard goes out of business and sells the trade name to another orchard, would that not be satisfactory?

The WITNESS: Providing the orchard went along with it. My friend, Mr. Stein, has pointed out to me that there is no provision in the Act for registering trade names. The law has always been that a trade name is appurtenant to the business. It seems to us that a trade name should not be assignable, apart from the business and the location itself.

The CHAIRMAN: I am speaking of a trade name that has been registered. "Strathcona Orchard" has been registered.

The WITNESS: It must be a trade mark, if it is registered, applicable to the sale of apples. That could be assigned without the goodwill.

The CHAIRMAN: You say that it can be assigned without the transfer of the orchard?

The WITNESS: Yes.

By Mr. Jeffery:

Q. What is the use of that trade name in clause 6?—A. In the case of a trade mark or a trade name it would not be right. Take for example, "Royal York", the trade name which is applied to the Royal York hotel business.

It seems to us that it would not be proper for the words "Royal York", to be registered as a trade mark, for example, for supplying foodstuffs, because it would be confusing with a trade name already in use.

Q. Although the trade name cannot be registered, nevertheless you want to prevent the name being registered as a trade mark?—A. That is correct.

By Mr. Macdonnell:

Q. To me there is something a little artificial in saying that you may assign a trade mark with part, or all, or none of the goodwill. But if in fact you do assign a trade mark, what is the meaning of that unless there is goodwill or usefulness? Without it, how do you prevent that happening?—A. A person may go out of business entirely. There may be no goodwill, but the ownership of the trade mark is a valuable piece of property and he should be permitted to transfer it and allow somebody else to use it.

By Mr. Richard:

Q. Is that not quite a problem?—A. It is always a problem, whatever you do. There was a case known as the *John Sinclair Case* in England. It was a tobacco firm and it had many dozens of trade marks applied to the sale of cigarettes. It purported to sell to another company one trade mark and the goodwill in the trade mark as applied to cigarettes. And it was held that that invalidated the trade mark because you could not split the goodwill from the trade mark. Let us take a case here. Let us suppose that the Imperial Tobacco Company said: "We just do not want to carry on anymore with "Players" cigarettes. We have other brands and we are going to sell this goodwill in the trade mark "Players", let us say, to Rock City Tobacco Company". It seems to me there is no reason why they should not be permitted to do that, and that a sale of that kind ought not to invalidate the trade mark?

Q. But that is a hard point, because it is a known trade mark and has always been joined to the goodwill and the wares of a particular person. And once that person goes out of business, the word should fall back into the public domain. That has been the ordinary opinion that would make it possible for some of these shabby things you have spoken about, for some people to register a trade mark with a very small use of it, and to deal with it or to sell it.—A. There is always that difficulty. This has been a very much discussed point in trade mark literature all over the world, as you know, for many many years. The general opinion throughout the world has been that the old artificial rules ought to be relegated. The United Kingdom and the United States along with a great many other countries have come to that conclusion. That is why we recommend this bill to your attention. This is not a new departure applicable in Canada alone by any means. This is in keeping with world opinion on trade mark law.

Mr. JEFFERY: I wonder if this thing is going to create any accounting problem and we will find ourselves running into some income tax problem?

The WITNESS: God forbid. We were getting along splendidly until you mentioned income tax, and now we are all unhappy.

By Mr. Richard:

Q. We would in fact be selling the words of the English language through means of their registration.—A. As long as they are trade marks.

Q. But they are trade marks only so long as they are being used.—A. Yes.

Q. But when they are not being used anymore, then they are not trade marks.—A. There are many situations in which a matter can arise, and mainly it is between a subsidiary and a parent company. Perhaps it might be as well if I treated the question of licensing along with it.

Now, in the classic concept of the law we have the principle of non-assignability, apart from goodwill. There has always been a collateral concept, and that is that no person, being the owner of a trade mark, can license another person to use that trade mark on that other person's goods. In other words, as Mr. Robinson has said, a trade mark is a single indication of origin leading back to only one manufacturer or seller. That doctrine arose back in the last century and has given a great deal of trouble, and a good many trade marks have been invalidated by reasons of its application. I think it is only fair to say that the great majority of well known trade marks on the register today would be invalid if they ever came into litigation, because you have a parent company in the United States and a subsidiary company in this country carrying on under the same trademark, and each company has indiscriminately sold goods in Canada using the same trade mark. Then, too, you have an American company owning a trade mark and yet the Canadian subsidiary company has been carrying on and selling goods in Canada under a trade mark which it does not own. You can multiply instances of that out of your own experience by the dozen and, on the law as it presently stands, many of the well known trade marks must be considered to be invalid.

We think that is quite improper, because the public is not being deceived. I do not want to use the names of corporations, but there are a considerable number of very large companies in the automobile business and the electrical appliance business to whom that would naturally apply.

The CHAIRMAN: And to the International Harvester?

The WITNESS: I was trying to keep away from names of corporations, Mr. Chairman. An American company owns a registration in Canada. It has a Canadian subsidiary which is doing business and selling all its goods, or substantially all its goods, in Canada under a trade mark that it does not own, and that trade mark is invalid.

We felt that a type of licensing of trade marks which does not lead the public astray at all, which does not do any harm, which deceives nobody, ought to be regularized. So we have set up what we term a system of registered users, which you will find in clause 49 of the bill. Thereby the owner of the trade mark can license another person to use it under properly supervised rules. That person will be registered in the trade mark office as a registered user, and he will be permitted to use the trade mark and such use will accrue to the benefit of the trade mark owner. That situation can come to an end when desired. Now, that situation is not new. That is, it exists in all of the countries of the Commonwealth. Section 49 has been substantially copied from the British Act, and similar provision exists in South Africa, Australia, and so on. We have felt, gentlemen, that this accomplishes a proper relaxation of these rigid rules whereby trade marks have been held to be invalidated through acts of the trade mark owners who evidently did not know the fine points of Canadian law and woke up to find their trade marks invalid. That is something that parliament might well be induced to amend. Now, concomitant with that, you will find a further section, section 50, by virtue of which these acts that have gone on in the past will not now be able to be urged as invalidating trade marks, so that these innocent things that have been done will not be held against a trade mark owner. He can validate his trade mark subsequently provided the licensing was between related companies, or provided in any hearing the Exchequer Court decides it did not mislead the public, or if the trade mark owner applies to get his licensee on the register as a registered user within one year from the commencement of the Act.

