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Canada. Parliament.
Senate. Standing
Committee on Transport and
Communications.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 1

THURSDAY, OCTOBER 24, 1974

Complete Proceedings on Bill S-11, intituled:

“An Act respecting British Columbia Telephone Company”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

- | | |
|----------|------------|
| Blois | Lawson |
| Bourget | McElman |
| Burchill | Molgat |
| Davey | O'Leary |
| Denis | *Perrault |
| Eudes | Petten |
| *Flynn | Prowse |
| Forsey | Riley |
| Graham | Smith |
| Haig | Sparrow |
| Langlois | Welch—(20) |

(Quorum 5)

**Ex officio members*

THURSDAY, OCTOBER 24, 1974

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 17, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Heath moved, seconded by the Honourable Senator Forsey, that the Bill S-11, intituled: "An Act respecting British Columbia Telephone Company", be read the second time.

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Heath moved, seconded by the Honourable Senator Forsey, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, October 24, 1974.

(1)

Pursuant to Notice the Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. and proceeded to the election of a Chairman and a Deputy Chairman, in compliance with Rule 69.

Present: The Honourable Senators Bourget, Denis, Haig, Langlois, McElman, Petten and Smith. (7)

Present but not of the Committee: The Honourable Senator Asselin.

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

On Motion of the Honourable Senator Langlois, seconded by the Honourable Senator Petten, the Honourable Senator Haig was elected *Chairman*.

On Motion of the Honourable Senator Langlois, seconded by the Honourable Senator Smith, the Honourable Senator Bourget was elected *Deputy Chairman*.

On Motion of the Honourable Senator Denis it was *Resolved* that unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of its day-to-day Proceedings be printed.

The Committee then proceeded to the consideration of the following:

Bill S-11: "An Act respecting British Columbia Telephone Company"

WITNESSES:

Communications Department:

Miss Margaret Prentis, Director,
Financial and Corporate Affairs;

Mr. Robert Somers,
Chief, Rates and tariffs.

Consumer and Corporate Affairs:

Mr. R. Viets,
Legal Branch.

British Columbia Telephone Company:

Mr. J. C. Carlile,

Vice-President—Administration.

Mr. Michael Butler,
Counsel.

Pitfield, MacKay, Ross and Company:

(Investment Dealers)

Mr. David Torrey.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

(Mrs.) Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, October 24, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-11, intituled: "An Act respecting British Columbia Telephone Company" has, in obedience to the order of reference of Thursday, October 17, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, October 24, 1974

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-11, respecting British Columbia Telephone Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-11, respecting the British Columbia Telephone Company. We have as witnesses: Miss Margaret Prentis, Director, Financial and Corporate Affairs, Mr. Robert Somers, Chief, Rates and Tariffs, Department of Communications; Mr. R. D. Viets, Legal Branch, Department of Consumer and Corporate Affairs; Mr. J. C. Carlile, Vice-President, Administration, British Columbia Telephone Company, and Mr. Michael Butler, Counsel; and Mr. David Torrey of Pitfield, MacKay, Ross and Company.

We shall begin with Mr. Butler.

Mr. Michael Butler, Counsel, British Columbia Telephone Company: Thank you, Mr. Chairman.

Honourable senators, I am a partner in the law firm of Farris and Company, a name which I hope is still favourably remembered in this chamber, and we act as general counsel for British Columbia Telephone Company, whose amending act is the subject of your consideration today. With me is Mr. J. C. Carlile, Vice-President, Administration of the company, the senior executive most knowledgeable of the problems related to the financing of the company, and also Mr. David Torrey who is a partner in the firm of Pitfield, MacKay, Ross and Company, investment dealers. They are the general financial advisers and underwriters of British Columbia Telephone Company. Also, as you have heard and as requested, we have representatives of the Department of Communications and of the Department of Consumer and Corporate Affairs present.

I have asked to have distributed to those who may be interested copies of the office consolidation of the existing special act respecting the British Columbia Telephone Company. This legislation was originally enacted in 1916 and has been subject to five amendments prior to this one which we are about to consider.

Also, honourable senators, the yellow sheets are copies of the material distributed to the ordinary shareholders of the company in connection with a meeting of shareholders which was held on Monday of this week to confirm the directors' resolution under which the petition was put to your house relating to the amending act. It is perhaps appropriate to state at this point that such a con-

firmation was forthcoming at the meeting by a virtually unanimous vote. Only 3,308 shares voted against, and that is approximately one-tenth of 1 per cent of those voting. Over 77 per cent of the ordinary shares of the company were present or represented by proxy at the meeting. This percentage is based on the share capital, without giving effect to a rights offering which actually closed on October 16 last, but I am told that the ever-speedy computer cannot give us a calculation giving effect to the rights offering for upwards of a month. So this is the only figure we can use, but it should not make any substantial difference.

If you disregard the majority shareholders of the company, over 54 per cent of the other shareholders were represented and over 99½ per cent of those voted in favour of this amending bill. Since the preferences and priorities of the existing classes of preference and preferred shares of the company are not affected by this proposed enactment, these classes of shareholders did not vote on this matter.

The purpose of the proposed bill can be very simply stated: it is, firstly, to increase the capital in contemplation of the company's needs over the next decade or more; and, secondly, to make the capital structure more flexible, in order to enable the company to meet the demands of the market place in competition for public financing during this period.

These changes are considered so consequential to the company and of such immediate need that it was determined to restrict the proposed bill to them alone, notwithstanding the desirability of other updating amendments to the existing enactment relating to both practical and technological changes and the current corporate practice and legislation. It is felt that in this latter respect the company can live with what it has, but such is not the case when one considers the present capital structure. Consequently, the amendments relate only to sections 4 to 7, inclusive, of the present enactment.

I propose therefore, with your concurrence, to review briefly the changes effected in each of these sections, and I will refer you to the bill, S-11, before you, which has not only the amending sections but also the original sections and explanatory notes.

Section 4, which is contained in clause 1 of the bill before you, is the general capital stock clause of the company. It is intended that this will provide for an aggregate nominal amount of capital stock of up to \$250 million. Section 4 presently provides for only \$5 million. This is a little confusing, in that in both cases, as I will

explain later, section 6. (1) permits further increases in the aggregate nominal amount of capital stock. This is the basic aggregate amount and then further increases are permitted with the concurrence of the shareholders. This section will also contemplate a variety of classes of shares, with or without par value, based upon the determination of the directors from time to time. Present references to the specific par value and to calls on the shares would be eliminated.

The amendments to section 5 effected by clause 2 of the bill are the most important changes proposed in this enactment. Section 5. (1) sets out in some detail the forms of capital structure which may be established by bylaw and the changes which may be effected in that capital structure. This subsection is substantially consistent with similar provisions in the Canada Corporations Act and is an updating of the present wording, which is proving unduly restrictive. Just as an example, there is no provision in the present enactment for conversion of shares to other classes of shares, nor for the redemption or purchase of shares, otherwise than at the option of the company.

I believe that both Mr. Carlile and Mr. Torrey would be able to expand on these additional types of financial structure and the need for them in current financing practices.

Senator Denis: Whenever such a change is desired, will it be necessary to call a meeting of the shareholders, or can this be done by the Board of Directors?

Mr. Butler: As will be seen from section 5. (3), any bylaw such as this will have to be approved by the shareholders. I should qualify that to the extent that in section 5.1(c) there is the provision that the bylaw may authorize the directors to prescribe from time to time, before issuance, the designation and the rights and conditions of any particular class or series. Once again, that would have to be, first of all, approved by the shareholders, but once that is approved the directors have the flexibility to determine the particular preferences.

Sections 5.2) to (5), inclusive, deal with these voting rights. The main thrust of the subsections is to ensure that the present notice, attendance and voting rights of the existing classes of preference and preferred shares remain unchanged. There is absolutely no change whatsoever effected in the present rights in this regard of the existing classes of shares, other than the ordinary shares. Thus, the provisions of existing section 5.2), requiring the holders of 75 per cent in par value of any class of preference or preferred shares to agree to any change in such rights, is carried forward, firstly in proposed subsection (4) and secondly in proposed subsection (3), both on the basis that these specific rights are set out in the provisions attaching to each class of shares.

Further, for the sake of certainty, section 5.5) deals with things such as subdivisions, consolidations and reclassifications, and deems them to affect the rights attaching to any shares, thus assuring that the voting privileges apply in such cases.

With regard to the ordinary shareholders and also to the holders of any new class of preference shares that

might be created—that is, as distinguished from the existing classes—the voting requirements which will be established by Bill S-11 are on the same basis as those in the Canada Corporations Act; that is, a two-thirds majority in each particular class of those voting must approve any such bylaw prior to its becoming effective.

The Chairman: This will be at a special general meeting?

Mr. Butler: At a special general meeting, sir, and if the rights of a new class of preference shares are affected, there would be a separate meeting for that class of preference shares. We would submit respectfully that this is a more appropriate provision than that presently existing with regard to the ordinary shareholders.

Section 5.6) merely carries forward a provision relating to share qualification necessary to become a director. Any holding of any class of share qualifies one for that position.

The proposed section 5.7) is a rather lengthy and complicated subsection. It deals with provisions relating to shares which are subject to redemption or purchase. Under the Canada Corporations Act this is dealt with in a long series of sections which are predicated upon the issuance of supplementary letters patent in the case of a reduction of capital. In view of this, in this company, where such does not apply, you will see that there is provision for a certificate to be granted by the Minister of Consumer and Corporate Affairs upon such terms as he may deem appropriate prior to any such reduction taking place. It is presumed that by virtue of such discretion the minister would require substantially similar procedures to be followed as are set out under the Canada Corporations Act. The wording changes in this subsection from that in the equivalent subsection (3) of the present enactment are not substantial. They are mainly for the purpose of bringing this subsection into line with the terminology of the Canada Corporations Act. The present subsection is based upon statutory sections as they read in 1941, and in their wisdom the legislative draftsmen have changed such wording over the past 33 years. However, it should be noted that this subsection will now deal with shares subject to purchase as well as those subject to redemption, which was not the case before.

Changes are proposed in both subsections 1 and 2 of section 6 of the enactment, as you will see if you refer to clauses 3 and 4 on pages 5 and 6.

In the former case—this is what I referred to previously—the amount to which the aggregate nominal amount of capital stock may be increased will be extended to \$1,250 million. Presently it is \$250 million, and it is the considered opinion of the company that this new figure may be required over the next decade or so to permit financing of the capital needs of the company during that period. Certainly the \$250 million will be used up before the end of 1975.

Clause 4, on page 6. Subsection 2 of section 6 is a rather complicated transitory provision which was inserted in the enactment in 1951. Personally, I would have preferred to amend it out of the enactment completely. However, this would have required some quite compli-

cated amendments in various other sections. So, in the circumstances, we proposed merely a minor insertion, which has the effect of making this subsection subject to the provisions of the new subsection 1 of section 5, thus allowing bylaws approved by the shareholders to further amend the status of the ordinary shares, if so desired. As I said, it is a very technical wording change to make the subsection consistent with the proposed new sections.

Section 7 of the enactment, the last section being dealt with, is contained in clause 5 of the bill. This covers debt capital of the company as distinguished from share capital.

Various minor changes are proposed in this section, for the most part merely to make the same consistent with the Canada Corporations Act or to adopt current wording and methods common to the financial market place.

However, subsection 4 contains a change of substance. This subsection presently states that all debt securities, with some limited exceptions, shall be considered to be a first preferential claim and charge upon the company and its undertaking.

I believe that honourable senators will be aware that this is not a usual situation for a corporation, and this has proven unduly restrictive. For instance, subordinated debentures or convertible debentures are not available to the company under this subsection as it presently reads, and it does not appear to be a common requirement anywhere. In fact, it was amended out of the Railway Act in 1919, and I think it was upon the Railway Act in 1916 that this subsection was based. It took your houses only three years to get rid of it, but it is taking us quite a lot longer. Consequently, it is proposed that it should be modified to permit that where the specific debt security so provides the first charge may be eliminated, to permit such things as subordinated debentures and unsecured debt.

I have gone rather quickly over this in the form of a summary. It may well be that various questions may come to the minds of honourable senators. My colleagues and I will do our best to answer any questions.

The Chairman: Have officials of the company or the department anything to add to what has already been said?

Senator Denis: Has this bill been seen by the Department of Consumer and Corporate Affairs? I suppose a representative of the department is here. Have you looked into it?

Mr. R. D. Viets, Legal Branch, Department of Consumer and Corporate Affairs: Yes, sir.

Senator Smith: Perhaps I may make the assumption that the company is very well run indeed, because one who is helping run the company is from Nova Scotia. I respect the British Columbia corporation for being wise enough to obtain such a man to help it run the company. My question is: Are these amendments, in general terms, similar in their assignment of powers in various fields to the legislation under which Bell Canada operates?

Mr. Butler: I have with me a copy of the last amending act of Bell. It is substantially similar. We, perhaps in our pride of authorship, did not copy their words exactly, but in substance the answer to your question is, yes.

Senator Smith: I suppose you are not asking us for more power than is given to any other similar company? I mentioned Bell as an outstanding one.

Mr. Butler: I would not like to say absolutely definitely that the powers we are asking for are identical with Bell's. Their bill was some five or six years ago. I think that in substance we are asking for much the same, because in substance we are asking for what is normally granted to corporations under the various acts across the country. Bell did the same thing. There is a slight difference in the fact that we are created under a special act, as opposed to letters patent. We do not come back and ask for supplementary letters patent when we create one of these share classes, but the protection is put in requiring shareholder approval.

Senator Smith: Mr. Chairman, I wonder if the witness could give us a summary, on the record, of the position regarding the ownership of the British Columbia Telephone Company with respect to its activities.

Mr. Butler: The yellow sheets before you have reference to this—on the second page of the information circular. It says:

Anglo-Canadian Telephone Company—
I believe it is a Quebec corporation—unfortunately, not Nova Scotia.

—is the beneficial owner of 1,640,644 ordinary shares...

This represents just in excess of 50 per cent of the outstanding share capital prior to the issuance of rights. Anglo-Canadian has taken out all the rights to which it was entitled, so that it will maintain that percentage ownership.

So far as the directors are aware, no other individual person or company, or even government, beneficially owns more than 10 per cent of the ordinary shares.

Senator Smith: Was there not a time not so long ago when rather substantial ownership was held in the United States? When Anglo-Canadian came into the picture, did they get some American shares, and thereby get control, or would they just buy whatever is available in this country?

Mr. Butler: I believe it is common knowledge that Anglo itself is controlled in the United States.

Senator Smith: I wondered.

Mr. Butler: I could ask Mr. Carlile to expand on that.

Senator Smith: These are just general questions. I am not particularly concerned with the actual fact of the matter. It seems to worry some people more than it does me, that control of such an important communications company would be in another country.

Mr. Butler: I am not quite sure of the number, but a large proportion of the directors of the company are Canadian citizens.

The Chairman: Does your company operate only in the province of British Columbia?

Mr. J. C. Carlile, Vice-President, Administration, British Columbia Telephone Company: We operate two small territories in the province of Alberta, just across from Fort St. John; they are very small. We also provide minimal services in the United States part of Point Roberts, which, as you know, is separated from the States.

The Chairman: Are there any further questions? Does anybody else in the delegation wish to say anything?

Senator Bourget: How do you intend to increase the capital? Do you intend to do it by the issuance of shares, debentures or bonds?

Mr. Butler: I should like to refer that to Mr. Carlile or Mr. Torrey.

Mr. Carlile: There would be various types of security but \$1 billion extra would be in the form of preferred shares and ordinary shares. It is expected to meet our needs over ten years. We have maintained a capital structure of approximately 50 per cent debt. At the present time we have allowed it to increase to close to 60 per cent. Our ideal situation is approximately 50 per cent debt, 20 per cent preferred shares and 30 per cent ordinary shares. As a forward-looking picture, we will try to maintain that balance for the next ten years.

The Chairman: Are there any further questions? If there are no further questions, I will read a letter from the Law Clerk:

Dear Sir:

In my opinion this Bill is in proper legal form.

I should add that there are a few typographical errors in the Explanatory Notes which do not require formal amendment in Committee. These will be corrected before the Bill goes to the House of Commons.

Yours sincerely,
E. Russell Hopkins

That is dated October 22, 1974.

Any further questions?

Senator Smith: I wonder whether the representative of the Department of Consumer and Corporate Affairs has anything he would like to add to what has been said on the bill, as to whether the department has examined it and is satisfied. We have had no statement to that effect.

Mr. Viets: I have examined the bill and am satisfied that the procedure that has been followed is the correct one, and that no proceedings could be taken under the Canada Corporations Act. There is nothing in the bill that would, if it were under the Canada Corporations Act, be unduly disturbing.

The Chairman: In other words, you approve the bill?

Mr. Viets: Yes, sir.

The Chairman: That is all we want to know.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I should add that Mr. Viets addressed a letter to that effect to me, which is on the file.

The Chairman: Are there any further questions on the bill?

Do you want to consider the bill clause by clause, or shall we have a motion to report it?

Senator Bourget: I move that we report the bill.

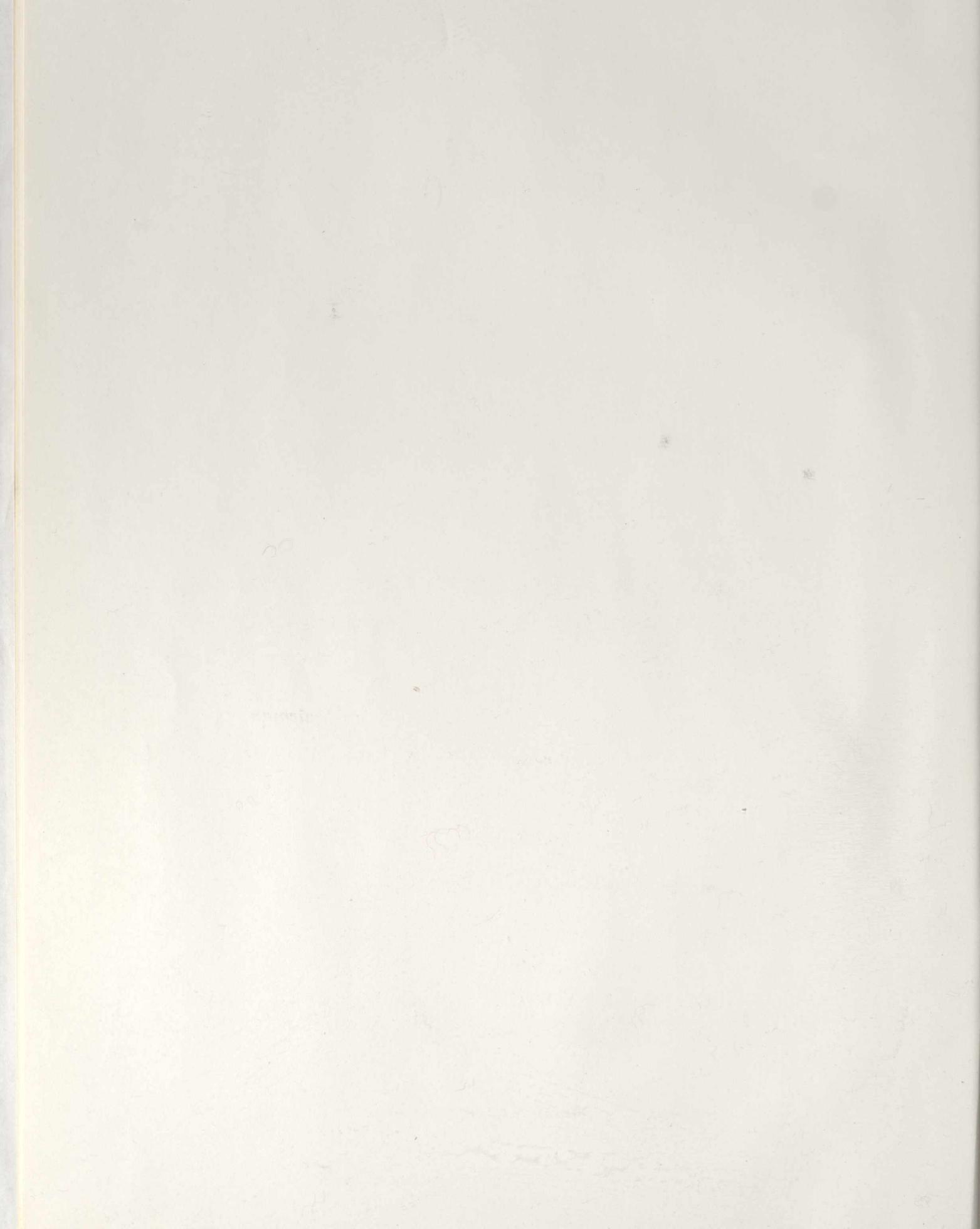
The Chairman: We have a motion by Senator Bourget, seconded by Senator Langlois, that this bill be reported without amendment.

Motion agreed to, and bill reported without amendment.

The committee adjourned.









FIRST SESSION—THIRTIETH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 2

THURSDAY, OCTOBER 31, 1974

First Proceedings on Bill S-5, intituled:

**“An Act to enable Canada to comply with a Convention on the
International Recognition of Rights in Aircraft”**

(Witnesses: See Minutes of Proceedings)



STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

- | | |
|----------|------------|
| Blois | Lawson |
| Bourget | McElman |
| Burchill | Molgat |
| Davey | O'Leary |
| Denis | *Perrault |
| Eudes | Petten |
| *Flynn | Prowse |
| Forsey | Riley |
| Graham | Smith |
| Haig | Sparrow |
| Langlois | Welch—(20) |

(Quorum 5)

**Ex officio members*

THE SENATE OF CANADA
STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 2

THURSDAY, OCTOBER 31, 1974

First Proceedings on Bill S-5, entitled:

"An Act to enable Canada to comply with a Convention on the
International Recognition of Rights in Aircraft"

(Witnesses: See Minutes of Proceedings)

Order of Reference

Evidence

Ottawa, Thursday, October 23, 1974.

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport: Mr. Chairman and Honourable Senators, I understand from reading the Debates of the House that the intent and purpose of the Bill has been to amend the Act in order to enable the Government to ratify the Convention on the International Recognition of Rights in Aircraft. I would like to refer to the Bill in order to clarify some of the points that have been raised in the House. It is my understanding that the Bill is intended to enable the Government to ratify the Convention on the International Recognition of Rights in Aircraft. I would like to refer to the Bill in order to clarify some of the points that have been raised in the House.

The Chairman: Mr. Shields, I am glad to hear that you are satisfied with the Bill. I am glad to hear that you are satisfied with the Bill. I am glad to hear that you are satisfied with the Bill.

Mr. Shields: The Bill was introduced in the House on October 15, 1974. It is my understanding that the Bill is intended to enable the Government to ratify the Convention on the International Recognition of Rights in Aircraft. I would like to refer to the Bill in order to clarify some of the points that have been raised in the House.

However, in recent years, it has been recognized that the Convention on the International Recognition of Rights in Aircraft is a very important Convention. It is my understanding that the Bill is intended to enable the Government to ratify the Convention on the International Recognition of Rights in Aircraft. I would like to refer to the Bill in order to clarify some of the points that have been raised in the House.

Minutes of Proceedings

October 31, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 9.15 a.m.

Present: The Honourable Senators Haig (*Chairman*), Bourget, Denis, Flynn, Graham, Petten, Riley, Smith and Sparrow. (9)

Present but not of the Committee: The Honourable Senator Rowe.

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

The Committee proceeded to the examination of Bill S-5 intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

The following witnesses, representing the Ministry of Transport, were heard:

Mr. L. Shields, Solicitor, Legal Branch;

Mr. P. S. Walker, Superintendent, Civil Aviation Regulations and Licensing Section;

Mr. C. A. Cowie, Inspector, Civil Aviation Regulations and Licensing Section.

The Committee also heard the following witnesses, representing the Federated Council of Sales Finance Companies:

Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel, Canadian Acceptance Corporation Ltd.;

Mr. Elton Doyle, Resident Counsel, Associates Acceptance Company Limited;

Mr. Peter Jiles, Vice-President and Secretary, United Dominion Corporations Canada Limited.

On recommendation of the Honourable Senator Flynn the Committee decided that the Attorney General of each of the provinces be consulted to obtain their views on this Bill regarding the question of federal jurisdiction on legislation relating to aircraft and of possible conflict with provincial legislation. In addition the Attorneys General will be asked to give their consent or rejection of the Bill.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, October 31, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 9.45 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: I see a quorum. The committee will discuss Bill S-5. Among the witnesses, from the Minister of Transport we have Mr. L. Shields, Solicitor, Legal Branch; Mr. P. S. Walker, Superintendent, Regulations and Licensing Section; and Mr. C. A. Cowie, Inspector, Civil Aviation. We have representatives also from Canadian Acceptance Corporation Ltd., United Dominion Corporations Canada Limited, and Associates Acceptance Company Limited. We also have a submission dated October 31, 1974. The front page of the submission refers to the House of Commons committee. That was an error in printing. It should be the Senate committee. We shall now hear from Mr. Shields. The bill was introduced in the Senate, received second reading and was referred to this committee on October 23, 1974. Mr. Shields, would you prefer to make a statement or answer questions?

Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport: Mr. Chairman and Honourable Senators, I understand from reading the *Debates of the Senate* that the intent and purpose of the bill has been explained. If any member of the committee has any questions, I would prefer to reply to those questions. I could go through the bill, but this seems unnecessary in view of the explanation given when it was introduced. It appeared to me to be quite exhaustive. I will attempt to provide an answer to any question to the satisfaction of honourable senators.

The Chairman: Mr. Shields will accept questions.

Senator Riley: I was not here when the bill was introduced, and should like to have a brief rundown on the general intent and purpose of the bill.

Mr. Shields: The bill was introduced primarily to enable the Canadian government to sign the Convention on the International Recognition of Rights in Aircraft. Some years ago an international convention was signed. Canada was not a party to that, and during the intervening years from the birth of that convention there really did not seem to be much necessity for giving serious consideration to it.

However, in recent years—in the last five, at least—due to the large cost of aircraft being obtained by Canadian air carriers, and also the fact that Canadian companies were becoming engaged in the manufacture of fairly large type of aircraft, it became necessary to find some better way of securing financial interest in an aircraft.

At present, if you have a financial interest in an aircraft, it is not entirely owned by the purchaser, and someone gives security for it, there is no way of knowing exactly what is registered against an aircraft unless you go through every registry office across Canada. Senators can conceive that this is an impossible task. You can go only to certain ones, because it would be impossible to go to them all.

The purpose of the bill is to provide one central registry office where all types of securities in relation to a particular aircraft are filed. The central aircraft registry, as conceived under this bill, is an information registry only. It will tell you only what is there. It will not certify the true title, who owns it, or anything else. It will simply tell you what is registered in the office against that aircraft.

There may be other liens against that aircraft that are not registered. In that event, only those that are registered in this registry will have priority. They have priority as of the date of registry.

It will also have priority over registrations that were in the provincial offices over a period of time. Persons holding security interest are not required by the bill itself to file their liens or security interests in the registry office. If they do not file them, they lose the priority against them; so that the aircraft may be sold or transferred without recognition of those rights unless they are filed in this office.

Although it does not state that they have to be filed there, or should be or shall be, for all practical purposes it would be almost incumbent on a person having a financial interest in an aircraft to file his security in this registry.

Senator Riley: Is there any time limit on the registration?

Mr. Shields: Yes, there is. Once notice of interest is filed, it is valid for a period of five years. Then it will be deemed to have expired, unless the person who files it makes an application to have it renewed. It may be renewed for another period of five years, and so on.

Senator Riley: Is there any time limit on the original filing?

Mr. Shields: No.

Senator Riley: I take it this applies to components also—to parts?

Mr. Shields: It applies to an aircraft and the components of an aircraft which make up an aircraft. It does not apply to spare parts.