By Mr. Macdonnell:

Would you mind explaining again the reasoning that was behind the case that you gave us?—A. The reasoning of the court?

Q. Yes.—A. Well, the court held that goodwill was whole and indivisible, that the trader could not sell a part of his goodwill. If, for instance, he had a business and goodwill and cigarettes in which he used fifty trade marks, he could not pick out one or ten or forty-nine of those trade marks and sell the goodwill of his business pertinent to these, and keep forty-nine or forty or one of the trade marks for himself. He had to sell the whole of his goodwill and all his trade marks in that field, or none at all.

Q. In other words, he had to go out of business.

Mr. RICHARD: He did not have to go out of business, he could abandon that trade mark and someone else could register it. That is the procedure that is followed.

The WITNESS: That was a subterfuge.

The CHAIRMAN: If there was a heavy investment in advertising the trade mark, surely the firm ought to be able to sell it.

Mr. RICHARD: I think we have to get into this a little deeper than this, and I think they will have to go into it a little more than that.

The WITNESS: May I put it this way, Mr. Richard. We approached this point with a great deal of heart-searching. I can sympathize with Mr. Richard's view because we have been all through it and we came to the view, from the almost unanimous representations we had on this point, that there must be some relaxation in the strict rules heretofore obtaining. Now we experimented, we tried going only part of the way, and in logic we found no stopping place. I remember vividly sitting at home in my study drafting section after section, trying to find a half-way house, trying to define good will, trying to define how you could split good will, trying to find a half-way house that would meet the views of everybody, but I found inevtitably that once you get away from the strict rule of non-assignability apart from good will, you are inevitably driven in logic to go the whole way. Just as every other country that has approached this question has had to do, the retreat from the old rule of non-assignability is inevitable.

Mr. RICHARD: I can understand your viewpoint as to the licensing, but I cannot see why a firm who has decided to stop using a trade mark, upon deciding that it does not want to use it any more, why it should not file a declaration of abandonment if it wants to give it to somebody else and let the other person apply for it. We are just creating a situation which is non-existent in more ways than one.

The CHAIRMAN: Is not the asset already there through the national advertising?

Mr. RICHARD: That is the good will you are talking about; he is not selling the good will.

Mr. MACDONNELL: There is some confusion here, Mr. Chairman.

Mr. HUNTER: Even if it were an asset of the corporation and was worth something, you could not give it away without the permission of the shareholders.

The CHAIRMAN: A fraction of the good will automatically goes with the name. If the trade mark or trade name is assigned or sold, it automatically carries that proportion or share of the good will of the original company with it so far as the company is concerned.

The WITNESS: It may not technically be good will, but it is substantially good will. Gentlemen, all I can say is that I do sympathize with Mr. Richard's

views, but this whole principle has caused us perhaps more trouble than any other provision in the bill. We have worked on it. We have examined it from every possible standpoint, and while I hope I am duly sensitive to the fact that parliament is in the end the ultimate judge, I may say that this committee has spent a great deal of work on it and that it reflects the best view these experts have been able to come up with.

By Mr. Macdonnell:

Q. I am not quite clear on the difference between you and Mr. Richard. You explained it to us, and I think I know or understand the principle in each case. If I remember well, you said a while ago that, taking the opposite view, you can assign a part or all of your own good will. You said that?—A. Yes.

Q. Now, Mr. Richard, where do you come in different from that? You said one or two things which I think were in line with that and in agreement with this. Where is your difficulty?

Mr. RICHARD: You cannot transfer a trade mark unless you transfer the good will of the company.

Mr. MACDONNELL: The whole?

Mr. RICHARD: The whole firm, yes.

Mr. MACDONNELL: Let us take that English case. The common sense of that thing would be they could have transferred that section of their business and go on with the rest. You say they cannot do that here?

The WITNESS: May I give another thought here. With respect, Mr. Chairman, what we are trying to do in this system is to be realistic and recognize what is actually going on in trade. Now I know what is on your minds—the traditional idea that a trade mark divorced from good will is meaningless. Now what happens in commerce is quite different from that. If I may give you an example, the idea is that if you assign a trade mark you assign the good will with it, and the public gets the same, substantially the same quality of goods they were getting before. Now that is the theory back of the whole thing, is it not, Mr. Richard?

Mr. RICHARD: Yes.

The WITNESS: In fact, that is not a realistic view, and I say that with respect, Mr. Richard. Let me give you an example. Some years ago I used to smoke a cigar. I was very fond of them, and you probably know of them—Tueros. They were rolled in Toronto by hand out of Havana leaf imported in bulk from Havana, and they were a very good cigar. Sometime later I found that these Tueros cigars were still sold under the name of Tueros in the same type of tin with the same labels, but they were being manufactured by Simons in Montreal and they were machine-rolled. The quality of the tobacco was probably the same, but, as you all know, a machine-rolled cigar does not taste the same as a hand-rolled cigar. Now, if there were any difference at all, the public was completely deceived. Tueros sold their good will to Simons in Montreal. Now, there is no distinction in fact, as far as the public is concerned, whether that good will went along to Simons or whether Tueros said "You can use our name for a consideration". The actual fact of what happened is that in neither case the public was deceived. And that is the realistic situation we are trying to handle in this section of the bill—I am sorry, Mr. Fraser.

Mr. FRASER: I was just going to say pretty nearly what you said, that despite the fact that you assign the good will and the trade mark, the article in many cases is not the same.

The WITNESS: There is no assurance, when the good will is transferred, that the trade marked goods will be identical or even similar to those that were manufactured before, or of the same quality or anything else, as a matter of fact.

Hon. Mr. BRADLEY: What did the public receive in fact? They got those Tueros cigars, but did they get a worse cigar than they were getting formerly?

The WITNESS: Perhaps they did, but that was a perfectly legal thing to do under the law. The trade mark could not be attacked at all. The owner himself can debase his trade marked goods. There is no guarantee, in other words, attaching to a trade mark.

By Mr. Macdonnell:

Q. Is there any means under the Act whereby notice is given when this transfer is made?—A. Yes.

Q. Is the same notice given under the total or the fractional transfer?—A. Whatever the situation is.

Q. Mr. Richard, does that not cover your point?

Mr. RICHARD: My point goes further than that. I do not think that anyone has the right to a word or a design or any part of the educational value unless he is actually using it as a trade mark, and once he stops making use of it it should fall either into the public domain or into the hands of a new user. The Crown has given an exclusive use to certain words which were common words of the dictionary.

Hon. Mr. BRADLEY: But he has built up that particular good will for that cigar. Now, having built it up it is of some value, and if it is of some value is he not entitled to some remuneration for it?

The CHAIRMAN: You see, Mr. Richard, do you not, the fact that the name initially granted by the Crown was of very little value. The value which came was acquired because of its use and the advertising and the quality of the goods supplied under that name.

Mr. RICHARD: And because it was associated with a particular person.

Hon. Mr. BRADLEY: I think that 990,000 out of one million do not know who the user was.

By Mr. Richard:

Q. I only raised the point because it perhaps is a much better point than appears on the surface, as Dr. Fox has suggested. I know that we shall have occasion in the future to watch some of the trading going on under these trade marks.—A. If this were a new thought which we were presenting for adoption in Canada alone without experience from outside, we would certainly pay very great attention to what Mr. Richard has said and I doubt if we would even be presenting it for your consideration. But it has been adopted in some other countries. It does exist in the United Kingdom, and there have been none of these unfortunate happenings to which Mr. Richard has referred.

Q. Perhaps I am a little too conservative and belong too much to the old English law, and have not kept up with my American friends.

The CHAIRMAN: Now, gentlemen, may we turn to the bill? I call section 2.

M. RICHARD: Mr. Chairman, we did not take up publications.

The CHAIRMAN: I thought we discussed publications thoroughly, and the question of the use of marks in export trade. I thought we would come to it on the bill.

Mr. RICHARD: Perhaps if we could have an explanation now it would save further discussion.

The CHAIRMAN: Very well. I now call subject matter No. 7, the "Provision with respect to the use of marks in export trade as a basis for trade mark rights in Canada." Who will be handling that subject?

Mr. ROBINSON: The position on that last point is this: Under the law as it now stands, the necessary basis for a Canadian to get registration of a trade mark in Canada is use of it in Canada. There are a certain number of Canadian traders who are doing an appreciable export business, and in their export business they may use certain trade marks which they do not use in their Canadian business at all. Let us say that a Canadian trader, doing an export business, uses the trade mark "Ajax" in his export business, but not in his Canadian business.

Under the present law he cannot get a valid registration of that trademark in Canada because he is not using that trademark in Canada. But he is then up against this difficulty, that the law of many of—in fact of most of the foreign countries to which he is exporting—is to the effect that he cannot get a registration in such foreign countries unless he first gets a registration in his home country. So we have provided therefore that if you use your trademark in the export trade, that is, if you make goods in Canada, and if you apply a trademark to them or to their packages and export them, those activities will be regarded, for the purposes of the Act, as use of the trademark in Canada. You will therefore be able to get registration of your trademark in Canada and, having your Canadian registration, you will be able to go to the foreign country where you are doing your export trade and say to them: "Here is my Canadian registration, I want to get registration in your country."

That cannot be done today. That is really what this last point deals with.

Mr. RICHARD: Will that mean that there would be two trademarks in Canada, one which a firm was using only in Canada and one which they were using for export trade outside of Canada?

Mr. ROBINSON: No, because the bill provides that those activities which I mentioned, the using of the trademark in export trade—is a use in Canada for the purposes of the Act. That leads to this consequence: that if you are using only in export but are not the first man, somebody who was the first to use the trademark in Canada can stop you. We did that deliberately. There was some suggestion that the conditions which you mentioned should exist, that is, that it would be possible to have one company using "Ajax" in Canada, while another company was using "Ajax" in export trade only. We rejected that, because we realized that if that were allowed, what could very well happen would be that a company which proposed to go into export trade only could use for that trade the trademark of some other company which was doing only a Canadian trade. The latter company could not stop this use by the export company, and if it later decided to go into the export trade, it would find itself debarred from using its own trademark. So the bill really provides that use in export trade is exactly the same as use in Canada, and as a consequence avails to the benefit of the exporter but also gives rights against the exporter to any other Canadian who may be an earlier user.

Mr. FRASER: Have any companies or any individuals played that trick which you just mentioned. That is, of being able to export with somebody else's trademark?

The CHAIRMAN: They could not get registration here?

Mr. ROBINSON: They could not get registration here. I have no personal experience of that, but I have heard of a case in which it did happen. That was where a company in the export trade, used a mark that was also being used by another trader in Canada. I have also heard of it happening in other countries.

The CHAIRMAN: But they cannot get registration of that mark here?

Mr. ROBINSON: No, they cannot get registration of that mark here. But what Mr. Fraser has in mind is that the exporter will say: "I am perfectly content to do without registration in order to steal this man's trademark."

That is possible under the present legislation.

Mr. FRASER: Have you had any cases of it?

Mr. ROBINSON: I have no personal experience of it, but it is a thing I have heard of.

Mr. MACDONNELL: Is it the intention among the adhering nations that the situation you described is now impossible, that is, that a man cannot say: "Ajax is doing well here". And then go to France and apply for registration of "Ajax" as a trademark over there? We cannot control it other than by convention, can we?

Mr. ROBINSON: No sir, it is not that. Under the Canadian legislation as it now stands there is no way of the Canadian trader who is using, let us say, "Ajax" in his Canadian trade preventing some other man using "Ajax" solely in the export trade.

Mr. MACDONNELL: Suppose the French did not want to play along with us. How could we prevent it?

Mr. ROBINSON: The bill says that any use of a trademark in the export trade is, for the purposes of the bill, a use of the trademark in Canada. Therefore let us imagine this situation: That Smith is using "Ajax" in Canada, a word which he has had registered. Then Jones starts using "Ajax" in export trade only. The bill says that Jones using it in the export trade is using it in Canada. Therefore Smith is entitled to prevent Jones' use, so that he cannot do it.

The CHAIRMAN: I now call section 2.

Mr. MACDONNELL: I have here a definition of trademark which was suggested to me, and I raise the point in connection with clause 2, paragraph (*t*) of the bill. It is a rather bald definition which says:

> (*t*) 'trade mark' means
>
> (i) a symbol, which may contain one or more devices, letters, numerals or words, or a combination thereof, which is used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others,
>
> (ii) a certification mark,
>
> (iii) a distinguishing guise, or
>
> (iv) a proposed trade mark:"

I take it that the draftsmen of this bill have decided on the simpler form, but it does seem to me that there is a point of view that laymen are perhaps not all lawyers. What I have read is much more descriptive than the phrase which is used in the bill. What is the objection to that?