Senator Riley: To new engines, and that sort of thing?

Mr. Shields: Two engines or four engines, whatever is on the aircraft. It applies to whatever makes up the aircraft,

that is operative. It applies to whatever is necessary to make an aircraft operative. It does not apply to spare parts, because it has been found, from a survey of American practice in connection with spare parts, that spare parts are not always in the same place. They are not always used for the same thing. It is difficult to trace them, or to make the act applicable to them. So, for the time being, we have initiated this measure without including spare parts. It is an effort to get the thing on the road, to achieve a purpose which those engaged in air transportation have been asking for over a number of years.

Senator Riley: If I buy an aircraft in the United States, bring it to Canada and use it from a base in Canada—it is domiciled here—will this act apply to that aircraft?

Mr. Shields: It applies to any aircraft registered in Canada. The aircraft has to be registered in Canada, and you file your lien in the country where the aircraft is registered. They have a somewhat similar act in the United Kingdom. So if they file liens against that aircraft in the United Kingdom under their act and in accordance with their law, then we, by signing this convention, would recognize those rights. Similarly, if we sign the convention, other countries recognize rights filed in Canada.

Senator Riley: How many countries are signatories to it?

Mr. Shields: I think there are approximately 30 countries. The United Kingdom passed a similar convention recently. There are 39 countries.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Have they comparable legislation to this?

Mr. Shields: Yes. All those who have signed it must have similar legislation to this, otherwise they cannot comply with the convention. The convention restricts the type of legislation we may enact.

Senator Bourget: Have you discussed this problem with the provinces?

Mr. Shields: Not in an official sense, but it has been discussed with the Canadian Bar Association representatives of all the provinces, and they have advocated this over a considerable period of time. They support our effort in getting this on the road.

Senator Bourget: But you have never discussed this problem with the provinces?

Mr. Shields: Not on an official basis. We understand that most provinces feel it is something that should be done; but on an official basis, no.

Senator Riley: It is without the jurisdiction of individual provinces?

Mr. Shields: The jurisdiction matter has been considered through the Department of Justice. Their opinion is that it is within the jurisdiction of the Parliament of Canada to pass this legislation. It is based on a Supreme Court of Canada case—the Johannsen case, which gave the power in all matters concerning aeronautics to the federal government.

The committee will notice that in this bill there are provisions which relate to the use of aircraft for commercial air services. Those provisions are there primarily in support of our jurisdiction, that the right to interfere with

commercial air services is restricted by virtue of this act against a person holding a financial interest.

Senator Riley: Senator Flynn questioned what I said about jurisdiction, and I bow to his superior experience, age and knowledge. He is a good lawyer—

Senator Flynn: Get to the point.

Senator Riley: I can see right away what he had in mind. If I had an aircraft in which I was hopping from, say, Ottawa to Cornwall, that is hardly an interprovincial undertaking.

Mr. Shields: The fact that the aircraft is operated only between Ottawa and Cornwall does not have anything to do with the federal government's jurisdiction in relation to aircraft.

Senator Riley: What act are you talking about?

Mr. Shields: I am talking about the Aeronautics Act.

Senator Flynn: I would like to deal with the point to which Senator Riley alluded. Presently there are provincial laws applicable to movables, including aircraft. We have the commercial pledge in Quebec. If I buy a plane in Quebec and I finance it, the lender registers a commercial pledge in accordance with the laws of Quebec. You suggest that because of section 9 and other sections of this act, the lender could not enforce his lien on the aircraft?

Mr. Shields: After this act comes into effect and it is registered only in Quebec, yes.

Senator Flynn: I could not?

Mr. Shields: No, unless it is registered under this act.

Senator Flynn: How can you reconcile that with the statement that is often made that this new system remains optional?

Mr. Shields: That is what I stated. It remains optional. You do not have to take advantage of it. But if you do not take advantage of it, you are apt to lose the right of your security interest. Your security interest will be perhaps overridden. It loses its priority in respect of other security interests which are registered under this act.

Senator Flynn: What will be required is a judgment of a court stating that provincial laws with respect to aircraft are ultra vires.

Mr. Shields: I agree that in order to decide this particular question once and for all there would have to be a court case. That very point was considered by the officials of the Department of Justice when this legislation was drawn up, and it is the opinion of the departmental officials that the federal government has the power to enact this legislation. That, of course, does not mean that it does have that power. It may very well have to be decided by a court of law as to whether, in fact, it does have the power to enact and enforce this legislation.

Senator Flynn: Whether or not the opinion of the departmental officials is correct, there will be a state of indecision until a final decision is arrived at by a court of law declaring provincial laws ultra vires in respect of aircraft. The laws of the provinces remain on the statute books; they have been applied to aircraft and they are applicable in principle, in any event. What is going to

happen until such time as a decision is finally made on this point?

Mr. Shields: I perceive what will happen, Senator Flynn, is that the legislation will be proceeded with and perhaps at some point some provincial body will take the matter to court. Until such time as that happens, it will be the law of the land.

Senator Flynn: It will be the law of the land, as will be the provincial laws that are applicable in this respect.

Mr. Shields: As you know, if the federal government has jurisdiction in one matter, matters corollary to that, even though they run into the provincial sphere, are held to be under federal jurisdiction.

Senator Flynn: I am aware of ancillary powers, but if you look at this legislation, it merely recognizes all rights in aircraft, which is purely property and civil rights. It is not a question of operating an aircraft, or of licensing an aircraft to operate, nor is it a question of interprovincial transportation. This legislation is only concerned with property rights in an aircraft.

Mr. Shields: Not strictly, senator.

Senator Flynn: It certainly is.

Mr. Shields: One of the chief points in connection with this legislation is that it is in connection with an international convention.

Senator Flynn: But the international convention deals only with property rights. In addition, as you well know, Mr. Shields, the federal government has refused to sign treaties where there were clearly provincial rights involved.

Mr. Shields: It is an international convention.

Senator Flynn: It doesn't matter whether it is international or national.

Mr. Shields: The federal government is the authority that enacts legislation in respect of international conventions.

Senator Flynn: I respectfully disagree.

Mr. Hopkins: I, too, disagree.

Senator Flynn: I have no objection to the bill itself. I think everyone concerned would be happy with this legislation. That seems to be the purport of the submission prepared by the Federated Council of Sales Finance Companies. However, they want to know where they are going as far as their rights are concerned. As long as the provinces do not agree to turn this entire field over to the federal government, there will be conflicts of laws as between the federal and provincial governments.

I cannot understand why the department would bring this legislation down before having obtained from the provinces their consent or their agreement to amend their laws, or to do something that will alleviate any conflicts which might arise. As matters stand now, this bill merely creates confusion.

Mr. Shields: I have just now been handed the submission prepared by the Federated Council of Sales Finance Companies.

Senator Flynn: That is the problem raised in that submission.

Mr. Shields: I have not as yet had an opportunity to read their submission, but I think I know what it amounts to. Some finance companies and banks are in the habit of making floating charges . . .

Senator Flynn: It is not a habit; it is the present legal situation.

Mr. Shields: Yes. They make floating charges on all the assets involved. If this legislation comes into effect, it will only be valid in so far as aircraft are concerned, and the aircraft has to be specified. In other words, the particular aircraft will have to be specifically designated. Because of that they feel it is going to cause them some problems.

Senator Riley: Perhaps the representatives from the Federated Council of Sales Finance Companies could deal with that question.

Senator Flynn: In the province of Quebec the claim can be registered against the specific aircraft. When you speak of floating charges, that is something else. Floating charges can be likened to a bond which is guaranteed by floating charges on several assets. You can also have a specific lien on a specific aircraft under the laws of the common law provinces, and under the Commercial Pledge Act in the province of Quebec.

Mr. Shields: Those provincial laws are made not only in relation to aircraft but in relation to movables, and chiefly motor vehicles.

Senator Flynn: No, not chiefly motor vehicles.

Mr. Shields: Unless they had no particular reference to aircraft. Otherwise, they would be included in the same legislation.

Senator Flynn: Not chiefly. I cannot see a court of any province, on the basis of this legislation only, enforcing the seizure of an aircraft to enforce a lien registered under provincial laws, unless the federal government intervened by having the provincial laws in this respect declared ultra vires. Without that intervention, anyone who wants to proceed under provincial laws, I suggest to you, with respect, will be able to do so, and there is no provincial court which will refuse such an application.

Senator Bourget: Mr. Chairman, not being a lawyer, I should like to know whether the effect of this registry is strictly an information system.

Senator Flynn: If it was only an information system, Mr. Shields could not say that anyone wanting to enforce a right in an aircraft has to apply pursuant to this legislation.

Mr. Shields: It is an information system in the sense that title to an aircraft will not be certified. It will simply show what is registered against the aircraft, and what is registered in this registry against an aircraft will be the only valid lien, and charges against it, assuming this legislation comes into effect.

Senator Riley: Will this legislation supersede the provincial mechanic liens acts in respect of labour, and so forth?

Mr. Shields: Yes.

Senator Riley: That would bother me.

Mr. Shields: That is dealt with in clause 6(c), which reads as follows:

(c) a person who, in such circumstances as are prescribed, has provided equipment or services in relation to the aircraft.

Senator Riley: It would seem to indicate that this legislation, if it is enacted, will supersede the mechanics liens acts of the provinces.

Senator Bourget: It seems that way to me, not being a lawyer.

Mr. Shields: As Senator Flynn has pointed out, there may be a dispute between the federal and provincial governments, but on the basis of the research conducted by the departmental officials, and on the basis of aeronautics coming under federal jurisdiction, what is corollary to that comes within federal jurisdiction, and particularly so in this case in view of the fact that there is an international treaty involved. For those reasons, the federal government feels it is justified in bringing down this legislation. However, as Senator Flynn has pointed out, there has been no final decision on it.

Senator Flynn: Since there has been no decision, a state of indecision exists.

Mr. Shields: I might add, it is the opinion of the barristers involved in the aviation field and the people concerned with the Canadian Bar Association that it is federal jurisdiction.

Senator Flynn: I doubt that.

Mr. Shields: Since lawyers outside of the department who are involved in the aviation field, as well as the legal branch of the Department of Justice, feel that the federal government has jurisdiction in this area, surely there is ample reason for it to proceed with the enactment of this bill and, you might say, take its chances.

Senator Flynn: With respect, I suggest to you that the people concerned want this legislation to be the only legislation applicable to aircraft. I think everyone is in agreement with that. It would certainly simplify the problems that exist presently. However, that does not necessarily mean that all problems will be solved. There are many other problems involved here.

It is my view, Mr. Chairman, that the committee should write to all provincial attorneys general to get their views on this legislation. I think it is our responsibility to do so, not only because we want the provinces to have an opportunity to express their views on it, but to protect the public at large. Otherwise, we will be creating a state of utter confusion as to the applicability of provincial laws and the federal law in this area, and I would resist that very much.

Senator Bourget: Mr. Chairman, I agree with Senator Flynn's suggestion. The Law Clerk seems to be of the same opinion.

Mr. Hopkins: I do not want to be misquoted. What I said was that we cannot enlarge federal jurisdiction merely by entering into an international treaty.

Senator Bourget: Yes. In any event, I do feel the suggestion made by Senator Flynn is a reasonable one and one which should be pursued.

Mr. Shields: If the committee does write to the provincial authorities to obtain their opinions, what does the committee gain? The committee will get no more than an opinion, resulting in it having to deal with one opinion versus another.

Senator Flynn: Are you sure that the opinions by the provincial attorneys general are going to be contrary to that of the department? If the provincial authorities say they are in favour of this legislation and agree to amend the respective provincial laws in this respect so that there is no conflict, I, for one, will certainly be more secure in passing this bill.

Mr. Shields: What I am saying is that you will simply get an opinion from some person.

Senator Flynn: Yes, as we have received an opinion from the Department of Justice.

Senator Riley: If we get opinions from elected officials, those opinions would reflect the views of the public.

Mr. Shields: But the committee will not get anything more definite than it has now until a final decision is made by a court, regardless of the opinions expressed by the provincial authorities.

Senator Flynn: I do not see why you say that. If the provincial authorities share the view of the department, then there is no problem.

Mr. Shields: I do not see where you are any better off by pursuing that.

Senator Flynn: If all parties concerned agree that this entire field is within the jurisdiction of the federal government, I will certainly feel more at ease.

Senator Riley: Mr. Chairman, I am inclined to agree with Senator Flynn's suggestion. Some of the countries who are signatories to the convention would not have the same problem.

Mr. Hopkins: A unitary state would not have any problems in this respect.

Senator Riley: If I feel I have an interest in an aircraft, how long is it going to take to deal with it? Even lawyers are not all well versed in the changes in this sort of legal procedure. I might place a lien on an aircraft and tell my client that for these services there should be a lien on his aircraft and find out that the lien has to be registered through the federal court. I would think that as a matter of courtesy the provinces should be approached and, if they are at variance with the federal concept of this legislation, let it be fought out in the courts on a jurisdictional basis.

Senator Flynn: Further to your remarks I might add that presently, without this legislation, there is no problem. The situation may not be as satisfactory as we would prefer, but you can register a lien against an aircraft under the applicable provincial laws and there is no problem of conflict of jurisdiction. We have gone through this for 25 years, since this International Convention was introduced, but there is no confusion or problem at present. If this legislation is passed without more assurance given that it is valid and desirable, we may worsen the situation.

Senator Riley: I might add that the whole idea of central registration is good.

Senator Bourget: I agree with that.

Senator Flynn: Yes.

Mr. Shields: You say there is no problem at the present time?

Senator Flynn: Well, there are, but they are not comparable to those we would face if this legislation were enacted without assurance that it is within the federal powers.

Mr. Shields: At this time a person who has a security interest in an aircraft does not know if that interest is of any value.

Senator Flynn: He knows, because in the absence of federal legislation on this point there is no doubt that the present provincial laws are valid and applicable.

Senator Riley: I do not wholly agree with that, Mr. Chairman, because I might register in Newfoundland an aircraft based in Ontario and owned by a Newfoundland company. It is very difficult for those who might find it necessary to place a lien on that aircraft to find out where it is registered.

Senator Flynn: It all depends; in some cases there might be problems, but they would not all be solved by this legislation.

Mr. Shields: In the case of an aircraft moving from one province to another, a search would have to be made in the registry offices of every county and district of every province into which the aircraft moved, which is impossible, therefore you do not know.

Senator Flynn: As far as the main claim on an aircraft is concerned, which is usually the cost of purchase, the lender will register his lien under the applicable provincial law. Certain conditions will be provided in this. Of course, he cannot prevent the aircraft from being used outside the province, but he has to take the usual precautions. The plane cannot be prevented from flying outside Canada, either, and this is not a problem that this legislation will solve.

Mr. Shields: Oh, yes; it certainly will solve it.

Senator Flynn: If it goes to a country which is party to the treaty, but not elsewhere.

Mr. Shields: All the large trading nations will be participants.

Senator Flynn: Just those, yes, but there would be a state of confusion.

Senator Riley: The chattel mortgage would have to be registered as a lien in every county in every province.

Senator Flynn: Not in Quebec. I think you would have to register it where the purchaser has his place of business or his domicile. That would be sufficient. Of course, if you are speaking of fraud, that is something else.

The Chairman: As this constitutional question has been raised, which I intensely dislike, we will take note to advise the provincial attorneys general of this proposal in the bill and ask for their consent or objection. Is that agreed?

Hon. Senators: Agreed.

The Chairman: In view of that and as Mr. Shields was whacked around a bit, we will now try Mr. P. S. Walker,

Superintendent, Regulations and Licensing Section. Mr. Walker, do you have a Statement to make, or are you prepared for questions?

Mr. P. S. Walker, superintendent, regulations and licensing section, ministry of transport: Mr. Chairman and Honourable Senators, about the only statement I have is that I am here in a technical and administrative capacity, rather than in a legal capacity.

The Chairman: Then no more constitutional questions will be raised.

Senator Flynn: You will be speaking more to the provisions of the Aeronautics Act which deals with the regulation of the operation of aircraft?

Mr. Walker: To that extent and also as to how this legislation would be administratively implemented.

The Chairman: Mr. C. A. Cowie, Inspector of Civil Aviation is here. Do you have a statement to make?

Mr. C. A. Cowie, Inspector, civil aviation, ministry of transport: Mr. Chairman and honourable Senators, I would only say one thing right now. If you were to go out to Uplands airport to buy an airplane right now, under the present system you can have no idea whether there is a lien against that aircraft.

Senator Flynn: Not at Uplands, for sure.

Mr. Cowie: You could buy an airplane from a person, for instance, from Vancouver and could sell it to a person in Ottawa, who could sell it to a third party, and there is no way or knowing where a lien has been filed in Canada. The whole point of this legislation is to bring it all together so that anyone who wishes to buy an aircraft could readily find out what is actually registered against it.

Senator Flynn: I agree, but his is not the only field in which a person would not know about something he wished to purchase. You say that about an aircraft, but the same thing would apply in many other fields. This is not a new problem.

Mr. Cowie: No, but aircraft moving the way they do, this is our main concern.

Senator Riley: There is an ever-increasing business, I understand, in this country and others, of buying aircraft from surplus divisions in other countries, or bringing them in to the country and refurbishing them here.

Mr. Cowie: That is true.

Senator Riley: And if it is an American aircraft being brought in, such as a helicopter, this central registration would apply, again giving those working on the aircraft and refurbishing it a right to file a lien locally.

Mr. Cowie: Under the act, anyone with a claim against such an aircraft can file it. Under this proposed system it must be done through the central registry.

Senator Flynn: If the aircraft is registered.

Mr. Cowie: Yes.

Senator Flynn: But what happens if it is not registered?

Senator Riley: What happens if a surplus aircraft is bought in the United States and brought into Canada? Must it be registered before it is refurbished?

Mr. Cowie: No; the aircraft does not have to be registered unless it is to be flown. Also, if it is to be flown into Canada it must be registered.

Senator Flynn: Not under this legislation, but under the Aeronautics Act.

Mr. Cowie: That is right.

The Chairman: So that means a foreign aircraft being brought in has to be registered in Canada if it is going to be flown in Canada?

Senator Flynn: Yes.

Senator Riley: After it is refurbished, or after it is rebuilt?

Mr. Cowie: It must be registered somewhere. If it is registered in the United States and there is a lien against that aircraft it would be filed in Oklahoma City.

Senator Riley: Does the same apply to government aircraft as to civilian aircraft? Must they also be registered?

M. Cowie: That is right.

The Chairman: Are there any further questions before we get into constitutionality?

Senator Riley: Oh, now, Mr. Chairman. I disagree with your view. As members of this committee we are entitled to ask questions and the constitutionality is an important aspect as far as the Senate is concerned.

The Chairman: We have discussed that, Senator Riley, but I am willing to sit here as long as you are willing to sit with me. No one else is going to use this room today.

Senator Riley: I appreciate that, but I do not think we should jump too quickly from one witness to another. It takes time to consider some of these questions and we would like to have information. At least, I would. I am just a neophyte here and I would like to get answers to the questions before I make any decision with respect to voting. That is all.

You say an American aircraft which is declared surplus in the United States and is transported to Canada by a common carrier does not have to be registered in Canada until it is going to be flown. Does that apply to test flights?

Mr. Cowie: No. An aircraft to be flown must be registered somewhere.

Senator Riley: That is right.

Mr. Cowie: If it is a United States surplus aircraft, purchased by a citizen of the United States who wishes to bring it into Canada for some work to be done, the aircraft must be registered somewhere.

Senator Riley: That is correct.

Mr. Cowie: If it is a United States surplus aircraft purchased by a resident of Canada who wishes to bring it into Canada to be flown, it must be registered in Canada before entry.

Senator Riley: Must it be registered before being brought in, although it would not be flown in?

Mr. Cowie: No. If it is trucked in, the aircraft does not have to be registered at all, but it must be registered prior to being flown.

Senator Riley: That is correct.

Mr. Cowie: If it were a United States army helicopter, for example, and a resident of Ottawa went to the United States to buy it, he could bring it back in a truck. This may be just an army helicopter, spare parts, or some junk. When it is fixed up, if it is to be flown it must be registered first.

Senator Riley: Even for test flying?

Mr. Cowie: Yes, he must register it. If it is going to be flown in Canada the aircraft must be registered in Canada. If it is to be returned to the United States after being rebuilt, it could be registered in the United States.

Senator Riley: Therefore the burden would be on the Canadian buyer of that surplus aircraft to search the central registry, or whatever it is known as, in the United States before bringing the aircraft into this country.

Mr. Cowie: That is right. That is our point.

Senator Riley: Even though it is declared obsolete by the United States Air Force?

Mr. Cowie: Yes, and this is part of the agreement in the actual convention, that a civil aircraft will not be taken off the registry of one country to be exported to another country unless the liens have been satisfied by being paid off or obtaining the agreement of the lien holder to the export.

Senator Riley: That is correct.

Mr. Cowie: Therefore, if the aircraft is subject to a lien in Canada under a central system and someone were to remove it from the country to sell it, it could not be removed from the registry in Canada until the central registry was informed that an agreement had been made. Therefore, the aircraft could not be re-registered and flown in that foreign country until we had notified them that the registration in Canada had been cancelled. The aircraft would therefore sit on the ground in that foreign country, in which event everyone would lose.

Senator Flynn: With due respect, I think you are creating confusion, maybe without wishing to do so. This registration of which you speak as being applicable to liens on an aircraft does not presently exist in Canada.

Mr. Cowie: That is correct.

Senator Flynn: You are making reference actually to regulations concerning the operation of the aircraft, which is something else and has nothing to do with the registration of liens or rights in aircraft. They only forbid the operation of an aircraft without a licence. That is why you said you could buy an aircraft in the United States and truck it in without having to register it. However, the moment that aircraft is to be operated it must be registered, but that is not provided in the legislation now before us.

Mr. Cowie: That is correct. It is provided in the Aeronautics Act.

Senator Flynn: And the Aeronautics Act does not provide for liens or rights in aircraft.

Mr. Cowie: No, but this bill and the Aeronautics Act, although separate, will dovetail.

Senator Flynn: They would eventually, if it were so desired, but they are not basically related. One is concerned with safety and the other with property and civil rights.

Senator Riley: Is there provision in this bill that the Aeronautics Act complements this bill and vice versa?

Senator Flynn: No.

Senator Riley: I suppose my next question should be answered by Mr. Shields. What about the sales tax provisions—the authority to collect provincial sales tax? Does that have any bearing on this?

Mr. Cowie: I could not answer that.

Senator Flynn: I doubt it. The provincial sales tax is applicable to the purchaser. If a person purchases a movable object and brings it into a given province, there is a tax applicable to that person. The tax is imposed on the purchaser; the jurisdiction is based on the domicile of the purchaser.

Senator Riley: Does the province not have the right to deny the transfer of the commodity if the sales tax is not paid?

Senator Flynn: Not the Quebec sales tax. The only thing you can do is sue the purchaser, because he is the one liable to the tax. I am referring to the Quebec legislation and not to others. However, I understand they are practically the same all across Canada.

Senator Riley: If you buy an aircraft, or an automobile under the Motor Vehicle Transport Act, and you cannot produce a receipt for the payment of the sales tax, a transfer is then liable; is that correct?

Senator Flynn: I had a case like that. If you buy a car—let us say you come from the United States with a car—normally you are supposed to pay the sales tax on the car. They may say, "If you do not pay the sales tax, we will not register the car." But that is an abuse of their powers. It is really two things. I had a case, and I forced the registration officers to register the car. I said, "If you want to sue for the tax, then sue." But it is not related. They are two different problems.

Mr. Hopkins: In Some jurisdictions there might be a lien on the car.

Senator Flynn: I do not know whether they could go as far as that.

Mr. Hopkins: Presumably, when we receive replies from the provinces, reference might be made to this.

Senator Riley: There is no uniformity in the Motor Vehicle Transport Act?

Senator Flynn: No.

Mr. Hopkins: In any event, this legislation before us has nothing to do with tax.

Senator Riley: Unless there is a lien involved on the commodity.

Mr. Hopkins: Yes.

The Chairman: Our next witness is from the Canadian Acceptance Corporation Ltd. He is Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel.

Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel, Canadian Acceptance Corporation Ltd.: Mr. Chairman and honorable senators, on my far right is Mr. Elton Doyle, who is the resident solicitor of Associates Acceptance Company Limited. On my immediate right is Mr. Peter Jiles, Vice-President and General Counsel of United Dominion Corporations Canada Limited.

Before starting, I would like to apologize for the poor condition of our brief and for the fact that it has not been translated into French.

The Chairman: We accept both apologies.

Mr. MacKenzie: Might I make a couple of changes in the draft submitted. On page 3, in the fifth line, there is reference to section 6(4). That should be section 5(4). On page 9, the middle paragraph, from the word "Further" in the sixth line, to the end of the paragraph, should be deleted. That has been corrected by an amendment which we missed.

Mr. Hopkins: These corrections would have to be made by amendment to the bill, would they not?

Mr. MacKenzie: This is in our brief, sir. The last word in the sixth line, and down to the end of the paragraph, should be deleted.

I am almost frightened to discuss the point I wish to make, because it really relates to constitutionality, but on a peripheral basis, as to how it affects the businessman.

First, we are not experts in dealing with aircraft, but a secured lender takes a secured interest in aircraft, which may run from the smallest Piper Cub to very large commercial aircraft. This is peripheral to our business. We do not deal solely in aircraft, but with registration systems. How do we protect our position with respect to security interest in personal property of whatever kind? Therefore we are familiar with problems that arise out of registry systems. Obviously we would be delighted if we could have a central system for aircraft.

Under this bill in its present form, not only will we have to register to be sure of our position, but we will have to register under all the provincial provisions, because the status of this question is by no means clear. In attempting to protect ourselves under a provincial system there are difficulties, but in nine times out of ten there is not much difficulty in finding out, or deciding, where you should register to protect your position. But under this bill we will have to register under a federal act.

We then get down to the very difficult question of trying to assess priorities between a federal act that purports to set up priorities, and a provincial act which purports to set up priorities. As businessmen we do not need those kinds of problems. We would love to see a central registry, and we think it is possible.

Rather than write the provinces for an opinion, would it not be possible for the federal government to ask provincial governments to delete from their security interest acts reference to aircraft, so that their acts will not apply to aircraft? It is then picked up by the federal act. That to my mind is a practical businesslike approach. That is the sort of thing we would like to see happen. We would then bless this act as much as we possibly could.

I have had some involvement with the province of Ontario. I was one of the draftsmen of the Personal Prop-

erties Security Act, which will be coming into force in Ontario in the next little while. I have spoken to some of the people in the department. This is strictly unofficial. They are people I know. I said, "What would you feel, as registrar, under the United States system, if aircraft were excluded?" They do not get up-tight about that at all. I cannot speak for anyone else, and this is purely unofficial, but it seems as though the practical way of doing it is to ask the provinces to ensure they are not in the field, by excluding it from their security acts. We would then be very happy with this legislation.

The next problem we have—these are important problems—is, how do you resolve some of these questions? We as lawyers have to give opinions to our company on what the risks are, or what kind of an interest they are getting.

The definition of aircraft merely covers an aircraft. It is not clear whether this definition would cover a part of an aircraft. An individual aircraft may, in effect, have one and a half engines, because if a company has a fleet of three, they have one engine in each aircraft, and a spare. The people who are financing, advancing, or taking a security interest in individual aircraft may not have an interest in the spare engine. Someone else might have an interest in that spare engine. Can that someone else register under this act his security interest in that engine, if he defines his engine? It could apply also to radio equipment, and to the sort of thing that now costs, in some of these large aircraft, \$1 million. Honourable senators may have different finances. The definition of aircraft here does not make it clear whether it has to be the whole aircraft or in a given instance, a component part of an aircraft, whether or not it is affixed to that aircraft.

When the bill refers to component parts, it refers to permanently-installed component parts. But if you are dealing with a spare engine, it may never have been permanently installed. It may never have been installed in a given aircraft which is financed. We are suggesting that the definition of aircraft should make it clear that it is the aircraft and parts of aircraft, and that you can register security interest with respect to those individual parts.

Senator Riley: If you have an interest in an aircraft, you can register it.

Mr. MacKenzie: What I am suggesting is that you may only want to register a lien with respect to the engine. If I were financing the engine only and I attempted to register a security interest in the whole aircraft, I may hamper the owner of that aircraft in raising further moneys on it. If I register a security interest in the whole aircraft when I am only interested in the engine, then I am overcollateralizing myself.

If the engine I finance is worth \$10,000 and the aircraft is worth about \$100,000, and to secure my \$10,000 I take a security interest in the whole aircraft, then I will effectively hamper the owner's equity position should he wish to obtain a further \$80,000 from another lender. We are dealing with priorities, with business transactions where people are raising money on their properties. We feel that the definition of "aircraft" should be expanded or made clear as to just what is involved.

Senator Riley: If I sold you a new engine for your aircraft and held a chattel mortgage on it, you would not have title to that engine, but only the equity of redemption, would you not?

Mr. MacKenzie: Yes, up to a point, but then accessory laws enter into it where you may get it by accession. I might be able to get it by paying you off and taking your engine away from you.

Senator Riley: But as a holder of the chattel mortgage, I have priority over you?

Mr. MacKenzie: Yes, as long as you had that position before it was affixed to the aircraft. If you had it after it was affixed, then you would not have priority.

Senator Flynn: Those problems have been solved under the Canada Shipping Act. There is no problem of jurisdiction under the Canada Shipping Act with regard to the registration of liens on parts of ships, and so forth.

Mr. MacKenzie: You should be able to make sure you can register against the engine, if that is the way you want to go about it. In relation to spare parts, it seems we are creating a position where a Canadian financier of spare parts would not be protected. The proposed legislation excludes spare parts. The American act, on the other hand, does not exclude spare parts, so we would be creating a situation where an American financier of spare parts stored in Canada, because he can register in the United States through the international convention, is protected, whereas the Canadian financier of spare parts stored in the United States, because spare parts are not covered in the proposed legislation, would not get the same protection. We point that out in passing simply as one of the aspects of this exclusion of spare parts. That is dealt with in clause 5(4).

Senator Riley: If you carried that ad absurdum, the same thing could apply to a new picture tube in a television set. In other words, you as the financing agency would have to search the registry office to see whether somebody had an interest in it. But you do not do so, as a matter of fact.

Mr. MacKenzie: No, we do not. The horrifying aspect of this is that spare parts could include a spare engine worth \$1 million. The problems become much more important with the amount of dollars involved.

The other problem we have under the proposed legislation—and this is not all that serious, but it should be clarified—relates to what is going to be registered. This may well be set forth in the regulations. Clause 5 of the bill, and elsewhere, deals with the notice to be filed. There is provision for notice where one would file a very brief note stating that there is a security interest in such-and-such an aircraft, with the name and address of the secured party being set out as well as the name and address of the registered owner. That is all that is on the record. That is what is going to be set up under the Ontario Personal Property Security Act. The document creating the security interest itself is not registered. That is fine, as long as the act goes on to provide the right for anyone having an interest or a prospective interest being able to go to the party that holds the security interest to obtain a copy of the security agreement so that he is aware of what his rights are and what his position is. Otherwise, it does not go far enough. It has to provide the right for people to obtain information. Under all the provincial acts, you file the document itself. If anyone wants to read the document, they can do so. Under the proposed notice filing system, no document is filed. The only place one can get a copy of the document is from the secured party who holds it, and the

right to do so must be made available in law in the event that he does not voluntarily provide it.

Senator Riley: Would there be any conflict between this proposed legislation and any of the provincial corporate securities registration acts?

Mr. MacKenzie: Yes and no. There is a uniform corporate securities registration act on the statute books of six or seven provinces, Ontario being one of them.

Senator Riley: Would this proposed legislation supersede a corporate securities registration act?

Mr. MacKenzie: If the Department of Justice is right and if an aircraft is involved, it should. The corporate securities registration act is just another act creating or regulating the creation of a security interest. If a province were prepared to exclude aircraft from conditional sales acts and chattel mortgage acts and, in Quebec, the commercial pledge act, then you would have to include the corporation securities registration acts, and I cannot see any reason why they would not do so.

Senator Riley: If you filed a corporate security agreement under the provincial act, you would have to issue a caveat, would you not, that it does not apply to aircraft, which must be registered under this proposed legislation?

Mr. MacKenzie: Yes, but what I am saying is that you would have to exclude security interest in aircraft from being registered under the corporate security registrations act at the provincial level.

Mr. P. A. K. Jiles, Vice-President and Secretary, United Dominion Corporations Canada Limited: You would have to register in both places.

Senator Riley: Yes. The financier would have to make a search to determine whether all the assets and replacements are covered by this security agreement which is registered and of which notice given. It would create some confusion, I should think, if it were not noted in the security agreement, whatever form it may be, that aircraft are excluded, irrespective of the legislation.

Mr. MacKenzie: It seems to me that in Ontario—and I am speaking from memory—either the Chattel Mortgage Act or the Corporate Securities Registration Act, excludes registration under the other act. In other words, if you register under the Corporate Securities Registration Act you do not have to register under the Chattel Mortgage Act. There is that type of exclusion in these acts presently.

Senator Riley: I am not sure of that.

Senator Flynn: Senator Riley has raised an interesting point. When a company issues bonds, under the trust deed it provides for a floating charge on all moveables and all those which are acquired subsequently. If you have a floating lien on an aircraft under provincial law, what control will you have?

Senator Riley: A search would have to be made in the central registry.

Mr. MacKenzie: You would have to search both places, and in that case you would have to register in both places.

Senator Flynn: But you will have to follow all the acquisitions made subsequent to the registration.

Mr. MacKenzie: With all due respect, that is the situation now.

Senator Flynn: That would destroy the lien you have created under the present law.

Mr. MacKenzie: If a \$100,000 eart-mover is acquired and I did not pick it up and get a lien on it, I might be in the same box if they moved it to another province.

Senator Flynn: If they moved it to another province, yes.

Mr. MacKenzie: When you are delaing with floating securities, you are always at risk of new equipment coming in and old equipment going out.

Senator Flynn: If there is fraud or negligence, you cannot prevent that, but this legislation would void the right which is created now under the trust deed.

Mr. MacKenzie: Yes, I think you are right.

Senator Riley: The floating charge would apply to a corporation which does not presently own an aircraft, but if it acquires one that charge would be registered under the federal jurisdiction with the central registry?

Mr. MacKenzie: By having to register it under the central system, thereby having to define it specifically, you get something different from what you bargained for under the provincial law. You would have more than a floating charge, but a specific charge because it was registered under the federal law, which would give you a specific right to that aircraft.

Senator Bourget: Do priorities enter into this?

Mr. MacKenzie: Yes, definitely.

Senator Flynn: They could.

Mr. MacKenzie: You cannot say that you register under this for information only. We are setting up a priority system whereby you are going to get paid if something happens and that is much more than an information system. It creates substantive rights, in effect.

Senator Riley: Again, I agree with Senator Flynn in that this would create a good deal of confusion. If a floating charge is registered under a corporate securities registration act and the corporation involved acquires an aircraft without informing its legal counsel, counsel is going to be blamed for not being aware of it. He was not given notice of it. It might be only a Piper Cub, or something like that, and because counsel is not advised there is not protection for the people who search the corporate securities registration registry.

Mr. MacKenzie: What I am saying is that you put in a provision whereby you can enforce and execute a specific document which you can register.

Senator Flynn: But you have to be aware of acquisitions.

Mr. MacKenzie: Yes, but I do not really think it has changed very much. That exists presently.

Senator Flynn: Yes, but now you are sure you will get it if you can find it.

Mr. MacKenzie: Yes.

Senator Flynn: But you could find it and discover that you have no right.

Mr. MacKenzie: Another area of concern to us in this legislation is that it seems to change the common law in connection with the right of retention by the repairman and that sort of thing.

Senator Riley: That is the mechanics' lien

Mr. MacKenzie: Yes, in the case of a mechanics' lien, if the movable property on which the repairs was done is not allowed out of the possession of the repairman, he has the right to be paid against any other party, registered or not. That gives him a first priority up to the extent of his repair bill. This legislation, by not dealing with it or by forcing the repairman to register his lien, will cause him to come behind all those who have mortgages and so on, which completely changes the law. If that is proposed, it should be spelled out so that we may be aware that it is taking place. As far as we are concerned, that will definitely be the effect of this legislation, which is a very serious change in the law.

Senator Riley: In my opinion there is a burden on legislators to protect those who provide services. In the case of a repair bill against an aircraft, it will be more costly and complex to register a lien under this particular legislation. It must be done by retaining counsel in the particular jurisdiction, who must then engage a correspondent in Ottawa. For a repairman or mechanic in modest circumstances who has a lien in the amount of \$2,000 for services against an aircraft, it will be a very costly procedure and, in my opinion, slightly discriminatory. It is a very heavy burden on a mechanic who has the right to a lien for his services.

Mr. MacKenzie: We have discussed mechanics' and servicemen's liens, but you are quite correct.

Senator Riley: What is your opinion with respect to the protection of the repairman or mechanic?

Mr. MacKenzie: In my opinion we do not necessarily have to do anything. It is a common law right which should be allowed to remain so and if a person has such a right he holds on to the property until he is paid, which is the existing situation.

Senator Riley: But you must register that.

Mr. MacKenzie: It does not have to be registered under the law in Ontario.

Senator Flynn: If this legislation comes into force?

Mr. MacKenzie: Yes. Under the provisions of the personal property security legislation in Ontario, whenever a statutory lien, rather than a mechanics' lien, is applied the situation will not be changed by this legislation.

Senator Riley: Is a mechanics' lien good on a local basis within a province on the basis of this legislation?

Mr. MacKenzie: I am not going to answer that. It may be, or it may not be, which was the reply of the Minister of Justice in the House of Commons.

Senator Riley: That is my reason for saying that all provincial authorities should be asked for their opinion in respect to this. I know that the provincial authorities would be deeply conscious of the rights of a repairman in

respect of his lien protection. He must file within a set number of days or his lien becomes invalid.

Senator Flynn: Under the provincial law.

Senator Riley: Under the provincial law. I believe it is 60 days for materials.

Mr. MacKenzie: It varies from province to province. In certain provinces even a mechanics' lien may be registered and if this is done properly there is no necessity to retain. It seems to me, however, that it is a rather important consideration to change the rights of such a person and force him to stack up behind many others behind whom he does not have to stack up now.

Senator Riley: Again I carry this discussion *ad absurdum*. When clearance must be obtained for underwriting during a period of, for instance, a postal strike and a particular individual has a right to a lien on an aircraft, he must send someone by air to Ottawa to register that lien if it must be filed within two or three days. If it were possible to file in his home jurisdiction, the claimant or his lawyer would simply go to the local registry office. It may involve procuring a courier service to file in Ottawa. This may sound ridiculous, but it has happened in the clearance of an underwriting or prospectus.

Mr. MacKenzie: Yes, there is no doubt that that is quite true.

Senator Riley: So there is a question of protection for the man, company or person who has the right of lien against the aircraft. In my opinion that is important and it is more important with respect to the unsophisticated type of repairman, for instance, who just comes to the conclusion that he can file a lien on that aircraft within two or three days prior to the expiration of his time for filing.

Mr. E. E. Doyle, Resident Counsel, Associates Acceptance Company Limited: Alternatively, if he does not become aware of his right and does not file, he is left with nothing and loses whatever right he had.

Senator Riley: Yes. Locally, he could simply go to the registry office or have his lawyer do so, and file the lien. I return to the point that we are going through a new ball game with respect to the postal service. It may be necessary to engage a courier to travel to Ottawa and deliver the lien to a correspondent for filing. It cannot be filed by mail because, again, we are in the postal service area. That is no reflection on the Post Office department, but we are living in a new world with respect to the transport of mail. That may not be serious, but it would be serious for the unsophisticated person who has supplied services to an aircraft and has this period for filing a lien. Does this legislation contain any provision that there is no time limit on the right to file a lien?

Mr. MacKenzie: That is correct; it may be filed at any time.

Senator Riley: But anyone purchasing the aircraft without notice of the lien is left unprotected, is he not?

Senator Flynn: Would you argue that a lien registered in that manner would be valid only if it were registered within the period provided in the provincial legislation, or would it be valid if it were filed or registered within five years, which I believe is the present provision?

Mr. MacKenzie: Yes, it is five years in this.

Senator Flynn: The mechanics' lien provides for 30 days.

Senator Riley: The aircraft could be bought and sold 10 times during that five years.

Mr. MacKenzie: That is why the right of retention in the mechanics' lien is provided. No one will buy or sell the property while the repairman holds it.

Senator Flynn: I believe the period for claiming would be extended to five years under this legislation.

Senator Riley: But if the aircraft were bought a year later and the lien was not valid until someone else had possession of it?

Senator Flynn: Agreed. On the other hand there is the other consequence, that most likely the right of the lien is extended to five years rather than 60 days for registration.

Senator Riley: Against a bona fide purchaser, without notice?

Senator Flynn: Not without notice, but if an aircraft were bought and the purchaser found that a personal claim was registered by a repairman two years after it became due, probably under this legislation it would have to be recognized, whereas under provincial law it would not be valid, because it would have been registered too late.

Senator Riley: Do you not consider that to be a problem?

Mr. MacKenzie: Yes, but, of course, being fair about it, I have to say that the provincial registration regulations are departing from the concept of a stated time.

Senator Riley: They are giving more protection?

Mr. MacKenzie: No, I mean a stated time within which to register. In other words, the time limit was established as what might be termed a fraud provision. It only creates problems, because if the registration is not made within the time limit, application must be made for delayed registration. The tendency, therefore, is to depart from that type of regulation. If there is no time limit in which to register and the aircraft is still there, it can be registered.

Senator Riley: But if the lien is registered against the aircraft and a finance company has seized it and sold it, does that lien follow the aircraft, even if it is registered two years after the seizure?

Mr. MacKenzie: No.

Senator Riley: That would be a real problem, in my opinion.

Mr. MacKenzie: That would be another argument for removing the delay. A person with a security or lien interest must register it as soon as possible. Otherwise it may be taken away by someone else.

Senator Riley: The tendency on the part of the suppliers of the material or the services is to take every step they can to collect their money before a lien is filed.

Mr. MacKenzie: Yes.

Mr. Doyle: In those cases in which the 30 days' or 60 days' delay applies and when the supplier of the services is getting nowhere, he would be very wise to make sure that he files the lien at an early stage. He only has a limited amount of time and he will find time is running out.

Mr. MacKenzie: If he were to attempt to comply with this legislation, whether he thought he had a reasonable opportunity to collect or not, he would register as soon as he could.

Senator Riley: But that is a costly procedure for a person with a small claim.

Mr. MacKenzie: It may not be. We do not know how exotic the department will make these forms.

Senator Riley: What about the Department of National Revenue Act?

Mr. MacKenzie: I do not know. You have left me there, sir.

Senator Riley: For taxation, excise tax, customs and that type of debt. There would be a priority exercised, as there always has been. Does that follow the commodity?

Senator Flynn: No, it is only in case of bankruptcy that you would have a problem, but they would come after registered creditors.

Senator Riley: That is not the case today, though. The priority is taken now.

Mr. MacKenzie: It is in the case of real property.

Senator Flynn: Under the Bankruptcy Act the guaranteed creditor comes ahead, but after that there is the privilege of the Minister of National Revenue.

Mr. MacKenzie: Yes, that is right. The other area of concern to us has to do with the provisions for trying to enforce a security. That is, seizure and sale provisions. They seem to be unnecessarily complicated and make it necessary to go to too many courts in order to be able to deal with it, in the case of a commercial aircraft. Before you can seize and sell an aircraft, you must go to a superior court—I assume that would be a provincial court—and be authorized to take possession of the aircraft.

Having obtained that from the provincial court, you must go to the federal court. They say, "Okay, you may seize." We now have two courts to go to. The federal court could then say, "Yes, but before you can sell that you must show what reasonable steps you took to collect."

While the act provides for a delay of six weeks before seizure and sale—I do not think anyone will complain about a period of six weeks—it looks as if it will take six months to get to the position where you can deal with an aircraft in a default situation.

Senator Riley: In the meantime the aircraft is in your possession. You have seized it.

Mr. MacKenzie: No. We are holding it for six weeks; but to get to the place where we can seize, no, it is not in our possession.

Senator Riley: But all you need is a pilot and a key. Is that not the procedure with regard to a finance company—to get the key to a car and drive it away? They take legal title to the aircraft.

Mr. MacKenzie: I do not think many of us are doing that, quite frankly.

Mr. Doyle: The facts are right there. No person may seize.

Mr. MacKenzie: You cannot take possession until you have gone to those two courts.

Senator Riley: Presently you can, under the provincial jurisdiction. You can walk in and say, "I am from the garage—

Mr. MacKenzie: No one is going to go out on their own and grab an aircraft. That is too troublesome. You will have bailiffs and you will do it properly. It is not like taking a fridge, and so on. This is a different kind of situation. Nevertheless, you cannot do any of those things. We are talking about commercial aircraft. You have to wait all this time.

While all this is happening and you are waiting, charges are running up. You are more into it. Someone has to pay more. You are not really doing your debtor or creditor any good, because it is costing more. If the aircraft was worth \$1,000 today, and it is still worth \$1,000 six months from now, the expenses in that intervening period may be \$100, which you are not going to recover; so you have to recover it from the debtor after you have disposed of the aircraft. It seems to me that the provisions for seizure and sale—I will not go into them in detail—are unnecessarily complicated. They do not have to be so complicated, and they could make it much easier for the parties to proceed to crystalize their security.

There are certainly protections in provincial law to ensure that the best price, and so on, is obtained, without going through the procedure that is set forth here.

Senator Riley: There are many loopholes.

Mr. MacKenzie: The other question is that, having got the aircraft and proceeded to sell, if you were a second mortgagee you would have to pay off the first mortgagee. There is no provision here whereby you can go to the first mortgagee and say, "I am going to exercise my security. I am going to keep up your debt, I am going to find a buyer, and the buyer will buy from me and assume your first mortgage."

This is done very often in real property, and very often with respect to moveable property. Because of the very strict wording of this bill, that sort of arrangement between parties will not be possible.

Senator Riley: Is it not the present policy of the finance companies to demand that the buyer's encumbrance be seconded to theirs? To pick a name out of the air, if the Industrial Development Bank has first mortgage on the assets of a company, and the Canadian Acceptance Corporation has to do some refinancing, is it not the policy of the finance companies to require that the prior encumbrance be seconded to their security?

M. MacKenzie: It may be, but not necessarily.

Senator Riley: But is that not the policy?

Mr. MacKenzie: I would say no. You cannot say that is a policy. There is no policy. In any secured transaction with parties, the credit grantors, whoever they may be—they may be the IDB, or ourselves, or another bank—are putting so much money in there. It is agreed that we are going to put so much money in there, and we are going to work out what our priority position is with respect to different properties.

My point is that if you have a first and second mortgage on an aircraft, and the first mortgage is \$50,000, I am owed \$10,000, the aircraft is worth, shall we say, \$60,000 . . .

The Chairman: There is not much equity left.

Senator Riley: Not much aircraft, either.

Mr. MacKenzie: I am suggesting that if I could find a buyer who is prepared to assume the first mortgage, rather than coming up with \$60,000, which he would have to if the first mortgagee was prepared to leave his mortgage in place and accept the new purchaser and let it go ahead, the new purchaser could get the aircraft for \$10,000 and assume the first mortgage. Under this bill, that is not possible, because it is very strictly provided. I do not have the exact clause, but it is strictly provided that this would not be possible. We think that is too limiting in the real world.

Finally, we come to the provisions regarding the five-year renewal. We think the period should be longer than five years.

Senator Riley: What clause is that?

Mr. MacKenzie: It is clause 12, which also seems complicated. I do not see why it cannot simply be a discharge or a statement by a secured party that he no longer has any interest, cannot be registered, without this business of making application for renewal, and so on. However, that is beside the point. The fact of the matter is, it must be renewed within five years, under clause 13(1). We would suggest that it be extended in the case of aircraft, because in many of the transactions, particularly in connection with commercial airlines, you are talking about much larger amounts, and they are running for longer periods than five years. A renewal merely complicates the thing. Someone has to remember to renew and go and renew.

My other comment is that if you miss renewing, you are right out; there is no provision for making application for a late filing or late renewal, subject to whatever your position may be.

Senator Riley: The same thing applies to conditional sales.

Mr. MacKenzie: That is right. There is no flexibility here, and we would suggest a kind of flexibility. The transitional provisions cause us the same kind of problems as the constitutional problems and the provincial question. I was interested, when Mr. Shields was speaking, to hear him say that the intention was that all security interest with respect to aircraft would be regulated under this act over a period of time.

We have looked at the relevant provisions of clauses 17 and 7. The way we read those clauses, it would appear that until such time as a provincial lien or right, registered validly under a provincial registration scheme, expired or was paid out, it would still have this position of priority, despite the coming into force of this act.

Therefore when we are dealing with ten-year things, if this is going to be the governing act, everything should be under this, and we should not have to worry about the priorities set up in province A, when in other provinces it is under the federal legislation. We would like to see it clearly spelled out that within a certain period of time, with respect to aircraft, and assuming the central registry is going to be the system, that everything be brought under the system, and not go along for 10 or 12 years with some

complementary system where you never know where you sit with respect to your priority position.

Senator Riley: To follow your line of reasoning, there is all the more reason to follow Senator Flynn's suggestion that the provinces be consulted.

Senator Flynn: Section 17 would mean that a floating charge created before coming into force of this act would remain valid, without any registration, and could remain valid for years—for 10 or 15 years. That is what section 17 means.

Mr. MacKenzie: You could also read sections 17 and 7 to mean that within a period of three months—because they talk about a delay for the commencement of section 7—all provincial registrations have to be registered in the central system, otherwise they are dead. I cannot read it that way. If you do not read it that way, as my friend said, what is the purpose of section 7?

Senator Flynn: My interpretation of section 17 is that before the coming into force of section 7, all those who have rights under provincial law keep those rights.

Senator Riley: Even renewal rights?

Senator Flynn: Yes. They do not have to register them. They just go on.

Mr. MacKenzie: If you read section 17 in its broadest aspect, you do not have to do anything. As I say, this could go on for a long time, with a double complementary registration.

Mr. Hopkins: May I point out gratuitously that there may be some limit on what can be done, bearing in mind the terms of the international convention? We may be straitjacketed to some extent in that regard.

Mr. MacKenzie: One would think that for the international situation they would want one law to look at.

Senator Flynn: I think we are all agreed that if we had one registration system it would be perfect. Probably if you had that, the act would not make it optional to register the aircraft. It would be compulsory, and everyone would know where they stood. But in going at it in this way—in a rather sneaky way—it will simply create utter confusion.

Senator Riley: 96 the acts of the other parties are not uniform, it will lead to more confusion.

Mr. MacKenzie: There is no doubt that the American act is different from the English act, and the proposed Canadian act is different from both of them. All that the convention stipulates is that you must do certain things. The question is how do you go about doing the same thing? I am not an international lawyer. I merely read the convention, and see what we have done here and what the United States has done. It seems to me that once you comply with certain things, you can do whatever you want.

Mr. Hopkins: There is considerable flexibility.

Senator Riley: If you are advising a client on his lien rights in respect to registration of aircraft in Canada, you would have to be familiar with the acts of all the other countries, in the case of a transfer.

Mr. MacKenzie: If we know an aircraft is coming in from the United States, we check with Oklahoma, where their central registry is located, and rely upon that.

Senator Flynn: You always have to consult lawyers in another jurisdiction, in any event.

The Chairman: Mr. Jiles, have you any further comments to make?

Mr. Jiles: Only that I fully support Mr. MacKenzie's comments, Mr. Chairman.

The Chairman: Do you have any comments, Mr. Doyle?

Mr. Doyle: No, Mr. Chairman.

The Chairman: Are there any further questions from members of the committee?

Senator Flynn: Do we have other witnesses, Mr. Chairman?

The Chairman: No.

Senator Riley: As I understand it, Mr. Chairman, we are not going to approve this bill today, but rather we are going to wait and reflect upon the opinions of the provincial authorities?

The Chairman: We are going to write to the provincial attorneys general concerning the effect of this legislation as it relates to present provincial laws, and we are going to enclose with that letter a copy of the brief submitted by the Federated Council of Sales Finance Companies, a copy of the committee proceedings of this morning, and a copy of the bill.

Senator Flynn: In addition to that, Mr. Chairman, I think the Department of Justice should look into the discussion that took place this morning with respect to the matters raised by the witnesses. There appear to be some practical problems which might arise with some of the provisions, and perhaps these could be eliminated by way of amendments. I feel the views expressed here this morning, outside of the problem of the constitutionality of this legislation, would be worth looking into by the departmental officials of both the Department of Justice and the Minister of Transport. Perhaps Mr. Shields could look into these matters and give us his views when the committee reconvenes.

Senator Riley: You have certain reservations about some of the provisions of the bill, Mr. MacKenzie?

Mr. MacKenzie: Yes.

The Chairman: Those reservations are contained in the Proceedings of the Committee.

Senator Riley: Since this bill was introduced in the Senate, Mr. MacKenzie would have to carry those reservations over to the House of Commons committee, and it would be far better if some of the points raised could at least be partially resolved before it reaches that stage. This might necessitate his appearing again before the committee as a witness.

The Chairman: Are you prepared to do so?

Mr. MacKenzie: Yes, Mr. Chairman. The brief is perhaps more lucid than I have been in setting out the objections. I was simply trying to summarize the points we made in our brief.

The Chairman: Mr. Hopkins, with the assistance of the Federated Council of Sales Finance Companies, will prepare a letter to be sent to the provincial attorneys general

along with a copy of the committee proceedings, a copy of the brief submitted by the Federated Council of Sales Finance Companies, and a copy of the bill itself.

Senator Graham: On a point of order, Mr. Chairman, are we not asking legal counsel from the Ministry of Transport to draft the letter?

Senator Flynn: No, this is something that should be done by the committee. The Ministry of Transport has been rather reluctant to do so.

Senator Riley: The Ministry of Transport drafted the bill.

Mr. MacKenzie: Perhaps I could interject something, Mr. Chairman. Most of the provincial governments, in their security systems, are moving towards a central registry system. Five or six of the provinces have a central

registry system presently, most of them being computerized. As computers can be tied into other computers, it may be worthwhile exploring that aspect. This might answer the complaint about people having to come to Ottawa to do things. If they could go through a tied-in provincial computer that would give them the information they are requesting, that problem would be eliminated.

Senator Riley: Or tied into a computer bank in the United States somewhere.

Mr. MacKenzie: The whole problem lies in the number of places one has to go to search for information before advancing a dollar. At the present time you have to go to five or six different places in each province, plus the federal government information bank, and so forth.

The Chairman: If there is nothing further, we will adjourn.

The Committee adjourned.

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1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

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THURSDAY, NOVEMBER 28, 1974

First Proceedings on the examination of the Television program entitled:

"Les Bruns Dimanche"

(Witnesses: See Minutes of Proceedings)

being with a copy of the transcript available to a copy of the transcript by the Department of Justice, the Department of Justice, and a copy of the transcript.

Senator Williams: On a general matter, Mr. [Name], are we considering legal action with the Ministry of Transport to put the issue?

Senator Flynn: No, this is something that needs to be done by the committee. The Ministry of Transport has been asked to collect that in.

Senator McKeen: The Ministry of Transport, would you like?