The WITNESS: The answer is twofold, Mr. Macdonnell. In the first place we went through all the definitions of trademarks that I think have ever been written beginning with the famous one of Upjohn in the United States which is supposed to be one of the best. Upjohn uses many words in his definition, but we came to the conclusion that the more you specify the more you tend to exclude.

The CHAIRMAN: That is absolutely sound.

The WITNESS: After all, a trademark is something that is marked on goods or marked in association with goods. So it seems to us that the word "mark" standing alone is all-inclusive, whereas if you start particularizing with symbol, word, letter, numeral, or any combination of any of those things, or all of them, you then tend to exclude some other specific thing that we may not for the moment have thought of.

The CHAIRMAN: Anything specific which you leave out is "out".

The WITNESS: And the representations that we have received with respect to this word "mark", with all respect, seem to us to be proof that people are batting this one around a great deal.

Mr. MACDONNELL: I am sure.

The WITNESS: We had definition after definition and we were finally drawn to the conclusion that if we wanted to be safe, we should use just the one word "mark".

Mr. FRASER: Wouldn't your requirement that you must have a black and white drawing help to define that?

The WITNESS: That does not apply in the case of word marks. Obviously you have to supply a drawing where you have a trademark which is other than words. But anyway, you have got to get it down on paper whether it is a word or a design. It becomes a mark when you mark it on your goods or your label as the case may be, and none of us would think of a word that would more adequately cover the situation than the single word "mark".

Mr. MACDONNELL: I would agree in general with your principle of simplicity. Perhaps I am completely answered, but how does the dictionary define the word "mark"?

Mr. ROBINSON: In fact, sir, I remember looking at it at one time, and my memory would be something like this: that a "mark" is something which is marked on something. Really as broadly as that.

The CHAIRMAN: I take it what you would like to have is a general provision, and then followed by specific provisions, without restricting its generality.

By Mr. Macdonnell:

Q. I would wholly agree with you that once you begin to enumerate or to exclude, and the other phrase which you just used, is to attempt to get away from it. But if you feel that way about these words:

> (i) a symbol which may contain one or more devices, letters, numerals or words or a combination thereof . . .

if that is your view, may I ask in respect to this trade mark definition as you have it, if the American definition gets away from the famous original one which you mentioned?—A. To a certain extent. They have a different situation or set-up by way of saying what essential particulars a trade mark must contain, but again, Mr. Macdonnell, I do assure you we have given this every thought, including the suggestion that you now have read to the committee. We have also considered that.

Q. Then, have you considered the other one which came from the same source?—A. Yes, we have considered the whole of them.

The CHAIRMAN: Shall clause 1 carry?

Carried.

The CHAIRMAN: Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Mr. MACDONNELL: Could we not go slower than that, Mr. Chairman? Could we perhaps ask these experts who are here, and who are familiar with this bill, to draw our attention to anything in the clauses as we go along which is a vital change, and then perhaps we need not dwell on the things which are mere routine.

Mr. FRASER: And draw our attention to things that are new.

The CHAIRMAN: I will read the clauses and if you will stop me when we come to any section which you believe should be amplified or explained, that will be satisfactory. I will call them slowly and you stop me when we come to one which you want to comment on.

Shall clause 3 carry?

Carried.

Shall clause 4 carry?

The WITNESS: We might there indicate only subsection (2) which for the first time brings under the Act trade marks used in association with services, and subsection (3), which relates to export trade marks.

The CHAIRMAN: Yes, these having been fully covered before. Clause 4 is carried.

Shall clause 5 carry?

The WITNESS: I think, Mr. Chairman, we might point out clause (b), which now covers radio broadcasts in the making known of a trade mark in Canada.

The CHAIRMAN: Clause 5—carried.

Shall clause 6 carry?

The WITNESS: This is the whole new attempt that I think we have explained already, Mr. Chairman, to cover the situation where a trade mark or name is confusing.

Mr. JEFFERY: I am not satisfied that this clause would be interpreted to mean the interpretation which was put on it by the officials. Now subclause (2) says:

> . . . if the use of a trade mark causes confusion with another trade mark, if the use of both trade marks in the same area is likely to lead to the inference that the wares or services associated with such trade marks are manufactured, sold, leased, hired or performed by the same person, whether or not such wares or services are of the same general class.

I am wondering if that should read something in this way: if they were used in the same area, because the point was brought out that it is not a question that they are being sold in the same area, it is a question that if they were it would lead to confusion. I am not too happy with that wording.

The CHAIRMAN: You suggest the words "should be" should be interlined before the words "in the same area".

Mr. JEFFERY: Yes.

The CHAIRMAN: Would there be any objection to that amendment?

Mr. STEIN: We should point out that in clause 2(b) the definition of confusing is given.

The WITNESS: As I tried to put it this morning, Mr. Jeffery, there is a notional concept that you have to import in order to decide what would lead to confusion, namely, if they were used in the same area. I think it is perfectly clear as it is.

The CHAIRMAN: Time and again the courts have declined to even look at discussions in committees when they are construing a statute, and I rather think that if overnight you would have a look at that, you could come back to the committee with a few added words that would leave no doubt that subclause (2) means what you say it means.

Mr. JEFFERY: That applies to the various other subclauses where the same words are used.

The CHAIRMAN: Clause 6 will stand.

By Mr. Macdonnell:

Q. Mr. Chairman, would you allow me to go back to clause 2(*u*), trade name means the name under which any business is carried on, whether or not it is in the name of a corporation, a partnership or an individual. So a trade name means the name under which any business is carried on. Might not a trade name be a part of a business? Wouldn't it be very likely to be part of a business, and would it always be the name under which the business is carried on?—A. If it is part of a business, it is still a business.

Q. Well, I do not know whether any ingenious person might argue on that.—A. Take, for instance, the name of a cocktail lounge in a hotel. That is the name under which the cocktail business in the hotel is carried on.

Q. Let us take a manufacturing concern which might have a dozen trade names, might it not?—A. No, a company has one trade name. It may have a dozen trade marks. Canadian General Electric, CGE, has only one trade name, and that is Canadian General Electric Co., but it has any number of trade marks: it has GE, it has GE in a circle, and many others.

The CHAIRMAN: And there is no registration of a trade name?

The WITNESS: No.

The CHAIRMAN: Clause 6 stands.

Shall clause 7 carry?

The WITNESS: There, Mr. Chairman, we made a few amendments. In subclause (*a*) we added the word "misleading" to the prohibition—"to make a false or misleading statement. "Misleading" was not in the previous Act. Then, subclause (*b*) was in the previous Act, but as to the final words saying "wares or business of a competitor", we have felt that these words should be changed to "another" who is not necessarily merely a competitor. If you will look at subclause (*c*) along with (*b*), you will find that subclause (*c*) is new. The reason for that is because of the jurisprudence that has been handed down. Subsection (*b*) of the Unfair Competition Act was held by the Exchequer Court in two cases to go no further than the common law action of passing off, and in our view subsection (*b*) was designed to cover and ought to cover a broader situation than passing off. Therefore, we added (*c*) to cover the action of passing off, in order to make it quite clear that (*b*) covers more than an action of passing off. This is an endeavour to cover these shabby tricks we were talking about. Mr. Crestohl had an example of people using the same coloured automobiles, the same coloured stationery, and all the rest of that sort of thing, in their business, and in order to overcome that we put in this clause—"(*b*), direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion . . ." Subclause (*d*) of section 7 is also new; in that we have tried to import the provisions of some of the sections of the Criminal Code which were transmitted to us by the Criminal Code Revision Commission for our attention. We have placed them here and recommended that they be deleted from the Criminal Code.

Mr. MACDONNELL: You can tell a big lie but not a little lie—you say "false in a material respect".

The WITNESS: There are many false things. You may say that this is the best ice cream obtainable in the world—well, that is false but it is not material.

Mr. RICHARD: There are no provincial rights involved in this? I have often wondered if the provinces ever will enact their own trade regulations.

The WITNESS: Section 91(2) of the British North America Act covers that, and we always come back to that, namely, the regulation of trade and commerce.

Mr. STEIN: I would refer you, Mr. Richard, to the case of the Attorney General of Ontario, appellant, and the Attorney General of Canada et al, respondents (1937) A.C. 405 at 417-418, where it was found that trade marks were properly within the jurisdiction of the federal government.

The WITNESS: It seems to me that whatever is in this clause is well within the framework of section 91(2) of the British North America Act.

Mr. STEIN: Mr. Richard, would you like me to read you part of that judgment?

Mr. RICHARD: No.

The CHAIRMAN: Shall clause 7 carry?

Carried.

Shall clause 8 carry?

Carried.

Shall clause 9 carry?

The WITNESS: Some changes were made here to incorporate further prohibited trade marks, such as R.C.M.P., United Nations, and scandalous, obscene and immoral matters, but no substantial change in principle.

Mr. FRASER: But under this the portrait and the signature of an individual could not now be used?

Mr. STEIN: That is in the present Act.

Mr. FRASER: But at the same time there are signatures and portraits that are used.

The WITNESS: With the consent of the person involved. If you will be kind enough to look at subclause (2)—"Nothing in this section prevents the use as a trade mark or otherwise, in connection with a business, of any mark described in subclause (1) with the consent of Her Majesty or such other person, society, authority or organization as may be considered to have been intended to be protected by this section."

The CHAIRMAN: Shall clause 9 carry?

Carried.

Shall clause 10 carry?

Mr. MACDONNELL: Will this cover the case where a man is selling to a merchant?

Mr. RICHARD: Mr. Chairman, do you intend to go past 5:30?

The CHAIRMAN: We are only down to clause 10. There are sixty-eight clauses in the bill. I do hope that at our meeting tomorrow morning we will clear up the bill. If members wish, we will adjourn now. We will meet at 11:30 in this same room tomorrow morning.

APRIL 29, 1953.

11.30 A.M.

The CHAIRMAN: Gentlemen, we have a quorum.

Members will recall that we agreed to finish our work at this session.

Shall clause 10 carry?

Carried.

Shall clause 11 carry?

Carried.

Clause 12, when Trade Mark Registrable. Shall the clause carry?

Carried.

Clause 13, When Distinguishing Guises Registrable. Shall the clause carry?

Mr. FRASER: What do you mean by "distinguishable guises"?

Harold G. Fox, Q.C., Chairman, Trade Mark Law Revision Committee, called:

The WITNESS: It is defined in clause 2(*g*), page 2.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 14, Registration of Marks Registered Abroad.

Shall the clause carry?

Carried.

Clause 15, Registration of Confusing Marks. Shall the clause carry?

Carried.

Clause 16, Registration of Marks Used or Made Known in Canada. Shall the clause carry?

Carried.

Clause 17?

Mr. RICHARD: Maybe it would be a good thing for Mr. Fox or some of the other gentlemen to explain exactly what is meant by valid registration so that there will be no misconception about it.

The CHAIRMAN: That was discussed very fully on the record yesterday.

Mr. RICHARD: Valid registration?

The CHAIRMAN: Yes. If you would like any of the main points they could be repeated.

Mr. RICHARD: Perhaps Mr. Fox would tell the committee members why a registration confirms any rights per se that are now not already existing?

The WITNESS: It is confirmatory of title and grants to the registrant the exclusive right to the use of that trade mark in Canada which he had before registration, but accords to him the ability of bringing the special action for infringement that is provided in this bill as it was in the old law.

Mr. RICHARD: There is no change in this?

The WITNESS: There is no change.

The CHAIRMAN: Shall clause 17 carry?

Carried.

Clause 18?

Carried.

Clause 19?
Carried.

Clause 20?
Carried.

Clause 21?
Carried.

Clause 22?

Clause 23, Registration of Certification Marks. Shall the section carry?

Mr. RICHARD: Mr. McCaffrey, are there very many certification marks registering now?

Mr. MCCAFFREY: Yes, quite a number. I would say in the last year we have had 100. The old standardization mark is now certification mark.

The CHAIRMAN: Shall the clause carry?
Carried.

Clause 24?
Carried.

Clause 25?
Carried.

Clause 26?
Carried.

Clause 27?
Carried.

Clause 28?
Carried.

Clause 29, Contents of Application. Are there any questions?

Mr. RICHARD: Are there any changes here?

Mr. MACCAFFREY: No. Just a few for administrative purposes. There are no consequential changes.

Mr. FRASER: With respect to the application which I mentioned before the meeting yesterday, when they apply now you are going to print in your notice the copyright or at least the trademark as they give it to you in black and white. Is that right?