Mr. [Name]: I would like to see something like that done, but it is not the province of the committee. It is not the province of the committee. It is not the province of the committee. It is not the province of the committee.

registry system presently, most of them being uncomputerized. As computers can be tied into other computers, it may be worthwhile exploring that aspect. They might answer the complaint about people having to check in Ottawa to do things. If they could go through a tied-in provincial computer that would give them the information they are requesting, that problem would be eliminated.

Senator Riley: Or tied into a computer bank in the United States somewhere.

Mr. [Name]: The whole problem lies in the number of places you have to go to search for information before checking a value. In the record that you have to go to one or six different places or seven provinces, plus the federal government, investigation, bank, and so forth.

The Chairman: If there is nothing further, we will adjourn.

The Chairman: adjourned.

Approved: [Name], Minister of the House of Commons
[Name], Secretary of the House of Commons



FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 3

THURSDAY, NOVEMBER 28, 1974

First Proceedings on the examination of the Television Program entitled:

“Les Beaux Dimanches”

(Witnesses: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)
(Quorum 5)	

**Ex officio members*

Minutes of Proceedings

Order of Reference

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

Thursday, November 28, 1974.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9.30 a.m.

Present: The Honourable Senators Haig (*Chairman*), Bourget, Denis, Flynn, Graham, Langlois, Riley, Smith and Sparrow. (9)

Present but not of the Committee: The Honourable Senators Asselin, Barrow, Beaubien, Desruisseaux, Fournier (*de Lanaudière*) Gélinas, Michaud, Molson, Norrie, Riley and Robichaud. (11)

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

At the request of the Honourable Senator Langlois, the Clerk of the Committee was asked to make a report on all the preliminary steps taken in order to expedite this meeting.

The Committee proceeded to the examination of the Television Program entitled: "Les Beaux Dimanches", televised on April 28th, 1974, on the French network of the Canadian Broadcasting Corporation.

After preliminary discussion the film was viewed.

The Committee then resumed its examination of the Program.

Witnesses:

Canadian Broadcasting Corporation:

Mr. Laurent Picard,
President;

Mr. Raymond David,
Vice-President and General Manager,
French Services Division.

Also present but not heard:

Mr. Ron C. Fraser,
Vice-President,
Corporate Affairs,
Assistant to the President;

Mr. Don MacPherson,
Vice-President and General Manager,
English Services Division;

Mr. Pierre DesRoches,
Vice-President, Planning;

Mr. Denis Harvey,
Deputy Assistant General Manager,
English Services Division;

Mr. Jean-Marie Dugas,
Director of French Television;

Mr. Marc Thibault,
Director of Information Programs,
French Services Division;

Mr. Jacques Alleyn,
General Counsel.

At 11.40 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, November 28, 1974.

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to examine and report upon the program entitled «Les Beaux Dimanches», televised on April 28, 1974 on the French network of the Canadian Broadcasting Corporation.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Well, honourable senators, it is 9:31 according to CBC time this morning, so we will proceed with our business. I will start the proceedings by asking the technicians to put the show on the road.

Senator Langlois: Mr. Chairman, before this presentation begins I would like to ask the clerk to report to the committee on the requests that we have made to the CBC in connection with this morning's meeting and as to the responses received from them.

The Clerk of the Committee: I did not anticipate this request, Mr. Chairman, but I will do my best. I have not the file with me, so I shall have to do this from memory.

Some two weeks ago, I would say, I received a call from Senator Langlois, whose motion this was originally, asking me to get in touch with the CBC and the CRTC, to ask Mr. Picard, Mr. Juneau and other officials, if needed, to appear before the committee to discuss the subject matter of the motion. I immediately started processing this request with Mr. Townsend, with whom I communicated all through, Mr. Picard being away at the time. With considerable trouble, I imagine, they managed to get him to consent to come. At that time it was decided that Mr. Picard would appear first, and so we dealt strictly with the CBC from then on.

First of all our request was to have the videotape with an English sound track so that the English-speaking senators could see the film as it was broadcasted but hear it in English. After numerous phone calls the CBC informed me that this was not possible because it would be not only very expensive but would take a very long time to achieve. It would in fact be extremely time-consuming. This information was relayed to Senator Langlois. In fact, every development was immediately relayed to Senator Langlois, with an account of the difficulties that presented themselves from a technical point of view. From then on the dubbing was abandoned, and we started to work on another approach. The CBC said that as an alternative we could have the text translated, and so we proceeded to work along those lines.

Last Friday we had the technicians here to go through the arrangements with Black Rod to make sure everything would go well. When I returned to my office at noon, Mr. Townsend phoned me and told me that after consultation with their lawyers it had been decided that they could not

translate the text because the matter of copyright had come up and the text, in fact, was the property of the authors and could not be used in such a fashion.

I phoned Senator Langlois in Quebec City on Monday morning and informed him of this latest development. I must say that when I relayed these various decisions they were always met with a certain amount of dissatisfaction, and certainly not happiness. Senator Langlois did not like this, and said that he doubted very much whether the whole committee would like it, but that that was that. So the arrangements were made. I asked for the text in French, which I received. I had it copied, but our problem was to send it to the interpreters, because by then it was obvious that this translation would have to be done by the simultaneous interpreters. The interpreters have had the text for two days, and they have gone to CBOFT, through the arrangements made by Mr. Townsend, so that they could have rehearsals. They have looked at the film and have tried to synchronize their interpretation as well as they could, and this is what will be done today. There was no other way to do it.

Senator Desruisseaux: The original text was in French, though?

Mrs. Pritchard: Yes.

Senator Desruisseaux: And this we will be viewing?

Mrs. Pritchard: The French-speaking senators will have no trouble at all; they will see the film and hear the original French version. It is the English-speaking senators who will have the trouble because they will have to use the simultaneous interpretation system.

Senator Fournier (de Lanaudière): Who is the author of the text? The names, please?

[*Translation*]

Mr. Raymond David, Vice-Chairman and General Manager, French Services Division of CBC: Well, five authors participated in the writing of this text; they are: André Dubois, Marc Gélinas, Serge Grenier, Luc Plamondon, a company called "Le Grand Cirque Ordinaire" and Michel Tremblay.

There were several authors because it was a series of sketches, some written in collaboration; naturally, others were written by only one person. However, in that kind of programs, very often one or the other adds or revises something.

Senator Langlois: And gives inspiration?

Mr. David: Even in the credit titles, Senator, all texts were said to have been written by the authors whose names I have just mentioned.

Senator Langlois: Are some of those full-time employees of CBC?

Mr. David: No, they are all members of La Société des auteurs.

Senator Langlois: Does CBC have contracts with each one of them?

Mr. David: Each contracts are signed on each occasion. So...

Senator Langlois: Are these individual contracts for each author?

Mr. David: Yes.

Senator Fournier: How much did the whole program cost?

Mr. David: I'm sorry, but I don't have those figures here.

Senator Fournier: That is important.

Mr. David: It cost what it usually does for such shows. As you know, there are special programs which need electronic mixing, many rehearsals and a production mixing. I could then send you those figures.

Senator Langlois: Mr. Chairman, I have here a copy of the text of this program and, on the front page, I can read the following sentence:

Copyright: CBC, 1974 for private use,
reproduction forbidden.

Can someone tell me if this is written in the individual agreements between CBC and each author?

Mr. David: Yes, we usually buy the rights to one program. Then, if there is a rerun, we don't have to pay an additional fee.

Senator Desruisseaux: Do you have exclusive rights?

Mr. David: Yes indeed, but we cannot use the material outside the program.

Senator Fournier: For today's replay, will you have to pay an additional fee?

Mr. Laurent Picard, Chairman of CBC: Well, I won't be the one insisting upon it.

Senator Denis: Was the program reviewed before being televised?

Mr. David: Going back to the Senator's question, I must say that we have no rights for private representations. We have never had to pay additional fees except for a public rerun.

Senator Bourget: Mr. Picard, how much did you pay for these rights?

Mr. Picard: Monsieur le président, j'aimerais s'il vous plaît changer le cours des questions. Je pense que cela a été la pratique... I think it has perhaps been the practice, in the Committee on Public accounts, the Committee on Transport and the Senate, not to publicly reveal the cost figures. For the sake of competition and other reasons, we have always offered—as you know, I haven't been at CBC for a very long time so it may be possible that I am mistaken—but we have always suggested that a committee or sub-committee reviews "*in camera*", the figures that we would then submit. Both the Senate and the House Com-

mittees have usually accepted this rule of not asking for precise expenditures and salaries.

Senator Denis: Why wouldn't you want to reveal the exact amounts?

Mr. Picard: For many reasons. It is usually that all information concerns an individual or problems which are under negotiations; for example, we are often asked about union negotiations. Then, it is the usual parliamentary practice—even though I am not very well experienced—not to ask questions about subjects that could prejudice someone or that could compete with private stations. Generally, we are heard "*in camera*" by a sub-committee where we open all our books.

Senator Denis: What kind of competition can be created by giving some? Everybody knows CBC declares surpluses or deficits. But of how much? If there is a deficit of 200 or 300 million dollars, what kind of competition does it create for other channels?

Mr. Picard: Listen, there is the fact that an artist is part of the labour force and that he has many chances of finding work at Télé-Métropole, in a theatre, or for other organizations. This is what I mean by competition. If you insist, we will give them to you but we generally do so "*in camera*".

Senator Bourget: Mr. Chairman, this question was discussed some time ago concerning the salary of the Chairman of the Canadian National. The competition is a lot stronger than in the case of our artists but still it was disclosed.

I don't see why members of the Senate and the House of Commons cannot insist to know the salary paid to the people writing such texts for "Les Beaux Dimanches" program.

Mr. Picard: First, the salary of the Chairman of CBC is publicly known; I can tell you my salary if you want. But it is a tradition. If the committee insists, it has the right to obtain them, but it was a general agreement to have them given "*in camera*". As I have already mentioned, however, if a Parliamentary Committee wants to see them, they will be shown. It is not a fact of law, the committee has a right to know. It was rather a case of traditional agreement.

Senator Denis: Was this show reviewed and authorized before being shown? Was it first seen by CBC officials?

Mr. David: Yes. For this kind of show, the head of the department—in this case Mr. Jacques Blouin, head of the varieties department—usually reviews the text and then, if in doubt, he can ask the Programs Directorate and have certain things suppressed or added. There is also an aesthetic judgment to make, a very discriminated one.

Senator Desruisseaux: What was the result of all this?

Mr. David: I can't tell you in detail what changes were brought in, but it is naturally easier for a soap opera as one knows more or less the plot; the review is more radical. But such shows are the responsibility of the head of the department who, in doubt, can ask for the opinion of the Program Directorate.

Senator Desruisseaux: What were his conclusions?

Mr. David: In this case, it was accepted without changes.

Senator Denis: Is Mr. Blouin the only one who authorized it or were other officials also involved?

Mr. David: I think it was only the head of the department.

Senator Denis: So, nobody else at CBC saw this show before it was televised?

Mr. David: I, at least, didn't see it. I cannot watch all shows before they are shown.

Senator Denis: Was it live?

Mr. David: No, it was an electronic mixing recorded on magnetoscopic tapes.

Senator Denis: Do you mean Mr. Blouin is the only person who reviewed the show?

Mr. David: I can't tell you, maybe he asked the Programs Directorate for advice but in this case I don't know. I remember texts for "Les Couche Tard" reached me—and I remember them well—because in some cases satire was too harsh. Then, they would be shown to me but they usually are not.

As I have already said, consultation is decided upon by the person responsible. If that person sees nothing contrary to our program policy, he decides by himself not to consult with the Programs Directorate. He figures that with the corrections he can make, the show will be in accordance with the usual policy for those kinds of programs. That's what happened here.

Senator Langlois: Mr. David, you have just mentioned a program policy . . .

The Chairman: Before any member of the committee or anybody else here speaks, would they kindly identify themselves for the benefit of the rest of us and the interpreters?

[Text]

Senator Smith: On a point of order. Might I ask you, Mr. Chairman, whether it would be possible for someone to give those of us who did not happen to be present at the time this matter was discussed in the chamber a short background of the general concept of the program and what the general complaint was. We are in the middle of a sandwich and we do not know what is on both sides of it.

Senator Molson: Read *Hansard*.

Senator Denis: You are going to see it.

The Chairman: This question would come better after we see the film.

Senator Desruisseaux: Before we do that, may I say that I am not too happy with the answer given by Mr. David as to what acceptance was made of this before. I am not too sure whether I understood him accurately, but I thought he said he was not sure what had happened.

[Translation]

Mr. David: What I am telling you is that the departmental head for this type of broadcast receives the texts and discusses them with the producers. At times, he finds his judgment safe enough that he does not refer to the general programming management.

Senator Desruisseaux: Mr. David, do you refer only to the programme presently under discussion; what happened?

Mr. David: I cannot tell you if programmes management was consulted, I was not there.

Senator Desruisseaux: If you cannot say, who can?

Mr. David: It would be the Programming Director.

Senator Fournier: Who was the producer?

Mr. David: Jean Bissonette.

Senator Langlois: Mr. David, when I was interrupted a while ago, with reason, by the Chairman, I was referring to your remark concerning the programming policy, as this sketch was accepted right away by the Corporation, through your departmental head, who, apparently, did not raise any questions, did not express any doubt on the value of this programme, should I conclude that this programme, in your opinion, fits into your programming policy?

Mr. David: Well, as you know, there is a long tradition of satirical broadcasts with the CBC since the broadcasting of programmes like *Carte blanche*, *Chez Miville* and *Les couches-tard*, it is a type of broadcast used in all radio and television broadcasts. On the English side, you have the same type of broadcasts. Therefore, the programming policy allows satirical and sarcastic programmes and it is a bit the same as cartooning in our newspapers. It is therefore in complete agreement with programming policies and traditions.

Senator Fournier: Has the *Parti Québécois* been the subject of a satirical broadcast?

Mr. David: Certainly, Senator.

Senator Langlois: On the English network. Now, Mr. David, you mentioned the producer, in one of your answers, can you tell the committee if it is when this contract was signed with the authors of the sketch that your producer really gave his input by telling these authors what kind of programme he wanted to produce?

Mr. David: In the first place, the main idea of this programme was to show-case, of course, one of the most popular comedienne in French Canada, Denise Filiatreault. It was a question of showing all the talents of this gifted star. As you know, she is a singer, dancer and comedienne.

Senator Langlois: That includes political talents . . .

Mr. David: Indeed, I believe that satire often touches politics, society or culture.

Senator Langlois: That could touch the political beliefs of Denise Filiatreault.

Mr. David: I do not know what her political beliefs are.

Senator Bourget: She stated them publicly at a political meeting in Montreal, Mr. David, please note that, in our work, we do not try to discover the political beliefs of the invited artists. We are trying to find out if they ply their trade well. Thus it was a matter of knowing if we were banking on a very good comedian. Consequently when I was asked what was the intent of the programme, I stated that it was to show-case Denise Filiatreault under all the aspects of her career. Obviously, this included many subjects, including "Aurore l'enfant martyre" and, more obviously, a satire on the Queen and also a satire on a visit with the Governor General.

Senator Denis: Speaking of satire, do you not think that this was "a bit much"?

Senator Desruisseaux: Mr. David, do you accept the responsibility for the programme we are going to see?

Mr. David: Yes, Senator.

Senator Bourget: Do you believe, Mr. David, that the effect of this programme was the promotion of national unity?

[Text]

Mr. Picard: Mr. Chairman, I would like to make two statements, one on the events of the last two weeks and the other concerning the question of policy, which might better be discussed after you have viewed the program, since at that time you would have some background for your questioning.

If I may allude to Mrs. Pritchard's summary of the situation with respect to the two weeks leading to this meeting, although I am sure Senator Langlois had no intention of creating a bad image for the CBC, there might have been an impression that the CBC has in one way or another tried to delay the proceedings, change them or otherwise embarrass the Senate by its decision not to have a dubbing or a text but to insist on a simultaneous translation. I believe Mrs. Pritchard underscored the fact that we did try to make the best possible job of the simultaneous translation we could in the time available. Actually, I am glad Senator Langlois raised the point, because in the light of my response to it honourable senators might have a better understanding of the frustrations involved in running the corporation. The point is, honourable senators, that there is a legal reason for our not using either dubbing or text but for insisting upon a simultaneous translation. We have our legal adviser here; perhaps the legal adviser of the committee would disagree with him, but in the opinion of our legal adviser the reason why we cannot have a dubbing or a text is that it would be an infringement of copyright. It would be against the copyright law of the country and the international copyright law—laws which I understand have been passed by Parliament.

I should like to make quite clear that it was not in the minds of those in the CBC to delay, hamper or confuse the situation with respect to presenting to the senators the best possible translation and presentation of the French text. I do not know if you wish to discuss that point, but I consider it important. Knowing only too well our mistakes and sins, Mr. Chairman, I should not like the discussion to start with the belief that the CBC has in any way tried to hamper the presentation of this text.

Senator Langlois: Since my name has been mentioned in these last remarks of Mr. Picard, Mr. Chairman, I should like to say at once that I had no intention whatsoever of embarrassing the CBC. Indeed, I was merely acting under your orders, Mr. Chairman. You asked me to obtain certain material from the CBC for this meeting this morning. I passed that message along to Mrs. Pritchard who was subsequently in contact with the CBC authorities. The furthest thing from my mind was any idea of embarrassing anyone at all. I was merely trying to obtain as much information for the committee this morning as possible.

[Translation]

Senator Denis: How much would the copyrights have cost?

Mr. Picard: It isn't only a matter of—maybe I could ask our legal counsel to speak in a while—it is not only a matter of copyrights. It is that in the case of copyrights, they prevent any change in the text, and there is also the translation of a humoristic text or other.

Senator Denis: If you offer to pay them, do you think they are going to refuse.

Mr. Picard: They did several times, and I can give you examples.

Senator Fournier: Does the text become the property of the C.B.C.?

Mr. Picard: The French text, as it is written. For instance, if a group would like to have a translation, let's say into English or Italian, it is not the property of the C.B.C. It is the strict and absolute property of its authors. Now, I don't know whether you wish to hear our legal counsel on this matter, but we are not free to do that.

Senator Desruisseaux: Mr. Picard, I don't think it is necessary to hear the legal counsel on this point, but the C.B.C. as such, has the right to examine and discuss the text beforehand.

Mr. Picard: Definitely, and Mr. David has said yes. He agrees.

[Text]

The Chairman: Are there any further questions?

Senator Desruisseaux: I would add one more comment, if I may, Mr. Chairman, about what was said by Mr. David in connection with the—

[Translation]

regarding the norms you have developed to influence the choice of programs, as I understand it, Mr. David, you have those norms; is it possible to obtain a copy? Secondly, the general policy of the government channels where programs are concerned, their acceptance, or the program policy has been repeatedly mentioned here. Would it be possible to obtain a copy of these documents dealing with the program policy you follow?

Mr. David: Senator, we have consolidated program policies in various operations, and we have here a book like the one here, which is called "Program Policy". It is a book written for producers, journalists, and senior officers. You have there the various programs which can be broadcast and the commercial regulations. I see, for example, regarding information programs and the commercial implication of information, that it is a matter of good taste. Everything is prepared by the management of CBC for both networks, the head office, to be submitted later to the Board of directors of the CBC.

Senator Desruisseaux: I do not seek personally to obtain explanations on commercial programs, but simply, the kind of programming such as: "*Les beaux dimanches*", the others which are accepted and which may be discussed. It is about those that we are interested in the guidelines.

Mr. David: Obviously, they are general guidelines, and each case is examined as it arises. There are plays which it is forbidden to broadcast. There are movies which we forbid to show, for instance, depending on the hour, the

area, but program policies are definitely written in the book I am showing you here.

Senator Desruisseaux: I have a feeling it would be useful to have it, Mr. David.

Senator Fournier: I would like to ask, either the legal counsel or Mr. David, a question. Does the legislation which governs the operations of the CBC prohibit the publication of the costs we were inquiring about a while ago?

Mr. David: I think Mr. Picard or the legal counsel could answer this question, Senator.

Senator Fournier: Then we ask them to.

Mr. Picard: Well, listen Senator Fournier, I will try to explain it to you. First, the Committee obviously has every right to ask this information and the CBC will comply. Traditionally, a Committee sitting *in camera* can examine those figures and report them. This Committee has the authority to get these figures. Therefore, if you demand them, we are going to give them to you but I think it goes a little against the usual practice.

Senator Flynn: In the present case, there are no objections?

Mr. Picard: Yes, I think, because for these programs, artists, writers, etc. receive salaries, and they do not work only for the CBC.

Senator Fournier: We are right on the elections market, not now, but before, when there was a rather stiff competition, and public accounts report to the last penny all the monies received from the government.

Mr. Picard: Now, listen, senator Fournier, senator Flynn, I do not wish to criticize; if the Committee requires the figures, you will get them, if you require them publicly, you will get them publicly.

Senator Flynn: Before making a decision, I would like to know whether in a particular case, you see any objection? You say it is against the general policy to reveal those figures, but supposing we would ask the total figure of the production cost of this program, there would be no objection to reveal the salaries or the fees paid to the performers?

Mr. Picard: No. Listen, senator, there again, the CBC does not object to it, the fact is that it is a long tradition. In a committee, it is done under the cover of a sub-committee, *in camera*. It is the individual cases which present problems. If, for instance, you ask for general figures, this as a rule, does not involve any problem. But there again, I wish to say that we do not object to your requesting them, we are referring to the tradition, but if you ask for the figures you will get them.

Senator Flynn: I understand your answer. As far as the total cost of this program is concerned, you do not see any objection to reveal it to the committee?

Mr. Picard: No, I have said the average cost of all "*Les beaux dimanches*". I would rather not give them individually. However, if you ask it, we can give it to you.

Senator Desruisseaux: Mr. Picard, I think it is obvious, several members of the committee have spoken along the same line, as have those who are not members of the committee,—I myself am not a member—but we would

still like to study those figures in this particular case. Personally, I think our discussions of those cases are not a waste of time, but such discussions should still justify, somehow, the attitude we adopt. We wish to clarify completely this question by going the whole hog.

Mr. Picard: Senator Desruisseaux, I have no authority to ask it except by pointing out the long tradition which exists. What I am asking you, is to be able to give the cost privately to all the members of the committee, and not publicly. That is all I am asking you.

[Text]

Senator Beaubien: Mr. Chairman, it seems to me that the committee decides for itself what its rules are and what its long traditions are. We also decide what questions we want to ask. I do not think the witness should sit there and tell us what our rules are or what our long traditions are. We are asking what he paid for this, and we want to know.

[Translation]

Senator Bourget: I think, Mr. Chairman, that senator Flynn's suggestion would avoid the drawbacks Mr. Picard has mentioned. Personally, I would accept the total cost of the production, unless other colleagues request more details. Personally, I would accept that you give us the total cost of this production.

Mr. Picard: Privately, of course.

Senator Bourget: Privately.

Senator Langlois: Well, not only the total cost, I think Mr. Picard was ready to give us the cost of the contract.

Mr. Picard: Privately, yes.

Senator Langlois: I would be satisfied with that.

Mr. Picard: Very well.

[Text]

The Chairman: I shall take another chance in asking if there are any more questions.

[Translation]

Senator Denis: Going back to the acceptance of various shows, what are your powers, as president, and your responsibilities? Do you have any, and which are they?

Mr. Picard: The president's responsibilities, as you know, are very general.

Senator Denis: You say very general?

Mr. Picard: Very general. He is responsible for the management of the CBC. It is obvious that neither the president of the CBC, nor the vice-president, can see all the programs which are produced; we produce 60,000 hours a year. If need be, it may happen that they ask our opinion on important matters. We have legal counsels, and we have network vice-presidents. It is a decentralized system and the president and the vice-president may be consulted occasionally.

Senator Denis: Were you aware of this particular show before its production?

Mr. Picard: Not the show itself, no.

Senator Denis: Do those who are responsible for accepting those shows report to you?

Mr. Picard: Listen Senator, I go back to Mr. David's statement when he said that decisions are taken at some levels. If somebody is asking questions, he must go to a higher level, either talk to Mr. David, and in some cases, talk to me.

Senator Denis: Mr. David never communicates with you?

Mr. Picard: Occasionally, if there are questions, he communicates with me. But, we leave those who are responsible for programming to make their own decisions.

Senator Denis: Then, when a contentious or controversial show is involved—I do not know what you want to call them—is it not normal that the president be aware of what is happening, I am not speaking of music, neither music or folklore?

Mr. Picard: That happens.

Senator Denis: Did it happen in that case?

Mr. Picard: No.

Senator Langlois: Mr. Picard, as I understand your evidence, it appears that, even though there was no consultation at your level or at Mr. David's level, before broadcasting that sketch, you have still expressed an opinion afterwards, and you accept it as being within your programming, your programming policy?

Mr. Picard: The question is very complicated, and I would like to come back to it right after.

I think the question arises at more than one level. The first level is: should Radio Canada satirize? Is it inherently bad? I would like to elaborate on that for a while. Is it inherently bad that Radio Canada should satirize some important Canadian institutions? This is the first point.

The second point is: does this particular program go too far? Is it funny, and so forth? Well, it is like having personal ideas. I think the first question which comes up is this one: should the CBC satirize on some of our institutions or should it not?

Senator Langlois: You should at least pick your victims.

Senator Denis: But this can lead to something different from satire.

Mr. Picard: It is light satire.

Senator Denis: Which shocks many people.

Mr. Picard: It is possible.

Senator Desruijsseaux: Mr. Picard, in fact, many people have protested. Have you received any letters of protest?

Mr. Picard: I have not personally received any.

Mr. David: I do not have the figures here, because there are many programs and it is very difficult to speak of mail, but some people find it funny, and some find it disrespectful.

Senator Desruijsseaux: I am speaking of this particular program, the others do not concern us.

Mr. David: At that time, it is not a person who is ridiculed, it is the institutions which are satirized. It hap-

pens in every country, including England, and the Queen is not spared either, in England.

Senator Langlois: Now they go much farther, they have bombs.

Mr. David: I understand, but at one time in France they satirized de Gaulle very much, and you know it. It is the institutions, more than the president, which are involved.

Senator Langlois: It is what they say at the ORTF as well.

Mr. Picard: It is a comparison . . .

Mr. David: It is a practice we have on radio and television, to have satire, as in the newspapers you have cartoons; radio and television have their particular methods, they make satirical shows.

If you remember, for instance, "*Chez Miville*" and "*Les Couche Tard*", it was the same type of program; they were satirizing politicians, trade unionism or the authorities whether at the financial, social or cultural level, and institutions involving responsibility. It is a way of voicing tensions, and it is extremely important in a society to find a disposition, a kind of irony which asserts the health of the society. It is this way that men have always considered cartoons, and that we are considering it at the CBC. It is quite possible, sometimes, that they are made in bad taste or that mistakes are made. But there, I think it was a satire and there was no malice intended.

Senator Langlois: Coarse.

Mr. David: It may be questionable, I admit. The proof is protests were expressed, but we also received letters from people who found it funny.

Senator Desruijsseaux: About those protests, I would like to know exactly what you received. Could you give us a picture of what happened?

Mr. David: Unfortunately, I do not have with me the report on relations with viewers, because I did not think I would have had to deal with this question.

Senator Desruijsseaux: Could you provide them?

Mr. David: Certainly, we are going to provide them.

[Text]

Senator Langlois: Finally, I merely wish to make this observation. Mr. Picard has referred to a book of rules. I do not know if that is the proper name, but I would like to know if it could be put at the disposal of our committee, through our clerk, in case we want to consult it before we deal with this subject. Is that possible?

Mr. Picard: Yes.

Senator Flynn: Mr. Chairman, following the comment made by Mr. David, I would like to ask Mr. Picard whether he thinks the same ethics should apply to a crown corporation as would apply to a privately owned TV station with respect to the satirizing of all our institutions.