The WITNESS: Yes, that is correct.

The CHAIRMAN: Shall clause 29 carry?
Carried.

Clause 30?
Carried.

Clause 31?
Carried.

Clause 32?

Mr. WARD: Why would a trade union require a trade mark?

The WITNESS: Union labels or trade marks are a protection as such and that has been the law in the old Trade Mark Design Act and there is no substantial change in the bill.

Mr. FLEMING: They actually use them quite extensively?

The WITNESS: Yes.

The CHAIRMAN: Shall the clause carry?
Carried.

Clause 33?

Mr. RICHARD: Is there any change here in 33?

The WITNESS: No change.

The CHAIRMAN: Shall clause 33 carry?
Carried.

Clause 34?
Carried.

Clause 35?
Carried.

Clause 36, When Applications to be refused. Are there any questions? Shall the clause carry?
Carried.

Clause 38. Do you still feel that the registrar should be restrained from granting extensions of filing time for any reason? This is in clause 38 (2) and the point was raised yesterday?

The WITNESS: Yes. We still feel the clause should stand as written.

The CHAIRMAN: Shall the clause carry?
Carried.

Clause 39?
Carried.

Clause 40?
Carried.

Clauses 41, 42, 43?
Carried.

Clause 44, Registrar may Request Evidence of User. We had a full discussion, but are there any further questions? If not, shall the clause carry?
Carried.

Clause 45, Renewal. Shall the clause carry?
Carried.

Clause 46?
Carried.

Clause 47, Trade Mark Transferrable.

Mr. FLEMING: With reference to section 47, I heard so little of the discussion yesterday as I had to be in the House all day and tried to be in another committee yesterday afternoon and I am sorry I have not the advantage of having followed the discussion on assignments. The words that trouble me are in the second and third lines "and deemed always to have been transferrable." Now, I have no quarrel at all with the general purport of the other words. In other words, trade marks are now to be made transferrable without, I understand, the necessity of an accompanying assignment of goodwill, but on reviewing the provisions of section 28 of the report, while it makes out, I think, a clear case for making trade marks assignable without the necessity of an accompanying assignment of goodwill, nothing appears to have been said there to justify these words which I have mentioned the purport of which could be retroactively to validate assignments made prior to the effective date and thereby to make valid what has been hitherto invalid. I do not follow the necessity for making retroactive operation to the provision that trade marks should now become assignable apart from transfer of goodwill.

The WITNESS: Mr. Fleming, we have felt, as I tried to express it yesterday, that a great many trade marks in the past have had their title clouded by assignment without goodwill. Many trade marks of very great value stand in danger of invalidity. We feel that it is proper to remove the cloud from the title of those trade marks as has been done in the United Kingdom. We feel that well-known trade marks that have become possibly invalidated through this artificial rule of assignment without goodwill ought not to be held invalid after the passing of this bill because in fact the public has not been deceived as to the source of the goods by the improper assignment and, while it is quite true the section will have a retroactive effect, that was exactly what we endeavoured to do in the bill.

Q. Well, I do not need to say anything to Doctor Fox on the subject, but I am sure that he is aware of the general feeling in parliament against enacting retroactive legislation, particularly where rights may be involved, and while I follow what Doctor Fox has said, I do not see that the same reasoning has been set forth in the report. It may be shared by the other members of the committee who have read the report, but it has not been expressly stated, and I must say, even after hearing Doctor Fox, I am left with serious misgivings as to the wisdom of our enacting retroactive legislation here. When you start into this field you never know, Mr. Chairman, what situation you are creating and how you may be affecting legal rights. Now, in saying that I am ready to concede, of course, that where assignments have been made, that undoubtedly the assignor has intended to give full effect to his assignment, and I would not wish to be particularly sympathetic with an assignor under those circumstances who would choose to come along later and contest the assignment. On the other hand, it may be that the third parties have rights in these matters by way of some other form of assignment, whether by operation of law or direct act of the parties, and it is just virtually, I think, impossible, Mr. Chairman, for us sitting here to conceive of all the situations that may exist today or that may arise hereafter that will be governed by retroactive legislation.

The CHAIRMAN: That is why I feel inclined, Mr. Fleming, to take the advice of the experts on this point. They could conjure up dozens of cases where we would only think of one.

Mr. FLEMING: On the other hand, though, Mr. Chairman, here is the difficulty: The point that Doctor Fox has made is that there may be questions, valid questions, existing today as to the legality or validity of assignments that have been made hitherto. Now, if we pass this legislation we are in fact replacing the law. We have a clear rule today, as I understand it, that the trade mark cannot validly be assigned apart from the assignment of the goodwill. Now we are going to say, not only will the rule change from this date on but that the rule shall always be deemed to have been, hitherto, that trade marks may be assigned without any assignment of goodwill accompanying them, and I cannot help feeling, Mr. Chairman, that we may be stepping into a field here that nobody, experts or mere members of parliament, can adequately see. We are being asked in effect that the law shall be reversed not only from this time on, but we are going to go back and say that from the beginning of time that shall be deemed to have been valid, which under the law existing hitherto has been invalid. Now, it troubles me a good deal to say that, legislatively, none of us can look into the crystal ball and see every situation that this is going to apply to.

The CHAIRMAN: Is there any litigation pending that you know of?

The WITNESS: May I answer Mr. Fleming, Mr. Chairman?

The CHAIRMAN: Yes.

Hon. Mr. BRADLEY: It is covered in subclause 2.

The WITNESS: I think I should like to develop three points. The first is that in the report of the committee, at page 38, about eighty per cent of the way down the page, you will find this sentence:

> We are all the more confirmed in this view by a recognition of the fact that considerable numbers of trade marks now registered in Canada would necessarily be held invalid if examined in the light of the manner in which they have been used commercially.

Now, I think that is reasonable notice, indeed, that we wanted this retroactive feature.

The second point I would like to develop is to read to the committee section 23 of the British Trade Marks Act of 1938:

> Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be and shall be deemed always to have been assignable and transmissible either in connection with the goodwill of the business or not.

Now, that section has stood in the British Trade Marks Act for fifteen years and there has been no complaint of it and no circumstance arisen which has shown the unwisdom of enacting it.

The third point I wish to develop is in reference to section 47 (2) of the bill, which reads as follows:

> (2) Nothing in subsection (1) prevents a trade mark from being held not to be distinctive if as a result of a transfer thereof there subsisted rights in two or more persons to the use of confusing trade marks and such rights were exercised by such persons.