Mr. Picard: Well, I am glad you have raised the question of satire, because generally the role of the CBC is rather different from the role of the private stations.

The Chairman: It is admitted that you are different from anybody else.

Mr. Picard: What is satire? We are now looking, not necessarily at a question of ethics, although strong ethics are essential, but really at a question of principle. Should we satirize institutions? If we consider a program, we have to examine that program, and while some people might think it is inclined to go overboard, other people might think it is funny—I do not know; but in terms of principle, I think that satire—and I would like to talk about that later on—is a very basic problem. It is not a problem of ethics; it is a concept of freedom. I think satire is just as acceptable a medium for the CBC as it is for the private sector.

Senator Desruisseaux: If I may say so, Mr. Picard, when we use words that may be used rather like guidelines, I think we should define these words. "Satire" must be defined quite specifically, and if you say "ridicule" you must define that, too.

Mr. Picard: Very well. Again, I will be forced to give you a very broad answer, but I would say that the ethics of the corporation, and the ethics of the private sector should be the same, because they are both using public wavelengths. Also, I would say that we should not use satire, or things like that, to destroy. That, I think, is the basic principle.

Senator Desruisseaux: Yes. So, what is satire?

Mr. Picard: Satire is a way of, you know, spoofing . . .

Senator Desruisseaux: Exactly. Right. You do not know. We can expand on it, or play with it.

Mr. Picard: When Oscar Wilde says, "This thing is much too important to take it seriously," he is using satire. It is a way of changing the logic of a thing so as to be able to look at the different perspectives of it, and give it perhaps a perspective which people find funny. People have tried for the last two thousand years, starting with Aristotle, to define what is funny and what is laughter, and we are not much further ahead today. We know one thing about laughing and satire, and that is that it tends to allay tension. Satire, as such, has never killed people. It tends to allay tension.

Senator Langlois: But it could destroy something.

Mr. Picard: It could, I agree, and I think our ethical principle should be, "Do not destroy!"

Senator Molson: May I ask Mr. Picard if he feels that the CBC should produce programs that have a political direction?

Mr. Picard: You are talking about news and public affairs, or satire?

Senator Molson: I am talking about programs. Let us take satire.

Mr. Picard: Generally, not. That is what we are trying to do. But satire, obviously, like the news, covers a wide field. If we talk about what I would call, and what other people might call, political bias, I do not think we should have political bias, as such; but I think satire, like the news, covers a wide field. Sometimes it will be used to laugh at or needle some institution, and at another time it will touch upon something which has nothing to do with political life, but which has to do with social life, or with character.

Senator Molson: Is there an effort made to balance these directions?

Mr. Picard: I think there is.

[Translation]

Senator Denis: Mr. Picard, I have here the Broadcasting Act. Section 3, subsection (b), reads:

the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

Mr. Picard, I would like to know if section 3 of the Broadcasting Act would not be violated in a show where the Queen, the governor general, the English people are the French Canadians, are ridiculed?

[Text]

Mr. Picard: I do not think I can give a short answer to that. I have to give a long answer. I do not want to misinterpret your point. I would like to make that clear. I do not feel very aggressive here. I rather feel like the first Christians looking at the lions just before they got into the forum.

The Chairman: You are not through yet.

Mr. Picard: I know, Mr. Chairman.

Senator Fournier (de Lanaudière): It was not only Christians that went before the lions.

Mr. Picard: I think that what you are asking there, really, Senator, is, is it a question of principle? And I think it is a very basic one. If the CBC, or any broadcasting institution in any country, or any newspaper, or whatever it may be, spoofs an institution like the Queen, or the generals, or the Prime Minister, or the Senate, for that matter . . .

Senator Denis: Do you care?

Mr. Picard: I say that because we care about it.

Senator Denis: I am not too sure of that.

Mr. Picard: The question is, are you destroying the unity of the country? My answer to that is, if you look at parliamentary democracy—and I think I am not wrong in saying this, because it is my belief—one of the things about Canada is the British system of parliamentary democracy, democracy with freedom and all that. I do not think you tell everybody to kill satire, even the top people, and I would like to give you some examples of that. If you ask people to do that, I do not think it is working for the unity of the country.

I should like to go on for a little bit on this. I am sorry to take some time on it, but I think we are here on a critical issue. In what countries is satire not a public institution? We can name them. They are not England, not Canada and not the United States. It is part of history that one of the first things that any totalitarian government does when it takes control of the country is to cut satire, to stop satire. I do not think that because we satirize the institutions of the country we are weakening the unity of the country.

Let me tell you a story. I was coming back from Yugoslavia, where I was chairman of a European committee, and on our way back to the airport I was with one of the heads of the Yugoslav radio. Somebody asked him, "Do you make any political jokes? Do you laugh at your political figures and institutions?" He said, "Yes, we do that all the time. In

Yugoslavia every week there is a new joke. Think of that. We have not made a joke for three months, and every time we do not make a joke for three or four months in Yugoslavia something very bad happens." Laughing is part of the system in which we live, and I do not think you destroy the unity of the country because you are needling, spoofing or laughing at its institutions.

We are not prepared for it, but with your permission I would like you to look at the spoofing by the BBC, which you will see goes much further than anything we do. Here we are talking about the basic concept of freedom. When Kennedy was in power in the States everybody made jokes about the pabulum in the White House, about Bobby Kennedy playing with his ducks in his bathtub and being upset when somebody hid his ducks. Everybody laughed; it was a happy country. We have not heard many jokes in the last five months.

In 1940, when Roosevelt was accused of becoming a dictator of the country because he was asking to become the first president to serve for a third term, he did something very bright, very political, very intelligent, and at the same time he won the game. The newspapers were attacking him on the grounds that he was supposed to be starting to take control of the country, to be a dictator and all that. He asked Will Rogers to present him as a candidate. For half an hour Will Rogers spoofed at Roosevelt, and Roosevelt laughed at himself, everybody laughed at Roosevelt, but he was nominated and he became president again. I think spoofing and laughing is a sign of a healthy society.

Senator Desruisseaux: Do I gather from what you say that you are approving of the program "Les Beaux Dimanches" that we are going to see?

Mr. Picard: I would like to repeat the distinction I drew at the start. The principle is one thing, and that is what we have been talking about. The program itself is a question of judgment: You might not like it; I might like it.

Senator Langlois: Let's see it!

The Chairman: I will not make the fourth mistake and ask for further questions. Now let us get on with the show.

The videotape of "Les Beaux Dimanches" was screened.

Senator Molson: May I ask Mr. Picard if there are any refunds paid to advertisers who are dissatisfied?

Mr. Picard: It would depend on the decision of the Senate. If the Senate thinks it is good, you might receive another bill.

Senator Robichaud: Mr. Chairman, I think there should be a distinction made between satire and indecency, indecency in the sense of an actual attack on our political institutions.

Like the rest of you, I viewed the television show just now and I can only say that from the first word uttered on the show to the last I think I laughed. I saw satire in it, but I did not see one ounce of indecency. In my opinion, it is a good show, it is a funny show, and I do not see why the Senate should have been asked to waste its time as if this were a "chambre à débarras." The Senate is an active institution, and in my estimation we have wasted not only several minutes but perhaps an hour of our time. At the moment I am not in a position to criticize this program one bit. I loved it and I enjoyed it.

Senator Desruisseaux: Mr. Chairman, how many people watched this show on the CBC and its affiliates?

[Translation]

Mr. David: I would say approximately one million to one and a half million spectators.

Senator Robichaud: Mr. Chairman, may I ask some senators whether they have found anything in the program that was contrary to their principles?

Well, senator Flynn, do you agree with my opinions, my views?

Senator Flynn: I think that the program is not, let us say, so shocking. I have just seen it here, I had not the first time.

Senator Robichaud: Neither had I.

Senator Flynn: This does not alter the question. We can certainly experience waves of bad taste. I particularly refer to the introduction sequence, the Queen hanging in the air, with her legs in the air. In my opinion that certainly was tasteless. In this sense, it certainly is a satire. But, on the whole, I think that they should not have gone that far. There are some little things, particularly like this introduction sequence.

What interested me most in this program was the opportunity of the visit that Mr. Picard and the officials of the CBC are paying us to determine how the Corporation exercises its control over the initiative taken at some other level to air such and such program, whether it be a satirical program or viewpoints on public affairs for example, in order to maintain the balance which is so often referred to.

We are sometimes under the impression that some opinions, some viewpoints receive more attention than others that would however better reflect public opinion as a whole, some marginal opinions, I would say, which take up too much of the CBC's time. I was wondering how the Corporation operated to control and balance its viewpoint programs and even its satirical programs.

Mr. Picard: Well, there are several procedures in this regard. First, there are the main policies which are important and serve as "guidelines".

Secondly, to administer the CBC is really to administer it on a day to day basis. It certainly means screening all programs. It has always been said that no balance could be established for all the programs by watching only one of them, that you had to watch a whole series. But we try as much as possible to balance this. We make statistical studies on that matter and I could perhaps tell you—which may be something that Canada can be proud of—that at the CBC the computerized data analysis system is perhaps the most advanced in the world.

There are also the policies. There are the viewers' critics. There are also the basic policies of the "right of reply", or the "fair balance". Also, when someone feels alluded to or that something is done in a direction which seems detrimental or too partial, and so on, he has the right to come back to the CBC, which is done not very regularly but as often as we are asked to, and when it is thought that it is true or necessary.

Mind you, you have a system that is extraordinarily complex, indeed, much more complex than the American or the British systems. But within the management's policies, and so on, we try as much as possible to strike a balance.

Now, it will happen that some people will find that we go too far in a certain direction. It will happen that some people will find that we are not aiming enough in an other direction or that we are exaggerating in that other direction. There is nothing more enlightening than to read the comments received by the CBC. In commenting a single program, people sometimes tell us that we were too biased to the right or too biased to the left. We then try to exercise our own judgment to balance everything. This is not an easy problem, Senator Flynn, for there are several opinions. There are significant minority groups and so on, but we try to strike a balance. In my opinion, which is the opinion often uttered in the Parliamentary Committee, for four or five years, we have made great efforts not to—I should say—“control” the CBC, that is not so, but to create a balance in the programs of the CBC. We have made great efforts in this direction.

Senator Flynn: You know that you have a system enabling you, at some time, or another to intervene and restore a certain amount of balance.

Mr. Picard: Yes.

Senator Flynn: But, let us, for example, consider this one program. If I had to screen it, I am quite sure that I would not have presented the opening scene in the same manner. I find that it was lacking good taste. I would have moreover corrected two or three little things.

I agree that politicians can be subjected to satire. I would add that everything that was done as regards the prime minister, the leader of the opposition and the leaders of the other parties is quite fair, that it is normal. I even quite agree that it is important that we should have this type of satire. But, as I say, I think that the question of the Queen and of the fun which is made of her, is absolutely tasteless because, after all, she has an official role, she is an institution and moreover she cannot defend herself, particularly as a woman, and I think that in any case it shows a lack of good taste.

Mr. Picard: Mind you, what we can say in the first place about this first part is that it is not very funny. It certainly happens that on questions of judgment such as this one, people might go too far. But those who know the CBC better, would be struck by the fact that the joke is basically directed more at the CBC than at the Queen.

Senator Flynn: I understand.

Mr. Picard: The joke is directed more at the CBC than at the Queen.

Senator Flynn: But it becomes subtle. I would generally say that the public would rather be thinking that the CBC belongs to the Queen of England.

Mr. Picard: May I make a distinction, Senator, since I have heard several comments that we are not speaking of the Queen of England but of the Queen of Canada.

Senator Flynn: Yes, but in the context, no distinction is made. These are problems of opinion. I understand that there are narrators or commentators who, thanks to the CBC, really direct public opinion in very specific directions. We always come back with programs which very often try, if you like, to undermine our private business system and sort of thing.

Mr. Picard: Well, that is where the question of balance comes in. Sometimes we go too far. There is also the

question of developing professionalism within the CBC, such as in the news and this is a very difficult issue but this is our objective.

You have noted that there has been a strike at the CBC because, in the case of the United Aircraft, people were forced to go and interview the management of the Corporation and if you recall last May, the CBC was shut down for seven days because of a conflict on that subject. It was argued that, first of all, the program was not well balanced.

Senator Flynn: Yes, I do not underestimate the difficulties of your duties. This is not new, I am only wondering whether, with the experience you have acquired over the years, you have found a procedure?

Mr. Picard: The only really valid procedure, Senator Flynn, is to develop, and I think that we have gone a long way in this regard—look at “Format 60”—to develop, as I say, the professional quality of reporting and analysing. This is our objective. I think that we have progressed quite a bit but there is still much to do. Our people are the first to say so. However, I believe that we have made headway. But at the CBC, we often have programs on highly controversial questions. I even think about external things receiving, at one time, general approval despite the difficulty of the problem and the emotional pressure that it creates. The quality was extraordinary and nobody criticized it. The problem of our society, of the Canadian society, of society as a whole, and now of the CBC in particular, is a problem that will always exist. I mean the problem of developing the quality of analysing and reporting, and so on. We surely have a long way to go in that direction.

Senator Flynn: But you surely have less control over your producing staff than the private sector has?

Mr. Picard: To a certain extent, yes. But the private sector certainly does not exercise its control in the same way we do. Of course, we are regulated by federal laws, union laws and so on. We are governed by a structured process of thought reflecting—and I was saying earlier that for me, it is very important—the concept of Canadian liberty. Apart from that, we are a huge organization larger than any private organization in Canada. CTV is a co-operative institution comprising an assortment of broadcasting outlets. CBC is an organization. I do not object to the question of salaries but the salary paid to a private station in Newfoundland are the salaries in force in Newfoundland. The same goes for the federal government as well as the CBC; the salaries paid to CBC's staff in Newfoundland are the national salaries. We cannot escape that and it is part of our problem. But very often we do not have the flexibility of the private business. However, the objective remains the same and it is to constantly improve, the quality of professionalism, of reporting, and so on. I think that this quality has already reached a high level but we still have a long way to go in that direction.

Senator Desruisseaux: For those who have the privilege of knowing, for example, the Légers, I am quite struck by the ridicule they have tried to inflect on Mrs. Léger. I understand you when you speak of satire but I distinguish between what I call the proper and quite acceptable satire and the ridicule which cannot only be detrimental to those people in their duties, in their acceptance by the public, but can moreover personally hurt them through things that, to us, they never represented. This is what Mrs. Léger is to me and looking at how they pictured her, I must say

that I do not agree with senator Robichaud, who seems to accept the whole program. For the main part of the program, which I saw this morning for the first time, I agree with you that there were perhaps scenes that were objectionable.

Mr. Picard: There are some that are objectionable.

Senator Desruisseaux: And in the light of the experience you have, if you had been given the opportunity to do it, they would not have been included in the program or at least would have been discussed. Now, I have worked for 12 years with private television and radio; it was a very interesting and comforting experience for me and, in many ways . . .

Senator Robichaud: Quite profitable.

Senator Desruisseaux: Quite to—except for the CBC from which only paid 50% of the fees,—but I have always objected to that. However, I left that field six years ago and I must tell you that I agree with you concerning the difficulty there is to run some programs as you would like them personally to be run.

As to your reference concerning union procedures and the areas of active freedom within unions,—I personally quite understand them and we must as far as possible, avoid impeding artistic creativity. But generally, I think that we can even be of some help to artists by supervising their work. Maybe we were a little too quick to accept this program particularly the sequence of a few seconds at the beginning dealing with Mrs. Léger and the references to the prime minister. Some sequences might be acceptable but, to me, they are in bad taste.

I wanted to make my comments on this situation even though I am not a member of this Committee.

Senator Langlois: It seems that we are about to upset the normal procedure of a Committee of this type. We are at the stage of the questioning of witnesses and opinions, judgments of values, if I may say so, have already been expressed that should have only been expressed when the Committee will be considering the report, if any, that will be tabled.

Having made these remarks, I do not want to intervene with Senator Robichaud, but after hearing what he and Senator Desruisseaux had to say, I think that the opinions differ according to the person. We must not forget that this program was not made for a senatorial committee but rather for the Canadian people in general,—people who cannot, as we can, ascertain the veracity of the facts presented to them on television. Also, it was made for people who, being like us in the political game, know how to discriminate between what is really a political game and what is not. But when they are attacking institutions like monarchy, which is the authority in general, I am not talking of the Queen of Canada and of England, which is the supreme authority in this country, and that the people being attacked through the institutions cannot, as a politician can, go to the streets to defend themselves and to answer to the ridicule they are being covered with, that is very bad. That is how the established authority in a country is destroyed. Moreover, when I presented this motion to the House, my only goal was, and still is, that the Parliament keep a certain control over this crown corporation, as the CBC is an agent of Her Majesty. Thus, we must keep a certain control so that, if this type of program is to be allowed, we can at least keep it within bounds.

Senator Asselin: We would have to amend the Act to do that.

Senator Langlois: Not necessarily. The Act clearly says that the CBC is a crown corporation and an agent of Her Majesty. It is in section 40 of the Broadcasting Act; I have it before me. I would like to read it to you, if you want. The Corporation is an agent of Her Majesty and I think that we will keep it within bounds. Senator Flynn, a few minutes ago, indicated a certain restriction which could be applied, but I think that it is too soon now in our debates to make valid judgments. We still have witnesses to question. We also have the president of the CRTC who supervises all these channels, whether private or public, of radio and television broadcasting in Canada, and who will be able to say if, really, programs of this type are within his jurisdiction, or whether he must intervene. As long as we have not all the evidence, until we have not been able to go to the heart of the matter about this program, and the program of the CBC, I think that we must defer our opinion until we consider the committee report. Having said that, I would suggest that we continue with the questions put to the witnesses present this morning, and I do not feel I have lost my time. If this hearing this morning aims at putting the authorities of the CBC in a tight situation, maybe in the future there will be somebody, when something is broadcast on television or radio, who will have the authority to speak and to make them fall in. I think that Parliament should not renounce its right, the right it has in this sense.

Senator Asselin: I would have another question. How many critics have you received from social groups, or minority groups, or the public in general, following this program? Can you produce this information?

Mr. David: Yes, we keep a record of all the telephone calls we receive through a service called "Relations avec l'auditoire", and of their content which is expressed, evidently, in a rather fast almost cryptographic style, as we said before, and we can put these reports at the disposal of the committee, should it request it.

Senator Asselin: I would propose that this report or these statistics be put before the committee, please, with the committee's assent.

Senator Langlois: You are not talking of publishing it, only of tabling it?

Senator Asselin: Only to table it.

Senator Robichaud: Mr. Chairman, I would like to make my position very clear. The last statement of Senator Langlois is perfectly true. I have the impression,—I would not want to exempt the CBC of all the program it has produced—but I still think that the CBC should be controlled by Parliament and, if I have said that we were losing our time this morning, maybe on the whole we are not entirely losing it. I think that it is time well spent, even if we are attacking the program we have just seen, since I think that this program contained very little offensive material. There are some CBC programs which I do not approve at all. I think that they are disgusting. This one in particular, except for the part where the Queen starts to dance, I thought it was a little awkward. Moreover, I think that it adds nothing to the program.

Senator Langlois: Did you see "La Sagouine"?

Senator Robichaud: I saw "La Sagouine", and the author, she is Senator Michaud's sister-in-law.

Senator Denis: Are we to think that the Acadians from New-Brunswick, in particular, cannot do anything else but wash floors?

Senator Robichaud: Not at all. "La Sagouine", it's a matter of taste. At home, they are not all sagouines.

Senator Denis: Well, if we have understood the performance correctly, would it not make one think that all French Canadians are floor sweepers, and of porters?

Senator Robichaud: Not at all. You are jumping to conclusions.

Senator Denis: You have heard the names given: butcher, cook, minor jobs.

Senator Robichaud: And what about Mr. Leger?

Senator Denis: Mr. Leger, they ridiculed him in a different way, by saying: Well, he is a French Canadian who has made it, but who is not doing his job.

Senator Robichaud: In all events, it is a matter of opinion.

Senator Denis: We must not forget that it was a French Canadian public which was listening to that. So that at a certain time, they must say to themselves: We are being cheated, we are revolted. They can be revolted to see how French Canadians are treated in the country. So, if CBC's purpose is to bring about Canadian unity, when a crown corporation ridicules a race rather than another, this is not going to unite Canada.

Senator Langlois: Senator Denis' observations must be considered within the present political context of Quebec.

Senator Denis: That is it.

[Text]

Mr. Picard: I fail to see any indication that Mrs. Leger is not doing her job right. I do not know how you can say that.

[Translation]

Senator Langlois: Do you think that the Montreal dockers have the same idea as you have?

Mr. Picard: I worked a year and a half with the dockers.

Senator Langlois: Listen, I used the expression "docker".

Mr. Picard: Basically, it is not meant to be mean. It is just like when on Christmas day or on New Year's day, the children mock their parents and laugh at them. Anyway, in my own home, they do it a lot. It is not mean.

[Text]

Senator Riley: Mr. Chairman, I should like to address my remarks to Mr. Picard. Gilbert Keith Chesterton, the famous litterateur of England, was once described as a propagandist. At that time the word "propagandist" had a somewhat dirty connotation. Chesterton replied in an essay that everything he wrote had a purpose, otherwise he would be a fool. With that in mind, I must say that everything enacted on CBC television, or on any show in

show business, has a purpose. Sometimes the purpose is to entertain. My interpretation of this particular show is that it was an affront to the Queen. It was more than satire. It was more than ridicule. Much as I hate to disagree with my colleague Senator Robichaud, with whom I have been associated for a long time in and out of politics, I would interpret this particular show, personally, as an attempt, not to destroy the monarchy as we know it in Canada and in the way we accept the Queen as our sovereign, but to implant doubts in the minds of the Canadian public, probably the impressionable section of the Canadian public, that the monarchy is something we can do without. The first part of the program was an affront to our sovereign state, to the head of our sovereign state, and the same thing applies to the ridicule that was heaped not only on Madam Leger herself but on her family and her brother-in-law the Cardinal.

That being my interpretation of the program, I should like to know what are the guidelines. Senator Langlois has asked for them, and he says that the guidelines will be available to us, but what are the guidelines in respect to good taste? What are the guidelines in respect to the type of program which must be reviewed before it is shown to the people? What are the guidelines in respect to the dangers of propaganda designed not to overthrow but to encourage the overthrow of our sovereignty in the sense that we know it?

Mr. Picard: Senator Riley, the guidelines will be available to you, but I would draw your attention to the multiple and different opinions which have been expressed here this morning. If you have four people in the CBC looking at a program, you might find exactly the same difference of opinion there. At some point somebody says, "We go with it," or somebody says, "No, we don't go with it." If we had a meeting here of CBC managers and we had to judge that program, what would be the answer? I have heard people say this morning that there was nothing offensive about it, and I have heard others say that there was something offensive about it. I can see that some people might regard it as being in bad taste, and I know that some other people reacted very strongly. But that is the problem we face. There is no short-cut way of solving this problem because it involves a question of judgment. There is no way of saying what is right and what is wrong. You have here among senators very different opinions from very different people. That is the same problem we have when we discuss these things. Sometimes they are very clearly in bad taste, and then some other times they are marginal. Then you say, "Well, most of the program is good, but there are a couple of things that do not fit in too well, but on the whole the program is good and we should go ahead with it." We have the same types of questions in mind that you have; we are no different from you, with all due respect.

I should like to make the point again—and I am sorry to disagree with you, Senator Riley, and I do so with respect for your view on the question, but I cannot agree with the statement that this thing was directed either implicitly or consciously or in any way was organized to destroy the feeling for the Monarchy in Canada.

Senator Denis: It was. Do you think the separatists did not like that program?

Mr. Picard: Do you want to enter into a bet; just a sheer bet? I say that, because I do not really know; I am not a separatist. But just as a bet, I would say they thought it was dull.

Senator Denis: After all, it is against Confederation and the Constitution.

Mr. Picard: It is not. When Bob Hope makes an hour show . . .

Senator Denis: Let Bob Hope alone. Talk about Quebec. Talk about the French-Canadians. Talk about the program we have seen.

Mr. Picard: It is a complex question, I agree with you there. But let me say this, and perhaps I am wrong, but, as a Canadian, I say that I would be frightened by any principle which would be introduced in Radio Canada, CBC, or the government, for that matter, which would indicate that the English-Canadian has the right to do things that the French network does not have the right to do. I would be thoroughly frightened, and I would say that if you want to find a fast way to encourage separatism, that is the kind of thing that might work. But the fact is that the British laugh at their Queen and, as I have told you, we have a BBC film that goes much further than that. And I can say that people who are shocked by our film would be ten times more shocked by the BBC film. Again it is a question of judgment, but to start with the principle—and maybe I am wrong, and please tell me if I am wrong—that the French network of the CBC or the French-Canadian does not have the same right in terms of using satire and all that as the English-Canadians, would appear to me to be very dangerous. I have never thought about it very much up to now, but it would seem to me, as I have said, to be very dangerous. There are tensions in Quebec.

Senator Denis: But there is the simple fact that the CBC belongs to the federal government and is paid for by the Canadian taxpayer and you produce programs that tend to separate the English and the French, and the province of Quebec from the rest. You can see the cheap jobs that the French-Canadians have in that program. It is revolting. It is disgusting. It means that we are badly treated and it implies that it is no use to belong to the federal government. What is in the Queen? What is in the Governor General? What is in the senators? What is in the job the Quebecer has in the federal entity? Do you not think this is the meaning of this? As Senator Riley says, there is a purpose in every program that is produced and presented.

Mr. Picard: Yes, and that purpose is to entertain. *La Sagouine* was presented to entertain and not in any way to criticize New Brunswick. It is just a facet of life and the idea is to make it a bit funny if we can. And, Senator Denis, when you stop making jokes in Quebec about the federal government and about the Queen and all that, that will be the time to be worried.

Senator Denis: It is not a question of a joke. It is a question of destroying yourself because you belong to the federal organization, and you present a program that tends to separate the federal organization from the province of Quebec.

Senator Langlois: Mr. Picard, you seem to have a different sense of humour from ours, and I will grant you that, but regarding the remark that you made particularly about the BBC, do you mean to say that you compare the situation in England at that time to the political situation we presently have in Quebec?

Mr. Picard: Well, I am not a political reporter, but I would tend to think, from what I have read and heard, that the situation in England is much worse than it is here.

Senator Langlois: Presently? You say that you think the political situation in England is worse than it is here? You are not serious when you say that. You know the trouble we are having in Quebec and you are not forgetting the events of October, 1970. I have not forgotten, if you have.

Mr. Picard: You are now talking to me as an individual, and I accept that. I am not an expert in the field, and I hope these statements are not taken as being statements of policy on the part of the corporation. But, surely, there are more problems now in England than there are in French-Canada.

Senator Langlois: I agree that there are economic problems, but they are not political problems.

Senator Riley: They are not advocating the overthrow of the Constitutional government in England or the sovereign, as such. The Scottish separatists just want to get off on their own, to be something like a province. They want to be decentralized and have their own government but still under the Queen. I think it is the same for the Welsh people.

Mr. Picard: I feel very embarrassed talking about that because you are talking to me now much more as an individual person. I do not believe there is anything there, and I think Senator Robichaud said the same thing, that shows any purpose or resolve to destroy the institution of the Monarchy.

Senator Riley: Well, Senator Robichaud and I have similar responsibilities to the Province of New Brunswick. We have been looking forward for years now to an increase in French programming not only in New Brunswick but in the Maritimes generally, because we want to have our children educated in the French language, perhaps not completely, but we certainly want to give them the opportunity to become bilingual. In New Brunswick we recognize bilingualism, as they do in other provinces. But if we are going to have an increase in French program input into our stations, whether on existing stations or on new French stations, I would be very concerned about any of my children seeing a program like that because it could affect them at an impressionable age. It shows a lack of respect for the Monarchy. So, if we are going to have more French stations and more French programs in the Maritime provinces, then I have serious misgivings after seeing this program. The same applies to other CBC programs—and I shall not go into that in detail now—which Senator Robichaud says are offensive. We are told when we object or when we criticize, "Well, you can monitor your programs, and if you don't want your children to see them, then turn the machine off!" Well, if you had seven children, as I have, and two or three sets, you would spend all your time going around monitoring every program.