In other words, the intent of that, Mr. Chairman, Mr. Fleming, is that if a trade mark has become non-distinctive by an improper assignment, then it can still be held invalid, but if the trade mark is still distinctive and still refers only to one source of goods, either manufactured or sold, then the public has in no way been mislead, and no harm will be done by validating the transfer subsequently. It seems to us that with this cloud on the title of so many well known and highly valued trademarks it is quite a proper suggestion that my committee should make to this committee and parliament, that that cloud should be removed. We realize the effect of ex post facto legislation, but in this case it seems that the greater harm would be done if the section were not enacted as it is now recommended, rather than if it is not.

Mr. FLEMING: There is certainly weight in what Mr. Fox has said. Normally, when parliament on very rare occasions is asked to enact retroactive legislation, it is with regard to some particular situation, the full particulars of which are known and disclosed, but to enact retroactive legislation in an entirely general manner does put us in a position where we may be doing an injustice to some third party in a situation where we would not wish to do it at all and which we cannot fully contemplate or foresee at this moment. I realize that weight has got to be given to the words of subclause (2), as the minister pointed out a moment ago, and I am sure we are all impressed with the provisions of the British Act which are directly comparable with these, and the fact, as Doctor Fox has stated, that there have been no complaints for fifteen years. I must say that I have a constitutional dislike of a legislative situation where I cannot fully see the effect of what we are doing.

The WITNESS: Mr. Fleming, I can, frankly, see no occasion where the section will work harm, but I can think of many cases where it would work harm if this provision were not in, because the way the matter arises is a purely adventitious attack on a trade mark, and when it comes into litigation at a future date somebody then goes back over history and says, "Oh, but you did

something over twenty years ago with this trade mark you should not have done. It is true it was under an old rule which has been now abrogated, but as of that time you clouded the title to your trade mark." Now, after all, no harm was done, no intervening rights were acquired by any person, the public was not misled in any way by that action of improper assignment, and yet by a very careful search anybody can go back to a happening many years before and invalidate the trade mark because of a happening in which he had no interest and which did the public no harm. And then if I may put it this way, my friend Mr. Robinson points out that by then you would definitely have a leading to confusion by the defendant using the same trade mark as the plaintiff; and if he were able to have the plaintiff's trademark invalidated on the ground of improper assignment, you would have two people using the trade mark, or possibly more than two people using the trade mark, because of its invalidity, and because of its invalidity and possible multiple use you would thereby create confusion in the minds of the public.

Q. With respect to the expression "no intervening rights have been established", that is something which gives me some question. How are you to assume that intervening rights have been acquired by anyone where there has been an attempt made to assign under circumstances where, if the mark is not indeed invalid, there are serious questions about it.—A. According to subclause 2, if intervening rights are established, the court has the power to hold that the trade mark is invalid. That is the very situation we have tried to cover under subclause 2. Let us assume a case. May I give you a concrete case? A plaintiff is the owner of a registered trade mark "Ajax" which was registered, let us say 30 years ago. However 20 years ago he had that trade mark assigned to him by a previous owner but without the goodwill; and for the past 20 years he has been using it in a proper trade mark manner. He is the only person who has been using it, in other words.

He then finds, let us say, a few months after the passage of this bill, that somebody else has started to use that same trade mark on the same class of goods. He then brings an action for infringement. The defendant says: "But you improperly licensed it 20 years ago. It is true that I never tried to use it 20 years ago, or not until after this bill became law." Why should the defendant get away with a situation like that? He had no intervening rights prior to the passage of this Act. Therefore this Act will wipe out no rights that he had acquired at all.

But suppose that during those 20 years, he did start to use it. He could then say: "There has been an improper assignment of this trade mark. I am going to use it." But the trade mark owner would say "Of course, if I bring suit after this bill, I will only have my trade mark invalidated, so I had better sit back and let him go on." In that case the defendant would have intervening rights. Both were using the trade mark in such a manner that it is no longer distinctive, and the court then holds the trade mark to be invalid.

The CHAIRMAN: You had a question, Mr. Cannon?

Mr. CANNON: I was only going to say, in another manner, what Mr. Fox has just said, but from a practical point of view. If you look at the effect of the clause, you will see that we are simply ratifying transactions which have taken place in the past in good faith between two parties. We are simply ratifying something that they both agreed to. The only one who could suffer would be some third party who was trying to assert a right because of some technicality. Therefore I think we ought to protect those who have acted in good faith in transfering their trade mark without the goodwill, but who did use them. If the transferee used it in the way contemplated by the Act, I think he should be protected as against a third party who may have just a technical right. That was what Mr. Fox explained but in more detail. That was what I had in mind.

Mr. FLEMING: I think there is more than just a technicality, when you have a rule of law which says that something is invalid which is admittedly done by way of assignment.

Mr. CANNON: As between the parties to the transaction, neither one has any interest in saying it is invalid. It would only be a third party who would have any interest.

The CHAIRMAN: I think we are only confirming a very strong equitable right.

Mr. RICHARD: Then in respect to a trade mark which was assigned, let us say, in the case of a company which went into bankruptcy or in the case of an estate, and it would help to legalize a transfer by the custodian of enemy property of any trade marks which were transferred without the goodwill.

The WITNESS: That is a very good point. Yes, that is what it would do.

The CHAIRMAN: Shall clause 47 carry?
Carried.

Shall clause 48 carry?
Carried.

Shall clause 49 carry?
Carried.

Mr. CANNON: I wish to remark, Mr. Chairman, that I think this is a very good addition and improvement to the law, because in the past, when licensing any people to use a patent, if you wanted to license them at the same time to use the trade mark in connection with the patent, you could not do so. You had to transfer the trade mark and make an agreement that at the end of the license they would retransfer the trade mark. Therefore I think that this provision for registered users, which was in the American Act as well as in the British Act, is something which was definitely lacking in our Act, and I want to congratulate the department for bringing it into this bill.

The CHAIRMAN: Shall clause 50 carry?
Carried.

Shall clause 51 carry?
Carried.

Shall clause 52 carry?
Carried.

Shall clause 53 carry?
Carried.

Are there any questions on clause 54?

> 54. The Exchequer Court of Canada has jurisdiction to entertain any action or proceeding for the enforcement of any of the provisions of this Act or of any right or remedy conferred or defined thereby.