Senator Denis: As I understand it, the purpose of satire is to make people laugh about what is going on.

Mr. Picard: Yes.

Senator Denis: If a program is not against the Monarchy, or against the French-Canadians, or is not against the Governor-General, it is not funny at all?

Senator Riley: We accept satire in the Senate. We get lots of it. We get it from all the media. We get it from the other place. There are consistent attempts to abolish the Senate as an institution.

Senator Langlois: Order, order!

Senator Riley: We accept this. We are constantly subjected to satire. Satire, however, is one thing, but ridicule and effrontery are another.

Mr. Picard: You know, so many people have an opinion on that. Would you like to take 10 minutes to look at a BBC program?

Senator Riley: That is another country. We are not concerned with what happens in other countries. As far as the Monarchy in this country is concerned, we reserve the right not to follow the example of Britain, not to follow the example of the United States. I remember that one time I was talking to Mr. St. Laurent at a railway station here, and I mentioned that perhaps we should follow the British system of diplomacy. He answered me quite abruptly and said, "We will develop our own system of diplomacy." Never mind the BBC. All this applies to the programs, as far as we are concerned, on the CBC, and we should not have to draw our example from the BBC. There are lots of things on the BBC that I do not agree with, and the same thing applies to the American networks. I am talking now as a Canadian with regard to the CBC which is a Canadian institution, a crown corporation, which belongs to all of the taxpayers. It belongs, not to the federal government, as one other senator said, but to all the people of Canada. I think the sensibilities of all the people of Canada should be taken into account when the question of what is good taste is being determined by the officials of the CBC.

Mr. Picard: We are trying to do that. We might not be successful all the time, but we are trying to do that. Take this example here. There are a number of interpretations of the program, and it is the same with every program. It is a matter of judgment. Sometimes we make mistakes; sometimes we may be right. We are very seldom right, from what I understand, but sometimes we may just be right. The fact is, however, when we look at a program, when we try to decide on a program, we face exactly the sort of thing you are facing here today. Opinions are different, people react differently, and you try to make the best judgment you can.

Senator Langlois: Mr. Picard, just to close this reference to the BBC, my opinion is that we have enough of our own faults without importing the faults of others, from whatever the country of origin may be.

Mr. Picard: Touché!

Senator Molson: Mr. Chairman, is this meeting being recorded, in addition to being interpreted?

The Chairman: No—except for the advertisements!

Senator Molson: I noticed those. If I may, Mr. Chairman, I would like to make one more remark, and that is this: I think it is abundantly clear that this program is entirely—well, perhaps not entirely, but very largely a matter of taste, and there is a difference. I think, however, that the vast majority of this committee feel that the program in question was in extremely bad taste. That is my own feeling, based on those little parts of it which have been mentioned three or four times already, and I assure you, I do not want to flog this matter. Apart from that, I think the program might have been extremely good. However, the way it was, it left me with a feeling of bad taste, and I think that is probably the feeling of the committee in general.

Senator Langlois: You should be reimbursed for that.

Senator Molson: That might be very difficult.

Senator Riley: Senator Molson does not review all these shows which carry his banner.

Senator Molson: We do not have that privilege.

Senator Langlois: If you have paid for a program of this kind, your sales will fall very badly.

Senator Flynn: Sometimes bad publicity . . .

Senator Langlois: . . . helps?

Senator Flynn: Yes.

The Chairman: Are there any more questions?

[Translation]

Senator Fournier: Please allow me one last remark, Mr. Picard; we find, nearly every day, that there are people in the French network of the CBC who think that they own the microphone they use to speak to us and who take advantage of it to broadcast their leftist, separatist ideas, anything, as long as it is against authority, as long as—and sometimes it is even disgusting—as long as it stirs people thanks to their line of thinking. This is what we want to protest against. We do not want to impose anything upon them; they are entitled to their own personal views, but, to take a microphone that belongs to the public and use it as their own personal property to broadcast a message that is anti-Canadian from beginning to end and which is often filled with insinuations, is another matter. At home, we often say, "Well, that is the CBC". Then we switch to channel 10. This goes on nearly every day, and we have had enough of these people who do not identify themselves. They can be what they want to be in their private lives, it does not concern us, it is not a question of imposing our own opinions. However, it is unfortunate that the microphones of the nation are used by people who want to destroy this same nation.

Le président: Y a-t-il d'autres questions?

Senator Asselin: Mr. Chairman, I saw this programme at home. I do have some reservations, but on the whole, I found it funny. I feel that if in a given society it is impossible to have a sense of humour and of satire, I begin doubting about the majority in that society. This was how I reacted to this programme.

I do not mean to say that the CBC always does everything perfectly. On the contrary, it is often to be criticized. Obviously, some parts may have hurt some people's feelings or some institutions. But the minute you stop having satire or humour, people will cease—maybe not to criticize too openly—questioning our institutions.

I have the impression that we will begin asking some questions about the maturity of our society. Of course, as you have already said, it might be impossible for the administration to screen everything that is broadcast, because planning must be extremely difficult. Of course, when I saw this programme at home, I found that some things were a little daring. I was not offended to the point of saying that the CBC presented a programme that was in bad taste. I like satire and humour. I have the impression that you have not heard the Governor General's, the Queen's, or Mr. Trudeau's opinions on this programme. Moreover, if we stop criticizing or having satire on public men and institutions, it will be rather dull, if you will allow me the expression. These are my impressions of the programme. I am not saying this to absolve the CBC of all the errors it may commit. As one Senator said a while ago,

sometimes, of course, it is easier for the message of some groups to be broadcast on the CBC network than elsewhere, on other stations, or other institutions of the television industry.

Well, it is the responsibility of the CBC directors to put some order in their business. As far as I am concerned, I think that satire and humour should continue to exist.

Senator Langlois: Mr. Chairman, I think it has been clearly established, and if it has not been, I want to repeat, that no one has said that satire as such should disappear. We only ask that there be some restraint and also some respect for some institutions and for some persons who are unable, as politicians are, to go down in the street and defend themselves if they are attacked.

Another remark that I wish to make following those of Senator Fournier, to the effect that there are some politicians for whom it may be easier than for others to broadcast certain messages, I only want to recall one anecdote, a rather recent one as a matter of fact. This happened when the FLQ solicitor in Quebec left jail one morning. He had been sent there for three or four months for contempt of court. He leaves in the morning, and at night, as if he were a star, he is invited to take part in the programme "Appelez-moi Lise", and then gives his message. He was given the French network of the CBC to broadcast the FLQ message. This is bad. And if it is not bad, I am wondering where we are going.

Senator Fournier: This happens nearly every day.

Senator Langlois: Call it freedom if you want, but I call it licentiousness.

Senator Denis: On the day following the municipal elections, the separatist candidate to the mayorship was interviewed, and not the mayor.

Senator Langlois: The mayor was not important!

Senator Asselin: He did not want to take part in the programme.

Senator Flynn: In that case, Mr. Chairman, where you become aware of an error of judgment or of some excess on the part of some producers, do you impose penalties or do you reprimand them, or something of the kind? Does something happen?

Mr. Picard: Very often. Sometimes, when you think of the errors that are made, and when you find that there are many, you should also think of those that could be made. This happens very often.

Senator Flynn: I ask you the question, impartially, because I would like to have an answer.

Mr. Picard: Yes. This happens very often and when it clearly appears to be repetitious, and that there are successive warnings, very often, we let people go.

Senator Fournier: Have you had results?

Mr. Picard: Of course, there have been all kinds of results. In the past five years, some people have left the CBC, senator Fournier, and there have been many. Some because they wanted to leave, others because they did not meet our standards. Listen, I do not want to justify the CBC or to say that we were right, but to go back to this matter, there was a five-day strike at the CBC, of which you have heard, there was a producers' strike because they

were forced to interview the administration of United Aircraft. This is an example where not only some are to be blamed, but, moreover, we told the people involved: you will not do it. So, we certainly do it.

Senator Langlois: The Board of Governors at McGill had similar problems last week, if I understand correctly.

Mr. Picard: Yes.

Senator Langlois: Now, Mr. Picard, do I conclude from your evidence, although you were not agreeable, but may I conclude, and I did not think that you would do it this morning, that there might have been errors as far as this representation is concerned. But in any case, I conclude that you must be happy to have had our opinion on this programme, and I am convinced that you will take it into account in so far as possible.

Mr. Picard: I thank you for what you are saying. I was going to say, it is true, and maybe I will speak in English a little.

[Text]

Mr. Picard: Despite the fact that appearing before a Senate committee gives us a rough time, it is my opinion that we do not come here often enough. This is the first occasion on which I have appeared before you. I hope in future there will be more opportunity for us to meet in discussion and for us to receive the benefit of your views. I believe this would make for better understanding between us.

[Translation]

Senator Langlois: When I made this remark, Mr. Picard, I had, as your producers say, a purpose in mind. First of all I wanted to answer my friend, senator Robichaud, on the remark that we had wasted our time. Secondly, to tell you that you may be asked occasionally to appear again.

Mr. Picard: I will always be pleased to return. I find that this has not happened often enough in the past.

[Text]

Senator Riley: Senator Robichaud looks for the best in everything.

Senator Robichaud: I am an optimist by nature.

The Chairman: There being no further questions, Mr. Picard, have you anything to add to your testimony?

Mr. Picard: Only that I should like to reiterate that even though it is a tough job to face the lions in their den, as I was saying at the beginning, it is a most useful process and we need more of it. We would be most pleased to appear before you again.

Senator Riley: Mr. Chairman, in reference again to Senator Langlois' request for the book of guidelines, I wonder if a copy of that book could be given to each member of the committee.

Mr. Picard: Certainly.

Senator Langlois: Is it voluminous?

Mr. Picard: No. We will send one to each member of the committee.

Senator Riley: Unexpurgated, please.

Senator Desruisseaux: If Mr. Picard does appear before us again, Mr. Chairman, perhaps he could explain some of these guidelines.

Mr. Picard: Certainly. I would be pleased to do that.

Senator Langlois: Mr. Chairman, I understand that the President of the CRTC is going to appear before us at some later date. Would it be possible to retain this morning's videotape in case he has not seen it?

Mr. Picard: We will not leave it here this morning, Senator Langlois, but it would be an easy matter for us to arrange things as they are this morning on 48 hours' notice.

Senator Riley: Is there a tentative date for the appearance of Mr. Juneau, Mr. Chairman?

The Chairman: I do not believe so.

The committee adjourned.

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1974
THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
TRANSPORT AND
COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 4

WEDNESDAY, DECEMBER 11, 1974

Complete Proceedings on Bill S-18, Intituled:

"An Act respecting International Air Transport Association"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



FIRST SESSION—THIRTIETH PARLIAMENT

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TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)
(Quorum, 5)	

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 26, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill S-18, intituled: "An Act respecting International Air Transport Association", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Order of Reference

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, Chairman

Wednesday, December 11, 1974.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day, at 9.30 a.m. to consider Bill S-18, intituled: "An Act respecting International Air Transport Association".

Present: The Honourable Senators Haig (*Chairman*), Bourget, Flynn, Forsey, Graham, Petten and Riley. (7)

Present but not of the Committee: The Honourable Senator Macnaughton.

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

Witnesses:

International Air Transport Association:

Mr. Knut Hammarskjold,
Director General;

Mr. J. G. Thomka-Gazdik,
General Counsel;

Mr. D. Gordon Blair,
Counsel.

After discussion during which two letters were read by Mr. Blair and subsequently Tabled, and upon motion of the Honourable Senator Graham, it was *Resolved* to report the said Bill without amendment.

At 10.05 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Mrs. Aline Pritchard,
Clerk of the Committee.

Extract from the Minutes of the Proceedings of the Senate, November 28, 1974.

Pursuant to the Order of the Day, the Honourable Senator Macnaughton, P.C. moved, seconded by the Honourable Senator Taylor (the Secretary), that the Bill S-18 intituled "An Act respecting International Air Transport Association" be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C. moved, seconded by the Honourable Senator Taylor (the Secretary), that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Forsey,
Clerk of the Senate

Report of the Committee

Wednesday, December 11, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-18, intituled: "An Act respecting International Air Transport Association" has, in obedience to the order of reference of Tuesday, November 26, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, December 11, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-18, respecting International Air Transport Association, met this day at 9:30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, I have received a letter from our Law Clerk saying that this bill is in proper legal form. Who will speak for the International Air Transport Association?

Mr. D. Gordon Blair, Counsel, International Air Transport Association: Mr. Chairman, I am counsel for the association. On my left is Mr. Knut Hammarskjold, the director general, and, on my right, Mr. Julian Thomka-Gazdik, counsel.

The Chairman: If you wish to make a brief statement, please go ahead. We are in your hands.

Mr. Knut Hammarskjold, Director General, International Air Transport Association: Mr. Chairman, perhaps I may say a few words on the creation of this association. It was created immediately after the war when governments and airlines tried to organize a world-wide air transport system to serve countries and nations for the future.

The governments created ICAO, which is headquartered in Montreal, and the airlines were requested to assist governments to take over one of the main tasks which governments were not able to cover in the Chicago Convention—namely, the economic side.

In addition, the air transport system being world-wide and needing a very high degree of standardization both in the technical and economic fields, governments through ICAO needed some form of expert support, and IATA was created for that purpose.

Obviously, the conditions after the war were very different from what they are today. The system after the war was served mainly by scheduled airlines. Today there are other airlines which operate programs, but chartered services represent around 20 per cent.

The amendment suggested is, in fact, an updating of the charter to make it correspond with today's conditions.

One year ago, the airlines within IATA, recognizing the importance of the charter sector, suggested the creation of a charter conference within their own framework. This has to be submitted to governments for approval. Comments were made that this would exclude charter operators from taking part in discussions of great importance to them. In fact, the present amendment is a follow-up, to enable charter operators to take part, if they so wish.

I should make clear that any agreements negotiated are of an advisory nature. They are all subject to government

approval, governments being responsible for public services. I think that is all I can say.

Senator Bourget: How many chartered airlines have made application to join IATA?

Mr. Hammarskjold: None so far. We, for reasons of wanting to be correct, have not gone out to solicit any new members before we are able to accommodate them. We will not do so, because we are not counting heads. It is the value aspect which should make them come in or not come in.

Senator Graham: Mr. Chairman, could we have an explanation of the word "supplemental"?

Mr. Hammarskjold: The word "supplemental" is used, especially in American aviation language, to characterize one type of carrier which is supposed to supplement the services provided by the scheduled airlines. In other aviation countries and language they are called either independents, non-scheduled or charter airlines. Today the word "non-scheduled" is no longer correct, because I would say that about 87 per cent of the supplementals or independents are, in fact, programmed services.

Senator Graham: Do we have an example of that in Canada?

Mr. Hammarskjold: I think you have probably several independent carriers offering charter services. One of them, I take it, is Wardair.

Senator Graham: I understand that, but in terms of offering supplemental services to the regular carriers.

Mr. Hammarskjold: I think that is an expression used only by the CAB. We do not use it. It does not appear anywhere in our official documents.

Senator Flynn: Is this bill incorporating the association the only constitution of the international association? Is it constituted in Canada for the whole world, or part of it, anyway?

Mr. Hammarskjold: This constitution is the basis of our world-wide activities, and therefore other countries depend on your Parliament to be able to update our operations.

Senator Flynn: And the head office is in Montreal?

Mr. Hammarskjold: Yes.

Senator Flynn: And your main purpose is to arrange for the air fares and then seek approval of the governments concerned?

Mr. Hammarskjold: We have two main purposes. One is in the technical field, where for safety and a number of other reasons, the airlines have to advise governments

through ICAO on operational and engineering matters. The other one is in the economic field, fares and rates, where the airlines designated by governments in, I believe it is, about 700 bilateral intergovernmental agreements—have the responsibility to negotiate, and then submit recommendations.

Senator Flynn: Charter airlines have to have their rates approved by governments as well as, let us say, the scheduled airlines?

Mr. Hammar skjold: So far as charter airlines are concerned, there are no general rules. Countries have individual regulations, and this makes for a certain inconsistency world-wide.

Senator Flynn: What would this bill do with regard to these charters?

Mr. Hammar skjold: It would give them the opportunity to negotiate, if not agree, charter fares as a sort of bottom in the total system of air fares. You are probably aware that in the last 10 or 15 years in the charter field there have been around 50, 60 or 70 bankruptcies because there has been no system. The weak have just disappeared, and there have been all sorts of social and other consequences both for the public and employees.

For that reason, the North Atlantic governments, including Canada, plus the Europeans and the United States, have been negotiating in a triangular fashion over the last two or three years to find some sort of common system which would include the possibility of a charter fare base to avoid this constant killing of each other.

In the last two years governments have even requested that airlines, both charter and scheduled, sit together under special dispensation and discuss charter fares. This has been rather improvised. We have de facto provided the secretariat, although we have kept outside completely. What this does is to provide a permanent forum in a certain orderly fashion, if charter airlines and others want it. It is nothing that is imposed.

Senator Bourget: Was it at your request that this bill came before us?

Mr. Hammar skjold: It was at the request of our general assembly of 111 airlines. We have a sort of parliament of airlines, which met in Montreal in September of this year.

Senator Bourget: Have you discussed this bill with the Canadian Transport Commission?

Mr. J. G. Thomka-Gazdik, Q.C., General Counsel, International Air Transport Association: I have discussed this bill with Mr. Cope. Mr. Cope authorized me to say that they are aware of it, but they do not feel they ought to comment on it. It is not within their competence to comment at this stage on the bill.

Senator Flynn: If they were opposed to the bill, they would certainly comment.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: May I intervene? We do not normally ask the Canadian Transport Commission to comment, as it has the character of a court of law. We did check with the Ministry of Transport, and any comment would be routed through that ministry rather than through the Commission.

Mr. Thomka-Gazdik: We have a letter from the Ministry of Transport which indicates that it has no objection to the bill.

Mr. Blair: Perhaps that letter could be tabled, Mr. Chairman.

The Chairman: Yes.

Senator Flynn: It would be useful to have that letter tabled. It may save time in the other place.

Mr. Blair: We also have a letter from the Department of Consumer and Corporate Affairs, also indicating no objection to the amendment. Perhaps that letter, too, could be tabled.

The Chairman: Yes.

Senator Bourget: Senator Grosart asked a few questions in connection with this bill during debate on second reading.

Senator Macnaughton: I think Senator Grosart's questions are answered, Mr. Chairman, by those two letters which have now been filed with the committee. Perhaps it would be useful if Mr. Blair read those letters.

The Chairman: Yes.

Mr. Blair: Mr. Chairman, the first letter is addressed to my law firm of Herridge, Tolmie, Gray, Coyne & Blair. It is dated November 8, 1974, and is signed by L. J. Shields, Counsel, Air Administration, Transport Canada. It reads as follows:

Re: International Air Transport Association

It is regretted that there has been some delay in making a reply to your letter of October 2, 1974, addressed to Mr. J. T. Gray, Counsel and Legal Adviser of the Ministry of Transport, in the matter of the amendment to the articles of incorporation of the above mentioned Association.

I am directed to advise that the Department of Transport has no objection to the said amendment.

The next letter is dated October 8, 1974, and is addressed to Mr. John M. Coyne, Q.C., of the law firm of Herridge, Tolmie, Gray, Coyne & Blair. It is signed by Digby Viets, Senior Legal Adviser, Ministry of Consumer and Corporate Affairs, and reads as follows:

RE: INTERNATIONAL AIR TRANSPORT ASSOCIATION

This will acknowledge and thank you for your letter of October 2, 1974 enclosing a draft private Act amending the Act of Incorporation of the above Association.

If the draft application was being made to this Department to amend the By-laws of a corporation incorporated under Part II of the Canada Corporations Act, the substance of the Bill would be acceptable.

Because this is a Bill to be considered by Parliament amending a private Act of Parliament, it does not seem appropriate that we should indicate whether or not our Department has any objection to the proposed proceeding.

I had discussed the matter and written a letter to Mr. Cliff Kennedy, Assistant Counsel, Legal Services, Department of Transport, in early September.

The Chairman: Are there any further questions or comments?



FIRST SESSION—THIRTIETH PARLIAMENT

1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND
COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 5

WEDNESDAY, FEBRUARY 19, 1975

Second Proceedings on the examination of the Television Program entitled:

“Les Beaux Dimanches”

(Witnesse: See Minutes of Proceedings)



STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

- | | |
|------------|------------|
| Blois | Lawson |
| Bourget | McElman |
| Burchill | Molgat |
| Davey | O'Leary |
| Denis | *Perrault |
| Eudes | Petten |
| *Flynn | Prowse |
| Forsey | Riley |
| Graham | Smith |
| Haig | Sparrow |
| Langlois | Welch—(20) |
| (Quorum 5) | |

*itEx officio members

The Honourable MAURICE BOURGET, Deputy Chairman

Issue No. 2

WEDNESDAY, FEBRUARY 19, 1975

Second Proceedings on the examination of the Television Program entitled:
"Les Beaux Dimanches"

(Witness: See Minutes of Proceedings)

Order of Reference

Evidence

Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

"The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Order of Reference

Wednesday, February 19, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Denis, Flynn, Langlois, McElman and Petten. (6)

Present but not of the Committee: The Honourable Senators Lapointe (*Speaker*), Asselin, Desruisseaux, Fournier (*de Lanaudière*) and Thompson. (5)

The Committee proceeded to further examine the Television Program entitled "Les Beaux Dimanches".

Witness:

Mr. Pierre Juneau,
Chairman,
Canadian Radio-Television Commission.

At 12:10 p.m. The Committee proceeded to consider the next order of Business *in camera*.

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, February 19, 1975.

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to examine and report upon the program entitled "Les Beaux Dimanches", televised on April 28, 1974, on the French network of the Canadian Broadcasting Corporation.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, our agenda today is concerned with the examination of the program "Les Beaux Dimanches". We have as our first witness Mr. Juneau who, as you know, is Chairman of the Canadian Radio-Television Commission. I asked him this morning if he had something to say before we start the questioning, but Mr. Juneau told me he would prefer to have the members ask him questions; so I will ask Senator Langlois, the sponsor of the motion, to start the questions.

[*Translation*]

Senator Langlois: Mr. Juneau, we are very happy to see you this morning and I believe that I am partly responsible for your presence here this morning. If this motion has been a misjudgement on my part, I do not believe that I have to ask to be excused, because we will have had the pleasure of seeing you.

I will begin my questions by refreshing the memory of the Committee as to the Legislation which regulates radio television in Canada. I will, first of all, refer you to the first part of the Radio Broadcasting Act, particularly to subsection 3 which defines the radio broadcasting policy for Canada and which begins by stating the principle that broadcasting undertakings in Canada are of the domain of public property, that the system must be effectively owned and controlled by Canadians, that all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast, subject only to generally applicable statutes and regulations. It is then stated that the Canadian broadcasting policy must be of high standard,—that is subsection (d) of section 3,—and that it must use predominantly Canadian creative resources.

There are many other points, but I now refer to paragraph 4 of subsection (g) of section 3, in which it is stated that the national broadcasting service should contribute to the development of national unity and provide for continuing expression of Canadian identity. I think that it is enough to establish what the legislator wants our broadcasting policy in Canada to be.

Now, if I refer to the third part of the same law, I get to the establishment of the Canadian Radio-Television Commission, of which you are the president, Mr. Juneau. I see that the powers of your Commission are stated in section 16, Powers of the Commission, and I do not believe it is

necessary to remind you the powers that you hold as far as our national broadcasting system is concerned.

You have control and supervisory powers on programs, and I believe your essential power is, unless I am being misled, to make sure that the broadcasting policy for Canada, as shown in section 3 of the Law, is respected in our country.

After having clarified this area of the broadcasting legislation, I would like to ask you, Mr. Juneau, how these powers are exercised?

Mr. Pierre Juneau, President, Canadian Radio-Television Commission: Mr. Senator, do you want a general answer or an answer directly related to the problem we will discuss today?

Senator Langlois: A general view.

Mr. Juneau: Let us say that in a general way the Commission has a power of regulation and a power of supervision. To explain this, we can perhaps use the English terms: "Regulation and Supervision". That is not only "Regulation".

These regulatory powers, that is if we consider as regulation everything that has power of law, if I can say,—the regulations which can be considered as established by the Commission itself, in pursuance of the law. There is also another function that the law assigns to the CRTC; that is the stipulating of the conditions necessary to get a license, and I do not know if we can say this, as you are lawyers and used to this vocabulary, but they also have power of law, and in any case a considerable value of coercion. There are also more general supervisory powers which are rather persuasive powers, if I can say.

Now, in trying to answer in a more accurate way to your question, I would like to deal with the question of programs, since that is the area that interests you, rather than the awarding of licences.

As far as programs are concerned, I believe that you have quoted section 3, and there is one subsection which deserves attention in relation to this morning's discussions: it is the subsection that says that all persons who are licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned.

So there seems to be in this section an emphasis on the part of the legislator to reject the responsibilities of the individual programs on the license owners themselves, and not on the CRTC, but, however, subject to generally applicable statutes and regulations.

Well, in the law, there is the text, the subsections you have quoted and which relate to the Canadian contents,

the duration of the programs, etc. So I think that we go back to the regulations themselves, which can have been laid down by the CRTC, according to subsection (c) of section 3. There is a regulation, regulation no. 5 of the CRTC, which is already quite old, and that is the only regulation which can be applied in a case like the one we are discussing this morning; this regulation prohibits a station or a license carrier to broadcast;

- (a) Anything contrary to the law;
- (b) images or remarks which could be offending for any race, religion or belief;
- (c) any indecent, blasphemous or obscene language or image;
- (d) any false or misleading news announcement;

There are other paragraphs, but they do not relate to the subject we are discussing this morning.

Senator Langlois: I understand, Mr. Juneau, that this regulation No. 5 which you have just read refers mainly to subsection (b) of section 3 in which it is stated:

That the Canadian Broadcasting System should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

Mr. Juneau: There is no doubt about it and this is a consequence of subsection (c).

Senator Langlois: As far as the law is concerned.

Mr. Juneau: It is subsection (c) which relates to the regulations themselves.

Senator Langlois: Since you have laid down regulations, can I ask you, now, if there are sanctions for having broken these rules and the general nature of these sanctions?

Mr. Juneau: After a breaking of the rule, there must be an intervention in court. So the court will have to decide, according to the nature of the infraction, the penalty that must be inflicted.

Senator Asselin: There is no disciplinary committee?

Mr. Juneau: That is the only possible recourse and that is the recourse to the court, according to the regulations.

Senator Langlois: Before resorting to this extreme measure, Mr. Juneau, does your Commission have the policy of first of all calling to order?

Mr. Juneau: In the cases where the infraction to the rule is very obvious,—there is for example a rule that states that there must not be no more than twelve minutes of publicity for each hour of television, it is very easy to measure, you only have to watch stations and check if there are twelve minutes, twelve minutes and a half or thirteen minutes. In cases that are as easy to check and measure as this one, when the Commission sees that there has been an infraction, the concerned station is warned and, if there is evidence of neglect or bad will, the Commission intends actions in court. If, for example, a station exceeds on many occasions the twelve minutes limit, well, in such a case, no warning is given, but if it looks like there has been negligence or inadvertence, and that the circumstances are exceptional, well, in such a case, just like I said, the Commission warns the station before taking any action. However, if the station does not comply with the

warning of the Commission, then actions are taken in court.

Senator Langlois: Now, Mr. Juneau, to get back to the program which is the object of this morning's sitting, and of your presence here, I would like to say, before asking any question on the subject, that, if I asked the Senate to study this program, it was rather to indicate that, in this instance, if CBC has not exceeded the limit, it came at least very near. It was mainly to give a warning that, even if we have an absolutely independent State Radio in Canada, we may be the only country in the world to have such a free radio-television system, where the only possible intervention is ours. And I disliked very much the fact, the other day, that witnesses compared us to the ORTF. I think that this is really too much, because if there is a limited and controlled radio-television system, it has to be the ORTF.

But when I saw this program and heard the language that was used, I thought that it was almost bordering the definition of obscenity that is contained in your Rule No. 5; and particularly, when it was suggested to Her Majesty the Queen in a song, "Use your head, use your buttocks". I believe that if this did not exceed the limit of decency, it came very near. It is mostly this obscene language, and I am not easily scandalized;—but on television, I am not the only viewer, there are children and all the people of Canada; so I believe that such language should be prohibited on a national television network. The same thing applies to any network, if you want. The thing that struck me mainly is that it seemed like they wanted to get across a message. It is not the first time that such a thing is tried at CBC.

You must first of all figure the present situation in Quebec. I still remember October 1970. And I will not forget it in a long time. You must keep in mind that there is a very serious political problem in Quebec.

You must not forget that they had chosen as main artist, who is furthermore a very good artist that I like to hear when she remains in the limit of decency—but who is an acknowledged separatist.

Senator Fournier (De Lanaudiere): An anarchist!

Senator Langlois: I would not say that. However she is an acknowledged separatist. You are trying to get a message across when you imply that the monarchy is not worth much and that it costs a lot of money. When the Queen's representative or his wife is cast as saying that they can have a trip across Canada at public expenses, that it is not expensive, that she can indulge herself in having breakfast in Vancouver, dinner in Ottawa, and being sick in Halifax in the evening, without having to pay one penny, I think that this is really too much. There is a feeling of destruction, they want to get across the message that this costs a lot of money, and what about this reunion with the mother-in-law, this old motherland by adoption, the idea is that it is very expensive for the people of Canada and that we could do without it.

Then there is the other message that they seem to want to get across in this program, that is the state of inferiority of the French Canadian in the confederative system. They tried to ignore the fact that the present representative of the Queen is French-speaking, but then they put the emphasis on the fact that it is all there is to it. If you want to find any other French-speaking person in Rideau Hall, you have to go down to the kitchen, and there you have a

Quebecer Sagouine who seems to represent our race. If this is not an anticonfederation message, I have never seen one! I know that according to them it is satire. It was satire, but satire is relative. Just imagine that you are a docker living in Eastern Montreal, or maybe a worker from Pointe-aux-Trembles, who probably form the majority of the audience of Radio-Canada on the Island of Montréal; they are watching television and they already have preconceived opinions; so, with this satire, they could jump quickly to conclusions.

They realized immediately that someone was trying to get a message across. And they understood the message, they are not stupid. I think that we must judge the program in this context, I think, at least as far as this kind of program is concerned, that CBC must be given a quite serious warning not to go any further, because then the rule will be applied. That is why we ask you to be present here this morning, but we will not ask you to give a judgment this morning. We do not have any advice to give to you. I must however say that I am not threatening you, but if I ever see another similar program, I will not hesitate to repeat this action, even if it is only to warn CBC to be careful, because they are bordering the limit that has been allowed.

This was the preliminary to the question that I want to ask.

The first question concerns the degree to which programs of this kind satisfy the regulations laid down by your Commission, as far as the content, mainly from the high standard point of view, the Canadian content and all these factors are concerned? Did you have in mind programs of this kind, vulgar programs, not really obscene, but vulgar?

Mr. Juneau: The regulation on the Canadian content does not prescribe to the television or radio stations the content or the style of the programs they are to produce and present. It is only stated that 60 per cent of the programs, over the whole day, must be Canadian, and 50 per cent during prime time. This regulation on the content of the Canadian programs does not concern at all the content of the programs. But, on the other hand, I think that you also asked me—what was the other part of your question—

Senator Langlois: Is this kind of program the model that you consider for the programs of Canadian content?

Mr. Juneau: Well, as it is said in the CRTC regulation on Canadian content, there is no indication as to what these programs must be like.

It is just said that there must be Canadian programs.

Senator Asselin: The percentage?

Mr. Juneau: That is only a question of percentage.

Senator Langlois: I understand very well, but I will ask you my question in a different way: do you think that a program such as the one we are studying this morning contributes, as it is provided in subsection (b) of section 3 of the Law, to "saveguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."

Mr. Juneau: In my opinion, the intent of the Act was not that the CRTC should express a judgment on each of the radio television programs in Canada. This section is what some call a preamble to the Act, a section, which in my opinion, is very useful to interpret the general spirit of the

Act. It seems to me that this section, this subsection describes the aim that Canadian broadcasting, Canadian stations and broadcasting networks should generally pursue. I do not think, in all deference, Senator, that this subsection was intended to impose on each broadcasting program such an objective, because, in this case, any broadcast, or any part thereof which should express a critical opinion regarding a federal Act could be considered illegal, as I understand the interpretation they want to give this section. However, it seems to me it is not the interpretation which should be given.

Senator Langlois: But would it not also be illegal, Mr. Juneau, to spread anti-nationalistic ideas?

Mr. Juneau: I think it would be contrary to the Act that a radio-television station in Canada, particularly the CBC, should fight national unity, confederation, as a general editorial policy. Could you repeat your question, please? I apologize, I have somewhat lost the thread of your question?

Senator Langlois: In my last question, I was asking you if, in your opinion, it would not be illegal to spread through the broadcasting system anti-nationalistic and anti-confederation ideas?

Mr. Juneau: It would certainly be contrary to the Act to fight national unity, as a general editorial policy. It would certainly be contrary to the spirit of the Act.

Senator Langlois: Mr. Juneau, you will notice that I am trying to phrase my questions in a rather general way in order not to ask you to pass judgment this morning on this program we are dealing with. I just want to determine your policy. How do you implement it?

Senator Asselin: You refrain from asking him that, while actually asking it.

Senator Langlois: I am providing exits.

Mr. Juneau: I certainly do not want to avoid answering your questions, and if you find that I am staying too far from the intent of your question, please, just carry on, Senator.

Senator Langlois: Now, a while ago, you spoke of penalties for infringements of your regulations, you said you have the power to take legal action against a network or a specific station, has it already occurred?

Mr. Juneau: Yes, it happens regularly. I can give you examples which are crossing my mind, chiefly in the case of commercials. Yes, it happens frequently enough. It happened, about a year ago, in the case of a political statement when a radio announcer took a stand about an election which was to take place the following day. As you know, this is contrary, both to the CRTC regulations and the act itself which says that 24 hours before an election no partisan broadcasts should be made. We brought an action in this case, it happens often enough.

Senator Langlois: I gather you must have exploited this aspect of the election act and during the first meeting of this committee, I asked the CBC representatives what they thought of what happened during the last provincial elections in Quebec, when the very polling day they broadcast over the radio, constantly for the whole day, separatist songs sung by Pauline Julien, if it was not a message, while she is recognized as a militant, she sang all day, "Bozo les culottes" and all that stuff. I wonder, whether at

that time, you were told about those broadcasts. Whether the CBC, I have a feeling that at that time the CBC was transgressing the election act, but there are all sorts of means of communicating an idea.

Mr. Juneau: Yes, you know that the law enforcement bodies must always express a practical judgement. If you consult your lawyers, and you are one, in such cases if you consult your lawyers and you ask them what should be done, they pass with you a practical judgement as to the action to be taken. If I take a very controversial case, the case of excessive limits of advertising, when a station exceeds by half a minute or three quarters of a minute the required time. You consult your lawyers, you study the circumstances and even if, in general, you must implement the law in the same way for everybody, it remains that in practical cases, the lawyers and the courts know it well, you must decide whether it is suitable in such a case to bring legal action or not. One of the factors to be considered, is the effectiveness of the intervention, and the ridiculous aspect of the situation. I think in the case you are mentioning, there was first an aspect of the question which did not, I am losing no time to tell you, furthermore, in my opinion intervening would not have been very practical. In short, there is the ridiculous aspect of intervening in such a trivial matter. As a matter of fact, facts proved us right. It did not have much bearing on the decision of the population.

Senator Langlois: I understand, but you must not always play with fire, and because it has had no immediate effect, it is still an attempt and even if it has failed, it does exist and it is governed by existing legislation. It is such programs which are likely to be the most effective. I think in such a case and I must say if the CRTC comes to the same conclusion as I have, it must bring legal action. However, I think calling the transgressor to order should perhaps prevent the repetition of the action, the production of such programs and would help to show to the CBC and other independent stations, that there is an authority which is watching their activities. It is simply in that sense that I have drawn your attention to this program.

Now, Mr. Chairman, I do not want to monopolize the questions, and I am ready to let all the Senators ask theirs.

The Acting Chairman: A supplementary?

Senator Asselin: With Senator Langlois's permission. Senator Langlois is speaking of admonitions. Under the regulations of the CRTC, can you simply take legal action if you claim that the CRTC Act has been infringed?

Mr. Juneau: I think that in a case where there is an obvious infringement of a regulation which is not very serious, one can abstain from taking legal action and made an admonition instead. It has happened to us. I think there are cases where it is obvious that there has been carelessness, or perhaps remissness, or more levity than ill will. I am thinking, for example, about a case that occurred some years ago, when a radio station—I will not even identify the place—announced during several days, in its news bulletins, that somebody was going to die, that the person was ill. Perhaps Senator Langlois knows which station is involved. Then, after 24 hours of announcements in the news bulletins, they eventually announced his death. No further mention was made of him. The population was a bit dismayed because they thought it was an important person. Finally, it was learned that it was the station which was going to change its initials, and the person who

had died was the former station, and a new one was born. In this case, we could have taken legal action because it was a false piece of information. There is a specific regulation which provides that one has no right to broadcast a false piece of information. It was obvious that it was a case of levity and irresponsibility. However, it did not have any serious consequences, and it did not deal with a specific subject, because nobody's name was mentioned, which would have been very dangerous and very unpleasant for the family involved. Therefore, we did not take any legal action, we made an admonition.

Senator Asselin: Now, a while ago you said that under the Act—

The Acting Chairman: Senator Asselin,—

Senator Asselin: I apologize.

The Acting Chairman: Will you allow Senator Denis to speak and after that it will be your turn.

Senator Denis: Mr. Juneau, in my turn, I welcome you here and I congratulate you for the high position you are occupying. It is probably for this reason that you are not mentioned in the show, yet you are a French-Canadian. They mentioned famous people on page 9, such as Mr. Léger, our Governor General. Then, where are the Mitcheners, the Légers.

Mrs. Léger, finds the idea amusing:

What type of work?

Then, **Mrs. Michener** says:

Well, to apply the great seal, then the small seal to legislation, when you find it makes sense... Ah! ... where are the great seal and the small one?

Mrs. Michener:

Here is the great seal and the small one is there in your hands. (SHE OPENS THE DOOR OF A WARDROBE AND ONE SEES A BIG MAN WHO IS MENTALLY RETARDED WHO IS GESTICULATING IN THE BACK)

This is the small seal our the great seal; who has the great seal in his hands? Do they mean Mr. Léger? Because the small seal, here it is written in French "s e a u" which means a seal, but when speaking, it could also be "s o t", which is pronounced the same way and means a fool. So, do you find it strange that your name is not mentioned among those French Canadians who occupy high positions as cooks...

The Acting Chairman: He is not a "sot", which means a fool.

Mr. Juneau: They called me a small seal.

Senator Denis: ... as a cook, as a gardener, we do not see Juneau's name. To begin with, they speak of Queen Elizabeth, have you seen the program?

Mr. Juneau: I saw it again quite recently.

Senator Denis: Have you seen it?

Mr. Juneau: I have seen it again.

Senator Denis: Then, did you see the Queen jump five or six times on her throne, to the point where you could see the bottom of her panties? It is the Queen, after all. I think that for the Protestants she would have the same impor-

tance what the Pope has for us, Roman Catholics; do you think it is respectful? Do you think it is in good taste?

Mr. Juneau: As I said earlier, I am continuously asked to express opinions on specific programs and surely; I may have opinions on them, but I always carefully avoid expressing my opinions on a specific program. It is very difficult for me to make a distinction between my personal opinions and my official role in these matters.

Senator Langlois: He is more specific than I.

Senator Denis: Earlier, Senator Langlois quoted part of the Act, and I heard among other things, that the Crown Corporation, the CBC, belongs to Canadians. But the Queen does not say that; she says: These are my studios, my scenes, my costumes. Mr. Juneau is mine, the producers are mine. First, it is probably a lie. Then, the fact that a person who is our Queen, who as I say, is the Pope of the English, jumps several times on her throne like a mad person, as you saw for yourself, I think it is in rather bad taste. Don't you also think that it is disrespectful?

Earlier, they said that French Canadians are being ridiculed by giving them lower positions. I think there would be a position which is important enough to be respected.

Now, not only do they speak of the Queen, but of her husband as well, they call him Phillip and they speak of the Queen, what do they say? They say she sleeps in a single bed, in a single room, because Phillip comes back home late at night.

Senator Langlois: And he goes to bed late.

Senator Denis: What do you make of this, Mr. Juneau? Does it mean he is a womanizer or what? It is most disrespectful for royalty, is it not?

Then religion gets a going over too; they speak of Paul-Émile, cardinal Léger, they call him "Paul-Émile", and as Senator Langlois said earlier, there is the cardinal's palace, but it is nothing compared to the Governor General's. But they are palaces. Therefore, they say they have prepared a place for him if he should come. Moreover, further on they speak of "the former mansion of your brother-in-law, the cardinal's palace," by saying that "it is a bungalow in comparison!"

They also say "Trudeau's house, on Sussex Drive, would fit into it four times, so you could not possibly mistake one for the other!" Then, they speak of civil servants who are not too nice to French Canadians.

On page 8, Mrs. Michener says: You know I was forced to fight for my provincial French (referring, in French, to a type of furniture) . . . the civil servants wanted me to use federal English . . .

Senator Langlois: It is a separatist message for civil servants.

Senator Denis: Englishmen are never involved where junior positions are concerned. There are only Italians, they tend to the beautiful gardens; yes, it is tended by Italians and concerning Acadians, listen to the Sagouine:

My name was the Sagouine!
I was looking for a good job
I didn't find any
I was offered to work here
I jumped on it
I was lucky

Because I came from Acadia!

Is it not implied that Acadians have nothing else but this type of place where to work?

Now, we questioned Mr. David. We asked him who was revising, who was censoring, one way or the other, the reviews. On page 6 of committee proceedings, Mr. David said:

[Text]

SENATOR DENIS: Was this show reviewed and authorized before being shown? Was it first seen by CBC officials?

MR. DAVID: Yes. For this kind of show, the head of the department—in this case Mr. Jacques Blouin, head of the varieties department—usually reviews the text and then, if in doubt,—

—he can ask the Programs Directorate and have certain things suppressed or added. There is also an aesthetic judgment to make, a very discriminated one.

[Translation]

Senator Denis: According to Mr. David's answer, it is not only Mr. Blouin who decides whether such a show must go through without anything being deleted or changed. In spite of the many obligations of the president, Mr. Picard, do you not think when a show is involved, it may be called satire, but I would rather call it malice or political innuendo—since the CBC costs at least \$60 million, I think . . .

Senator Langlois: Deficit.

Senator Denis: . . . \$300 million in expenditures.

The Acting Chairman: Over \$300 million, if I remember correctly.

Senator Denis: Would it not be normal for the president to have somebody, that Mr. Blouin should ask someone to watch the program director, to inform him of what is going on. He said he had not seen it, he had not reviewed it. Mr. David also said he had not seen it. Do you not think the head of the CBC in Montreal is partly responsible when a show which lasts an hour, an hour and a half or two hours, is involved? Don't you think it should be the duty of a president to know what it is all about? I think so.

He answers us that he cannot review all that, because there are 60,000 hours of programs per year; but these 60,000 hours per year do not consist entirely of variety shows, there are concerts, hockey games, movies, or . . .

Senator Langlois: Westerns.

Senator Denis: Or there are soap operas. During the year there are perhaps two, three or four variety shows in all, and according to them, they use satire galore. But sometimes this satire goes rather far. Therefore, I think it should have been at least his duty, because it would not have been live, they would have recorded it before. Furthermore, he had ample time to see the program again. He had ample time to tell somebody to go and see what it was about.

As Senator Langlois said, it is an encouragement to separatism, because in this show French Canadians are unjustly ill-treated, and Acadians as well. They have lower positions, whereas it is the English who manage everything, who decide everything. Furthermore, Confederation,

the Queen, the Governor General, the senators, the M.P.'s, the civil servants, are criticized without exception, all of them. All the party leaders as well. They are worthless, that one is worse, the other is dreadful, the senators have a lumber-room. That can be overlooked, but it is part of the system, of Confederation, the Queen is part of Confederation.

Now, in Quebec there is a separatist party which wants to separate from the rest of the country. Do you think it is normal that the CBC, a Crown Corporation, can make such propaganda to incite French Canadians to detest the English, and Canada as a whole, to become separatists?

This is nothing more than an encouragement for the separatists. I wish no harm to anyone. A Canadian has the right to be a separatist but he should not use the network, he should not take advantage of his job at the CBC paid by the Federal Government to endeavour to destroy the latter. I see nothing else. The majority of the CBC listeners in the Province of Quebec are French Canadians. Therefore, anyone, whether Dominique Michel or Pauline Julien are separatists, I could not care less, he has the right . . .

Mr. Juneau: Senator, I hope that you are speaking to the Chairman and not to me because I have had absolutely nothing to do with that program. I can listen to you until the end of the day if you want.

Senator Denis: But I would like you to understand what this show contains, even if you are not responsible for it.

Mr. Juneau: Yes, I am listening closely.

The Deputy Chairman: I think that the question Senator Denis wanted to ask Mr. Juneau is in what way, in what circumstances, the CRTC may intervene, according to the authority that the Act provides to it? I think that this is the intent of your question.

Senator Denis: This is my question and I do not think that Senator Langlois has obtained a satisfactory answer.

Senator Langlois: I told Mr. Juneau that I was not asking him to make a judgment. We can go further if I may speak on a point of order. I believe that Senator Denis, I do not want to have him say things that he has not said, but I believe that he is simply pointing out to Mr. Juneau what we do not like in that program.

Senator Denis: That is right, so that at least you, among the high officials, will know what happened.

The Deputy Chairman: I also think, Senator Denis, that the intent of your question is to ask Mr. Juneau, as the Chairman of the CRTC whether in the circumstances, it should intervene and how it can do so? I think that this is the logical conclusion.

Senator Langlois: We will not ask Mr. Juneau to speak on this today.

The Deputy Chairman: No, but according to the law, as it reads, I believe that . . .

Senator Denis: No, my intention is simply to tell Mr. Juneau that this show was a separatist show. Secondly, something should be done to stop this. This show is not the only case, this is well known. The program "Les Beaux Dimanches" has been used, if you read the official records of the Debates, you will see that the opposition leader in the Senate has declared that not only should we investi-

gate on this but we should also make an investigation on many things that are going on at CBC.

Mr. Juneau: Senator, I would simply like—because I think that I should be polite enough to comment what you have just said, even if you have not asked any questions, because there is an implicit question in your remarks as told by Mr. Chairman. Consequently, if I may say something, I suggest that I understand very well that you have the right as any other citizen to your own opinion. You have the right to express firm opinions on a program such as that one. I think that in a position such as ours, we must defend the right of all to express opinions on programs.

However, I think it might be risky to ask an organisation such as the CRTC, even if it were to be replaced by an other organisation because we have replaced the BGR, thus to ask any organisation of the kind to intervene in individual programs. I think that the so-called remedy would be worse than the so-called harm.

Senator Denis: We have talked about supervision; your responsibility consists in supervising the stations, but what loss it mean exactly?

Mr. Juneau: In the case of programs, supervision, yes, but in the light of the rest of the text of the Act. It says clearly that in these matters, primary importance must be given to freedom of expression and when this is established it unavoidably implies abuse. What we accept as a democratic system, as a broadcasting system and as a press system is therefore based on freedom of expression. At the onset, this implies that there will be unpleasant things, abuse, errors of judgment, but that there will also be excellent things. But at the onset, it is accepted. If you create an information and entertainment organisation supported by the Government and it is incorporated in this system of freedom of expression, it is done according to Section 3 that the Chairman was quoting. In that case, I think that there is a certain price to be paid. It is the same as that which is paid when you accept a system of freedom of expression, it is tolerance, for the ideas that will be expressed and with which you do not agree. Moreover, some of the ideas that will be expressed may be false, abusive or sometimes harmful. Obviously, there will also be some satisfaction to be gained out of the good things. This is part of the game right from the beginning. I think there is a serious problem, when a policy as a whole goes against the intent of the Act, or where there is a particular expression that is clearly against an Act or Regulations. In that case, you must then bring an action before the courts. If you ask me, in that case, a technical advice, that is whether it is justified to bring an action before the courts, I think that all the lawyers would have felt that such an action would be useless and ridiculous.

Senator Denis: It is because I have here the policy of the CBC programs. It is again repeated in this policy: "Contribute to the development of national unity and constantly express the Canadian reality". There is another passage on national unity on the following page. The CBC attaches great importance to this passage in the Act which according to it, gives the essential aspect of its role, and the title is "National Unity". Very well. Someone who has seen this program cannot think anything else but that it tends to bring the Canadians apart. He cannot. He cannot think otherwise. He will say that everything that is federal is worthless. The Queen is worthless. The Governor General is worthless. The Senators are worthless. The Members are worthless. And so are the civil servants.

Therefore, I have a right to my opinion, as you say, but I think that there are many who think like I do, unless there is no will to see what is there. Unless one is a separatist.

The Deputy Chairman: Would you allow a question from senator Desruisseaux?

Senator Desruisseaux: First of all, I must point out to Mr. Juneau that I am not a member of the committee. I have been to the meetings any way and, we are permitted to speak with the witnesses that are present. To those who are here, I must point out that I have known Mr. Juneau for over ten years. For my part, I have only congratulations to address him personally even if I have not approved his ideas, especially when he was refusing me an increase of power. He said it was not justified.

However, I would like to ask one or two supplementary questions, even if I have to come back later. I am quite worried when the public opinion points out as it does at the present time, that the CRTC favors the CBC over other stations, in matters of programming. Before the electoral campaign we have on many occasions heard senator Langlois say in the Senate that there was abuse on television of political programs. For instance, some politicians appeared very often and when we added up the number of hours, it was found exaggerated and disproportionate. I think that Mr. Juneau knows what I am talking about in general. It is not necessary to give a specific case here but I have always thought that the CRTC had the task of revising somewhat the general programming I think that on this point, Mr. Juneau had done an extremely good job especially in the regulation of private stations. As for CBC, not that I have been influenced by those who have previously told me about this, but I definitely have the impression that it is protected by the CRTC. I may be wrong and I would like to be told that I am. But, in matters of the revision of programs and this is my question, following that of senator Denis how far does the CRTC go about this? And I add: during the meeting of the committee on November 28, Mr. David was saying that he is responsible for programs but that in such a program, there are several writers and that he does not have the freedom to amend the programming. He has not tried to do so because he was not free to do so. Therefore, I would like to ask Mr. Juneau, concerning the revision of the CBC programs, when it is necessary or when he receives quite a few complaints what does he do?

Mr. Juneau: This can be approached in various ways.

Senator Desruisseaux: Yes.

Mr. Juneau: I will try to proceed in the right order. As for your remark, that the CRTC favours the CBC too much, I think that this would bring a smile to the lips of many members of the CBC to begin with the chairman and going down because we here . . .

Senator Desruisseaux: This has little importance.

Mr. Juneau: No, but I would like to point out that we often hear the contrary. On the attitude of the CRTC concerning the general policy of the CBC, if I may, I will point out to you the decision of the CRTC dated March 31st, 1974, yes, that is right, March 31st, 1974. This is a document of approximately 250 pages on the policy of the CBC and in great part, on the programming policy of the CBC. You find there general opinions of the CRTC on the global policy of the CBC. Consequently, I do not think that

we have neglected our responsibilities in this matter. I think that your question is not only on this point. You seem to be thinking of special programs: what do we do when we get complaints from the public on CBC programs? We try to respect this section 3 of the Act and we do the following. First of all, we send the complaint to the person involved in the CBC. We ask the CBC to explain the complaint received by this person. If we consider the explanation of the CBC insufficient, we insist that it gives a more satisfactory explanation for this complaint. Now, I must tell you that the insistence of the CRTC is much more practical, has much more importance, I will not say, has more weight, but it can be administered more easily. It is more credible. It has more practical importance if this is a program of opinions or informations where the opinions are more easily measured. For instance, recently, we have had a great number of complaints from the public on CBC programs on abortion, especially on the English network. Many people are complaining that the CBC too often show the point of view which is favourable to abortion, compared to the other one, that which is less favourable. Therefore, we have received a great number of complaints on this. We transmit them to the CBC to obtain an explanation, especially for the people who are complaining. We are witnesses, if I may say so, of the validity of the response. If, following these explanations, we evaluate,

Senator Asselin: Do you evaluate the validity of the explanation?

Mr. Juneau: Yes we do. However, if we definitely have the impression that maybe not the corporation itself, but the producer, or the section, or the station, because sometimes this applies to one station in particular, that one or the other had an attitude that was definitely biased and that the explanation showed so at that particular moment, we will intervene more firmly with the direction. I must say that in areas not concerning information as such, in the conventional sense of the word, that in areas where fiction, fantasy, irony, ordinary techniques of fiction are involved, it is then much more difficult, because there are so many intangible factors.

Senator Desruisseaux: Do you respect copyrights, that is to say do you admit that an author requires that no correction be made to the script?

Mr. Juneau: This is one thing that does not concern us at all. It is obvious that the direction of any radio or television station has the right to accept or to refuse a text. There is no doubt about this. Anyway, the Act is clear on this. The person responsible for what is shown on the television screen or what is said on the radio, is the owner of the licence.

Senator Desruisseaux: Then, if you allow me . . .

Mr. Juneau: The author definitely has the right to say "Sir, if you touch one line of my text, I withdraw it. This is the right of the author. But, the one who buys the text also has the right to say: Sir, I am not buying it.

Senator Desruisseaux: I would like to get additional information on one particular point: If you have reasons to feel that a program must be changed, what can you do in that particular case?

Mr. Juneau: We never interfere before a program is presented, never.

Senator Desruisseaux: But, for rehearsals?

Mr. Juneau: The CRTC never has access to a program before it is shown on the television screen, or presented on the radio, except, Mr. Senator, for commercials, where, in some areas, they are presented to the CRTC but voluntarily, by the sponsors. In the fields of food and drugs and publicity for children, the people who produce these commercials submit them to the CRTC in advance, in case they might invest a lot of money in the production of these commercials only to realize afterwards that they are illegal. Therefore, to avoid investing unnecessarily, they voluntarily submit their commercials to the CRTC who decides if they violate the Act or not. As for these programs, we never see them before there are shown by the owner of the licence.

Senator Denis: But I think that the CBC officials should do so. What do you think?

Mr. Juneau: Well, I think that everyone has his own opinions on the way that a radio or a television station should be operated.

Senator Denis: But what is your opinion?

Mr. Juneau: In my position, I will not give any personal opinions. The BBC director has his way of managing the BBC just as the directors of CTV have theirs; Senator Desruisseaux also had his way when he was director of CHLP, but anyway—

Senator Desruisseaux: In this case, he also had his criticism.

Mr. Juneau: Yes, but I think it is not the duty of the CRTC to tell license operators how to manage their own businesses. You may personally agree or disagree, but it is not our task to interfere in these matters.