Mr. FLEMING: Just as a general estimate, I wonder what Dr. Fox has to say. Is it the view of the committee that the net result of the enactment of this new bill will be that there is more or less litigation through the Exchequer Court?

The WITNESS: Much less.

Mr. FLEMING: You say there will be much less.

Mr. RICHARD: And it is not very heavy now.

The CHAIRMAN: Shall clause 54 carry?
Carried.

Shall clause 55 carry?
Carried.

Mr. ASHBOURNE: I have no doubt that the clause referring to Newfoundland has received very particular attention especially since our federal cabinet member, the Hon. Gordon Bradley, the Secretary of State, is here and his department has been looking after this bill. I am not a lawyer, but I was wondering whether or not Dr. Fox might like to elaborate on this clause which applies to Newfoundland. I was wondering particularly if there is any need of these people who had their trade marks registered in Newfoundland, now having to apply to have them re-registered at Ottawa.

The CHAIRMAN: Would you answer that question please, Mr. Fox?

The WITNESS: Mr. Chairman, I think that the controlling answer is that clause 65 carries forward in the same words the terms of the Union.

By Mr. Ashbourne:

Q. I noticed that the laws of Newfoundland—in paragraph 2 it says:

> 65(2) The laws of Newfoundland as they existed immediately prior to the expiration of the 31st day of March, 1949, continue to apply in respect of application for the registration of trade marks under the laws of Newfoundland pending at that time and any trade marks registered under such applications shall, for the purposes of this section, be deemed to have been registered under the laws of Newfoundland prior to the 1st day of April, 1949.

Shall clause 56 carry?
Carried.

Shall clause 57 carry?
Carried.

Shall clause 58 carry?
Carried.

Shall clause 59 carry?
Carried.

Shall clause 60 carry?
Carried.

Shall clause 61 carry?
Carried.

Shall clause 62 carry?
Carried.

Shall clause 63 carry?
Carried.

Shall clause 64 carry?
Carried.

Shall clause 65 carry?

Newfoundland.

65 (1) The registration of a trade mark under the laws of Newfoundland prior to the 1st day of April, 1949, has the same force and effect in the Province of Newfoundland as if Newfoundland had not

become part of Canada, and all rights and privileges acquired under or by virtue thereof may continue to be exercised or enjoyed in the Province of Newfoundland as if Newfoundland had not become part of Canada.

(2) The laws of Newfoundland as they existed immediately prior to the expiration of the 31st day of March, 1949, continue to apply in respect of applications for the registration of trade marks under the laws of Newfoundland pending at that time and any trade marks registered under such applications shall, for the purposes of this section, be deemed to have been registered under the laws of Newfoundland prior to the 1st day of April, 1949.

I persume that was only with respect to applications which were pending at that time, and not in respect to any future applications.—A. As a matter of fact, clause 65 is now in the present trade mark law in the Unfair Competitions Act, where it appears as section 61-A. It has been enacted by parliament in carrying forward the terms of the Union.

The CHAIRMAN: Are there any further questions, Mr. Ashbourne?

Mr. ASHBOURNE: I was just wondering. I presume that all applications of course have to come to Ottawa for registration with respect to any trade marks.

The WITNESS: That is right, that is correct.

Mr. ASHBOURNE: Thank you.

The CHAIRMAN: Shall clause 65 carry?

Carried.

Shall clause 66 carry?

Carried.

Shall clause 67 carry?

Mr. FLEMING: Is there any indication when it is intended to bring this bill into effect by proclamation?

Hon. GORDON BRADLEY: No, I cannot give you any date at the moment. The regulations presumably, would have to be drafted. We had a chat about that yesterday afternoon and while it is more or less mechanical work, it is likely to take some little time.

Mr. FLEMING: There will be ample notice given before the Act actually comes into effect.

Mr. STEIN: There will be a proclamation issued.

Mr. FLEMING: This is the kind of Act where I think notice is very important, and I wondered if it was intended to bring it into effect very soon, or after a reasonable period of time.

Mr. BRADLEY: It will not be for some months I would say anyway.

The CHAIRMAN: Carried.

Shall clause 68 (repeal and transitional) carry?

Carried.

Clause 6 was marked stand yesterday pending a discussion on a number of amendments. These amendments have now been agreed upon with the officers of the department, and Mr. Fulford, on behalf of Mr. Jeffery, moves that clause 6, subclause 2 be amended by striking out the word "is" at the beginning of line 25 and substituting in lieu therefor the words "would be"; and that subclause 3 of clause 6 be amended by striking out the word "is" in

line 31 and substituting in lieu therefor the words "would be"; and that clause 6, subclause 4 be amended by striking out the word "is" in line 39 and substituting in lieu therefor the words "would be". Shall the amendment carry?

Mr. FLEMING: I am imposing on the committee by asking for clarification of this, but not having been here yesterday to hear the discussion, could you tell us in a word what this means, because there does not seem to be a great deal of difference between the word "is" and the words "would be" in the context here.

The CHAIRMAN: Mr. Jeffery raised the point that the words "would be" would lead to greater clarity and would indicate more clearly what the words "in the same area" refer to—

Mr. BRADLEY: It is subclause 2.

The CHAIRMAN: If you read subclause 2, the words, "in the same area", at the end of line 24, might appear on casual reading to be restrictive, but the intent of the section is that these words are definitive, and confusion would arise if the wording of the section would lead one to believe that the section is only operative if the trade marks are actually used in the same area, that is why the words "would be" were added.

Shall the amendment carry?

Carried.

Shall the clause (clause 6) (when mark or name confusing) as amended carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill, as amended?

Agreed.

The CHAIRMAN: Mr. Fulford moves that we print 750 copies in English and 200 in French of the minutes of proceedings and evidence in respect of this Bill. Does the motion carry?

Carried.

Mr. RICHARD: I think before we leave we should thank the members of this committee and the officers of the Crown who are here today. There has been a great deal of work done on this bill in the past four or five years, and I think they have given us a great deal of help and explanation, and as far as I am concerned, they have given us a very good lecture on trade marks for which I thank them.

The CHAIRMAN: On behalf of the committee and to the minister and deputy minister, and all who have assisted us in our work, we wish to extend our very sincere thanks.

Mr. FLEMING: If they had not been here and had not done this work, this bill would not have gone through.

Mr. BRADLEY: I do not think there would have been a chance of it.

pl-136

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