Senator Desruisseaux: So what would be an efficient way to achieve some result with a program such as "Les Beaux Dimanches"?

Mr. Juneau: I think, honourable senator, that the public opinion prevails and the management of the CBC, as well as the management of any other radio or television station, always has the responsibility of interpreting the Act, of interpreting its responsibilities in connection with its mandate, and of deciding, in a specific case, the way the editor of a newspaper would do, whether a given article is justified or not. In my view, this is a matter on which a judgment can scarcely be expressed from the outside. Let us take the present case for instance—and I will pass no judgment on this matter, but let us take it as an example. I think that you can have a satire, or a somewhat farcical show with relation to a political reality, and in one case, somebody will judge it and say, "Well, it is not that bad", but the other will say, "It is an outrage". I think this is a judgment which has to be made by people who are as near as possible from the ultimate authority. As for us, we are much too far from it. But this does not preclude the public, or the politicians, who are the representatives of this public, to express their views on it. But I think that it would be a misuse of our quasi-judicial power to intervene in these particular cases—unless we have a clear case of an offence to a particular Act.

Senator Desruisseaux: I think this is in the field of legal interpretation because you have the right to award or not to award a license, which enables—

The Acting President: For television, but not in the case of the CBC; I do not think that the CRTC has this right.

Senator Desruisseaux: I think they would have the same right.

Mr. Juneau: We do not have the right to take licenses back from the CBC. We would have the right of refusing its renewal, but as you know, this power must be used with a great deal of discretion. The Parliament decided there would be a CBC, and CBC stations. The CRTC could not decide overnight that CBC would no longer exist. I think this would be a position contrary to the spirit and the will of the Parliament, stating that there must be CBC stations. In a particular case, we have the right to refuse a license.

Senator Desruisseaux: As you just stated, there is a will of the Parliament, and in several instances strong criticism was addressed concerning some types of programming by the CBC. Maybe Senator Langlois will refer to that later. But for my part, coming back to the program "Les Beaux Dimanches", I will ask the following: have you received any complaints? And, what has been done following those complaints?

Mr. Juneau: No, we did not receive any complaints as far as this program is concerned. Naturally, we have been made aware of complaints expressed in public by the members of the Senate, but we received no complaints whatsoever from the public, that is, written or official.

Senator Langlois: But usually, do you receive complaints concerning a program in particular?

Mr. Juneau: Quite often—on a daily basis, as a matter of fact.

Senator Denis: Concerning this program in particular, it has been stated that Mr. Blouin was the only one who had seen it. Mr. David had not; neither had Mr. Picard, nor any departmental official. It was stated:

[Text]

MR. DAVID: I think it was only the head of the department.

SENATOR DENIS: So, nobody else at CBC saw this show before it was televised?

MR. DAVID: I, at least, didn't see it.

Mr. Blouin, the departmental head, contacts the program director only when he wishes.

[Translation]

Senator Asselin: You are speaking of the CBC itself.

Senateur Denis: I am speaking of this show, recorded before being produced, and we are told that Mr. Blouin is the only one who has approved it.

Senator Langlois: He is the last resort authority.

The Acting President: I will now give the floor to senators Asselin, Thompson and, afterwards, McElman.

Senator Asselin: I do not think that the last questions were actually answered by Mr. Juneau—those of senator Langlois.

You said to us at the beginning, Mr. Juneau, that the CRTC has a supervisory right on contents of the broadcastings. Am I mistaking when I say that?

Mr. Juneau: I do not recall having used these specific words, but if you want to ask me this question, I will say to you—

Senator Asselin: Yes, with regard to this matter, if you have this supervisory right, does it apply only after the telecasting of the show?

Mr. Juneau: Exclusively, yes.

Senator Asselin: As you said a moment ago, you do not have any supervisory right on the formulation of the broadcast?

Mr. Juneau: Never.

Senator Asselin: Do you also have, by virtue of the Act, a coercitive power, a dissuasive power?

Mr. Juneau: Not with regard to the production or the presentation of specific shows.

Senator Asselin: To bring compliance to the CRTC Act, these dissuasive powers you have, when you speak of dissuasive power, do they merely amount to representations made to a radio or TV station, or to the CBC, on a specific broadcasting, on which you have received complaints? Does that cover your persuasive or dissuasive powers on the whole?

Mr. Juneau: I might say that in cases where we consider that there was an offence to an Act in a program or a part of a program, if it is a serious and flagrant case, we follow suit.

Senator Asselin: Not necessarily all the time?

Mr. Juneau: In other cases, where it appears that there was an offence to an Act, and we do not know what would be the judgment of the court—and you can never know—and that the case does not seem to be serious to the point that a decision to follow suit would be justified, in cases like that we may merely make representations. Besides, we do not all agree on that. We were blamed several times for having made representations to them in similar cases, and I could give you examples.

Senator Asselin: Generally speaking, were these representations made following many complaints received by the people as a whole, on such and such program, or were these representations made or legal actions taken as a result of a decision of the CRTC, following shows that were already telecasted?

Mr. Juneau: Furthermore, we make representations very scarcely. Most of the time, we rather arbitrate between the people who file the complaint and the television station concerned, in order to obtain that the station gives a satisfactory explanation or that it corrects the wrong one which presumably was made. There was one case recently at Edmonton, where it was asserted that the CBC—I am sorry Senator Desruisseaux has left—but the CBC at Edmonton had telecasted at 7 p.m., if I recall, the result of a nudist contest. So at 7 p.m., at supper time, the children are there, and it was normal that we should have received scores of complaints. So we directed those to the CBC which in this particular case decided that it was no use to defend itself by saying, "we have done this because we thought it was a justified program for such and such reasons". On the contrary, they immediately presented, the next night, their apologies to the public, and the matter was settled.

In other cases, the CBC will answer, "yes, we have done this because we thought it was justified and here are the reasons why we uphold our position".

This is one reason. In other cases, there are pieces of information that seem to us clearly misleading—with intent or not—and I can give you an example.

If the case is serious, we follow suit. If it is not, if it is a matter of shallowness, we say, "Look here, this thing you did was stupid and please be careful in the future".

I have other examples in this field, though somewhat different. It is that when the opinion of a group, all depending on which group or what persons are concerned, if their ideas are unjustly reflected, and that the persons or the group concerned pretend they did not have the opportunity to express themselves adequately, with relation to something somebody else has said, in this case, we arbitrate. However it happens that the station, be it a CBC station or another, restores the balance by giving to the person the opportunity to defend herself. But sometimes the damage is already done. This occurred in one case where we made representations to a station.

Senator Asselin: Am I right when I say, Mr. Juneau, that as far as your persuasive powers are concerned, or your representation powers, your rights of legal action conferred to you by virtue of the law, am I right to say that they intervene when you have the formulation of a complaint which is serious in the view of the CRTC, or do you have within the CRTC a department responsible for the supervision of programs, which reports to the management of the CRTC? Moreover, does the CRTC take on itself the responsibility of action, whether by virtue of its persuasive right or by virtue of its representation power? Does the CRTC take action only when it receives a serious complaint from a group of taxpayers, of citizens, or if it takes the initiative of bringing to the attention of a radio or TV station, of a public agency, on this matter, by saying, "this has been done and we do not like it. Give us your reasons." I would like to know, what is the policy of the CRTC in such a case? Do you have a department responsible for the supervision of all those programs, which reports to the management, and then do you say, "we have seen this broadcast, would you please warn the station, make representations to it or take legal action? Or do you wait until you receive complaints from organizations, or taxpayers with relation to some broadcasts? This is what I would like you to elaborate on.

Mr. Juneau: Yes, I will try to answer.

In cases of broadcasts which seem to constitute clearly an offence to a section of the CRTC Act or the CRTC Regulations, we do take this initiative. In the case, for instance, of this partisan broadcast within the 24 hours before an election, we took the necessary steps. In fact, I think we have lost in first instance, and we appealed, and then won. In the case of excess of publicity, it is the same thing.

So when a Regulation or an Act is concerned, when a program does infringe upon Regulations or an Act, yes, clearly, we take this initiative.

In matters of taste or of opinions on the contents of a program, we have very very seldom—and I would have trouble trying to recall one case in which it occurred—taken the initiative of intervening with respect to a particular program. And this is done purposefully. We think that the spirit of the Act was that licenses were given to people who were responsible of managing the programs this way, for the duration time of the license. If they operate poorly, to the point to which we have to take the license back, then we must take it back. But the spirit of

the Act is not that we should consistently substitute ourselves to the judgment of the license operators with respect to particular programs.

Senator Asselin: Let us take the specific case we have before the committee this morning. Senator Langlois has brought the program "Les Beaux Dimanches" to the attention of the Senate. We have held a committee to study this matter. You are before us, you have heard the grievances of senators Langlois and Denis; in your view, would this be enough to make representations to the CBC with this program, and to ask for explanations?

Mr. Juneau: I think that the attention of the CBC has indeed been focussed on this program for more than one year by the discussions which have taken place in the Senate. As I already told you, we never received any complaints from the public at the moment this program was broadcasted.

Senator Asselin: Would it have been better that Senator Langlois send you an official complaint by means of a Resolution or a Motion of the Senate, and following this complaint, would you have taken any steps?

Mr. Juneau: You are speaking of a hypothetical case. We assuredly would have studied the matter.

Senator Asselin: Maybe I am acting more like a lawyer at the present time.

Mr. Juneau: I would be glad to speak about that informally, because when I have to answer immediately, I always tend to answer in a rather detached manner. I think that carefulness would command, in a case like that, that I study your questions before answering.

Senator Asselin: There is another question I have had in mind for a long time. I think that the CBC should reflect canadian political reality whether it be federalism or separatism, but I think we must let government and private agencies free to reflect canadian reality.

Obviously, I completely agree with Senator Langlois when he says that this program, "Les Beaux Dimanches", was in such poor taste. If the intent was to stigmatize our federal system, I feel it was a very awkward way to do it and that such a program will not affect serious people who have their own views on canadian federalism. All the same, I agree with Senator Langlois that it was a program in very bad taste, a satire—it was obviously a satirical program.

Senator Denis: Too many of them are not serious.

Senator Asselin: Yes, but the people should always be free to think and to judge for themselves. Do you think that this canadian reality should be reflected by other means than these satirical programs we have? I really feel you can say, in terms of information, that if a radio station deals with certain political tendencies, this comes under the CRTC Act. I do not think that we could object in this regard. But, would it not be better, according to you, to establish a framework instead of showing that under the guise of satirical programs and limit ourselves to information, to dialogue, to the television "panel", rather than to leave it in the form criticized by Senator Langlois?

Mr. Juneau: Again, without giving a personal opinion on this particular program, I will first answer the positive aspect of your question. We have repeatedly stated our position on this before the CRTC, officially as well as

informally and I have delivered many conferences, speeches—and I still do. My colleagues, and particularly the vice-president of the CRTC, do the same. I think that the principal theme of the CRTC is the importance of broadcasting, not only through CBC, but the importance of broadcasting in Canada, to help Canadians know each other better; that French speaking Canadians know their English speaking fellow citizens and vice versa; that the people from the West know better those from the Maritimes; that we know better the Eskimos and the Indians and the new Canadians, and soon in order that our country can better develop and survive in this modern and very competitive world.

Senator Denis: A measure of unity.

Mr. Juneau: That is what I think, and that is what I say in other words. We have expressed our opinion several times, by stating that this should not be done by trying to impose on Canada as a whole a uniform way of thinking. We try to take into account French-speaking Canadians, precisely Quebecers, and the way people think in the West, in the Maritimes, or in Toronto.

I have already been reprimanded on this by Senator McEIman, and I share his philosophy on the subject. The CRTC has tried to defend a concept of national unity consisting of an increasing exchange of feelings and ideas from all parts of the country, and not of compulsory patterns divided in Toronto, Montreal or Edmonton and so on. But once we have such a pattern, we believe that it must be worked at intensively. We must have a strong policy in this regard. It is not a policy of uniformity, but a policy of unity based on an acknowledgement of this diversity.

Then, if you are interested, I could send you a very large number of documents from the CRTC on this matter, and especially the decision taken on March 31, 1974, where this question is discussed at some length.

The Deputy Chairman: Could we have this document?

Mr. Juneau: Yes. We will forward it to each member of the Committee of the Senate, if you want.

Senator Langlois: To each member of the Committee would be sufficient.

Mr. Juneau: So, honourable Senator, I think it would be a pity to state as a matter of policy that we should not . . .

Senator Asselin: As a framework.

Mr. Juneau: To establish a regulatory or informal guideline that we should not use fiction, recreation, songs or anything that is not a news item to reach the objective on which we are discussing—I think it would be a pity. It may well happen that a satirical program be unpleasant or excessive, or in poor taste, but, because a particular program is judged, maybe by a very large number of people, as being in poor taste, it would be a pity as I see it, to put aside the technique of satire, or the technique of fiction. I think it would be a pity.

[Text]

Senator Thompson: Mr. Chairman, first of all, I want to say that I am not a member of the committee. I also should say that I am associated with a radio station, in connection with which I have faced the stern hand of Mr. Juneau, and respect him very much for the decisions he has been making.

It seems to me that this is a French language question, since it concerns a program that was shown on the French language network. I did not see the program, but I have looked quickly at the content as it appears in the script.

Mr. Juneau represents the whole of Canada. I was very interested in his approach to criticism by the Senate committee, because what would apply in connection with French language stations would also apply in connection with the English language stations. The approach which has been taken by the committee, as I understand it—although it is not in the report of the previous meeting of the committee or in what was said by Senator Langlois in the English language press—is that the concern of Senator Langlois is on the general policy. That is the concern, it seems to me, that he has as to the general editorial policy of the French language CBC towards separatism.

On the other hand, if it were a question of one particular program and the taste of this particular program, then I must say that I do not agree with criticism. I think it is a very healthy thing, as I understand the words within section 3 of the act, "to safeguard and enrich". I understand that one way to protect and enrich our society is to take a good wallop at any stuffed shirts.

In Britain today there is a very healthy discussion going on in connection with the salary of the Queen and whether she is being paid too much. It is a very healthy discussion, in my terms, on whether they should have paid for the plane that took her to the Bahamas and there is a very virile discussion by a Scottish member, every time that the appropriations paid to the Queen come up. *Punch* and a number of other papers, I think, contribute to the diversity of Great Britain by the fact that they challenge the Queen or the House of Lords and make fun at them.

I think one of the diseases that takes place with higher civil servants or senators and others is the disease of pomposity. And we should be open to criticism, satire and ridicule. So I am not objecting to that at all. I think it is healthy.

Last night there was a page of criticism with respect to the cost of the Queen. I felt that the matter of taste—and I think and hope that this is what I drew from Mr. Juneau's remarks, that he would be very reluctant to decide what is bad taste and what is poor taste and his approach is that in some cases this may be poor taste but on the whole permitting a great deal of diversity, we get a very rich society and a very rich Canadian content. I hope I have asked the question, but that is the conclusion that you make?

Mr. Juneau: I think that that represents our position quite clearly.

Senator Thompson: I would say that I think I have been in the minority, in previous criticisms made in the Senate about some CBC programs. I saw one evening a very beautiful program, to my mind, of a French Canadian girl who fell in love with an English Canadian boy from British Columbia.

Senator Asselin: That could happen.

Senator Thompson: I think it depicted with sensitivity and with dignity this love affair that they had. I came to the Senate and I was sitting in my seat and someone got up and talked about the obscenity that had taken place on the program on the CBC in which a boy and girl got into bed. I did not connect it with this program, which I had loved

and which I thought was doing something for the unity of Canada. Afterwards, I wished I had got up and said how much I enjoyed the program. I am saying this to express the difficulty the chairman must have and that the CBC must have, because my view of what is bad taste obviously differed from that of other senators.

Could I say one other thing? If there is any impression that the Senate should be the censoring body to make decisions on what the content of the CBC should be, I would deplore that and resist it with every power I have, because I can think of no stuffer body to be deciding what the content across the country should be than the Senate, which has seen the tragedy of Rodin and others who had to go before bodies and others in order to have decisions made about their artistic creativity and I would hope that this would not be a role for the Senate.

The Deputy Chairman: I do not think it is the role the Senate is going to play or wants to play. I think the purpose and the reason why Senator Langlois raised that question and referred that matter to this committee, was that parts of that program—and other programs, this program was only the occasion but there were other programs particularly in Quebec. I understand your point of view, but you do not live in Quebec. You don't understand exactly.

Senator Langlois: Quebec has never been understood by Ontario. That is nothing new.

The Deputy Chairman: I am not going to say that. You can say what you want. The purpose of Senator Langlois was to bring a matter to our committee and to the Senate, so as to draw the attention of the CRTC and the CBC, that they were going against the aims or the purposes of the establishment of the CBC.

Senator Denis: Hear, hear.

The Deputy Chairman: That was his purpose. It was not in order to criticize the programming but what has been conveyed through that program and other programs. That is the purpose.

Senator Thompson: Mr. Chairman, I appreciate that you are underlying that purpose. At the start of my remarks, I wanted to say that as I understood from the tenor of this meeting, it is the concern of Senator Langlois that the general editorial policy of the French language station, not a particular ridiculing program, that he is focussing on. I said that, in reading in the English speaking papers the reaction to his remarks, it was not a suggestion that he is concerned about the Senate and some high officials, including the Queen, being ridiculed, rather than his deep concern about a general editorial policy, a consistent policy which is emphasized in more a separatist approach than that of the unity of Canada, and I take it that you have underlined that.

The Deputy Chairman: Yes. I call Senator McElman, unless Senator Langlois has something to add to what I have said. I tried to express the reason why he brought the matter before the committee.

Senator Langlois: You did a good job. I made that clear and once again I am not surprised to see that the Ontario papers have misrepresented the attitude of French Canada. It is not the first time.

The Deputy Chairman: We will leave the matter at that.

Senator McElman: Mr. Chairman, I think it is a very healthy thing that this committee is discussing this matter and that Mr. Juneau has come before us to hear the views of the members of the committee. I think it is also a very healthy sign for Canadian Confederation that the reaction to this program—as one of a number of programs, but specifically this program—has been most strenuously expressed by those senators who represent La Belle Province. I think that is a very healthy sign in the defence of the institutions that we enjoy.

Having said that, I say we seldom have Mr. Juneau before us and I enjoy all of his appearances. Sometimes we do not agree, but I enjoy them. There is a temptation to try to broaden the scope of our reference here today.

Mr. Juneau: I cannot say "be my guest." I am your guest.

Senator McElman: I hope that at some future date we will discuss what I believe to be the preponderance of violence and crime shown in the general programming on television. I think that would be a useful discussion. In line with the discussion presently under way which hinges largely on Canadian unity, which is part of the mandate of the CBC, I was offended on the weekend by the news coverage on both of our national networks, CBC and CTV—it was on Friday, February 14, Valentine's Day—on the tenth anniversary of our Canadian flag.

CBC is first in New Brunswick, I should say, as we get it at 11 o'clock in the national news, and CTV at 12 o'clock. CBC first dealt with the fact of it being the anniversary, by referring to the difficulties that accompanied the adoption of the flag and the only person who was shown commenting upon it was the person who had led the opposition to the flag. I might have felt that it could have been useful and balancing if some young Canadian, under 10 years of age, had given his reaction to his feelings for the flag. I was shocked by this and I thought it was not very respectful for the flag that we have adopted and imbalanced coverage of it. That was a personal reaction, and I said to myself: "McElman, as usual, you are over-reacting." Then I watched at 12 o'clock the CTV coverage. One would have thought the same producer had handled both, because the same person was on who had led the opposition to the flag and there was no counterbalancing whatsoever.

The point of this is that I agree with most senators who have spoken, that watching television over a period of time one does occasionally at least get the view that it is, not balanced as it should be, that there is a preponderance of programming, of editorial thread, running through the program which does not support the mandate which is given to the CBC that it has a responsibility to promote Canadian unity. Having said that, I believe that Parliament was wise in not establishing the CRTC as a censor. I think it would destroy the CRTC and would destroy democracy to the extent that broadcasting may take part in it.

I think it was wise that it established CRTC to perhaps monitor what goes on in broadcasting, after the event, rather than censor it in advance of the event. It is that that I would like now to question our witness about. I understand thoroughly that you mentioned commercial content some while ago, and it is my understanding that in so far as there are limitations on time of commercials in programming, that the stations are required to submit copied of their logs. Is that right?

Mr. Juneau: That is right, sir.

Senator McElman: And it is in this mechanical fashion that you monitor what they are doing, rightly or wrongly?

Mr. Juneau: Not only that. We also have become better organized. I am not suggesting that it is a perfect system, but we have become better organized in monitoring stations while they are on the air. We do not do that constantly, of course, but we do spot checks. Just like people pass on traffic lights and get away with it, it is inevitable that the same kind of thing will happen in radio or television. But we do have monitoring of the signals.

Senator McElman: But there is a machine there, whereby you have some control and you monitor the log?

Mr. Juneau: That is right, yes.

Mr. McElman: I was amazed to hear that you had not had public complaints on this program. In a specific program where there is public complaint, you get immediately a feed back that starts the machinery moving within the CRTC to determine whether some action should be taken? Is there a machinery that operates without being moved by public complaint? It has been suggested that over a long period of time there is an editorial thread that runs through the programming, particularly in Quebec with the French network, that leans towards separatism, perhaps. Where there is such a thread, are you dependent upon public complaint, or do you have any mechanism that monitors to check whether a particular station, a network, or any element of the broadcast media coming within your purview, is developing a trend of editorial approach which is contrary to the mandate for national unity?

Mr. Juneau: We do not have that. We do not monitor programs in order to determine whether we should take any kind of action, legal or unofficial, in matters of taste—and I think I am repeating myself. We do not do that. We do monitor in relation to very specific things, but I think that is not your question. Your question is, do we monitor programs in order to detect whether there are trends which would be contrary to the spirit of the law. We do not do that in a systematic way, if by that one would mean checking and calculating meticulously and almost mathematically whether there is an imbalance in the representation of certain views, as against other views. No, we do not do that. I would not call that monitoring because that implies a spirit of surveillance, so to speak, and we do not do that. I am not saying that we should not do it. If there were strong indications that such trends are really nefarious, then I presume it would be part of our responsibility to verify whether there is a strong problem or not. We are not doing that kind of thing.

We do, however, feel that we are not only responsible for watching, in a sort of a police way to see whether there is something wrong or not that is going on. But we feel that we are part of broadcasting, we are not only watchdogs, as people have sometimes called us in the past, but we are part of the whole thing and our role is to work with the broadcast in CBC and private broadcasters, to try to improve the standards generally, including the standards you are talking about. In order to do that, we have people who watch a lot of television. They are not sitting with a cap on and checking, but we find that we could not do our job if we didn't have people who are very good television watchers and radio listeners, just to understand what is

going on. Out of that, we develop opinions concerning the present value of television generally or of the CBC particularly.

We sometimes write about that. Or, in a less official way, I may make a speech or the vice-chairman may make a speech, and express views. We have often expressed the view, for instance, that there could be, on both the private sector and the public sector, much more programming which would contribute to the identification of the country and the unity of the country, both on the English side and on the French side, and not only the French-English thing, but as you pointed out on other occasions, the east and west and north and south and what have you. We do that, and we do express views. For instance, if you are talking about the editorial tone of broadcasting in general, we think—we are not the first to say it; it may be true for newspapers, too—there is a certain appetite for the sensational; there is a certain tendency to deal more with the negative than with the positive; there is a certain tendency not to be interested in success; there is a tendency to ignore certain themes, certain areas. Engineers, for instance, will talk to us very often and say, "How come there is scarcely anything said about what is going on in engineering?" It is news; it can be very dry and drab if it is thought of only in terms of figures, but some of it must be interesting.

I remember the man who was in charge of the development of the Alouette and Isis satellites in Canada telling me that several years ago they invited broadcasting reporters to go to the launching, from Cape Kennedy I suppose. I will not identify the people involved. They had accepted. It was going to take place. Finally, at the last minute, they cancelled their acceptance to go down there to watch the launching of Alouette. I think it was the first launching, so it was very dramatic and very important. It was a great story of an engineering and communications type. The intention to go was changed because some racial disturbance had occurred in Alabama and they decided to cover that rather than the launching. That is an editorial decision. Everybody is free to make decisions of that kind, but I think everybody is also free to look at these trends and comment on them and say, "How come?"

I had a very interesting letter, quite a long letter, from an engineer, not vituperating or harshly criticizing, but saying, "Scarcely any attention is paid to our field. We know it is difficult and intricate, although not necessarily more intricate than political matters, and there must be a way to make it interesting." After all, so much of what we live with today is the result of engineering decisions. I sometimes feel that too many things that we have to cope with are the results of engineering decisions that the public knows very little about, yet we have to live with that afterwards.

One phrase we have for it is the "missing themes in information." You could set up a long list of themes that are scarcely ever dealt with, or dealt with very little. That sort of thing we do; not, as I say, as watchdogs but as people who are positively involved with the development of this medium.

Senator McElman: I appreciate the complexity of the problem you and your colleagues face today. I was glad to hear of your reaction that perhaps not enough is done with respect to monitoring.

Mr. Juneau: I would acknowledge that.

Senator McElman: I too would not want to see you become part of a policing exercise; I do not think that is your purpose or your role. You mentioned trends that might be missing from the general tenor of broadcasting. I think the concern here has not been what might be missing, but a trend that might be overly present in broadcasting, namely attacks upon the institutions and the system that we enjoy.

I realize that there are peaks and valleys in public opinion and public interest, but if the public should become passive about what it sees on television and hears on radio, and, as some might suggest, because there is no reaction to a program the public is passive, it seems to me that your mandate requires that there be a fair element of monitoring, particularly with respect to how it has an effect upon national unity. If on occasions the public reacted to a series of programs that could be interpreted as being anti-Confederation, by saying, "What the hell! There is nothing we can do about it, anyway," if you got no reaction at CRTC, if the CBC got no reaction to its programming, and if the private broadcasters got no reaction to their programming, simply because the public had become passive, then there should be some mechanism, some continuing mechanism, that fills that vacuum. I would suggest that, if nothing else is accomplished by this reference, if the CRTC and others in responsible positions in connection with broadcasting have a look at this, it might be very useful.

Mr. Juneau: Your point is well taken, senator. I think I can say, though, that there are many people who acknowledge that there has been an improvement over the last few years in broadcasting in general towards greater interest in the problem of national unity and reflecting various parts of the country one to the other. A lot of people acknowledge that development, both in the CBC and in the private sector.

With respect to the CBC, I have not heard people say that on the French network, whatever one may think about this particular program, there has been a deterioration. We generally hear the opposite, that there has been a considerable improvement. I like the way the President of the CBC puts it, because I remember re-reading recently his explanation.

It is a very difficult matter. If you look at the printed press, some of the problems that are being discussed here exist in the printed press. I know that some members of the Senate will say, "You are right, but this is different. We created the CBC for this or that purpose." That is true. Yet the CBC has been created as part of the press, in a way, and it cannot get away from the rules that apply to the press. That is part of the price you have to pay if you create an organization such as the CBC. It has to follow the rules of the medium in general, and the law, of course.

Starting from this premise, the President of the CBC has expressed the view that their attitude has been to use the rules of the press and try to obtain from the people who work for the CBC, either the staff or people the CBC employs, a high level of professionalism. That is something that honest people find difficult to resist, if you call upon a sense of professionalism. Some people have fewer acute feelings about this matter than others, but it is an interesting way of approaching a very difficult problem, for both the CBC and the printed press to say, "Let us insist on a higher and higher level of professionalism; not with a political bias in one sense or another, but a higher level of journalistic professionalism." That may constantly leave

some problems unsolved, but I think it would solve many problems.

I have met a number of individual journalists in the broadcasting medium, including groups of journalists, unions, union officers and so on, and I know that many of them—I am not saying all, by any means—whatever their political bias may be, are personally very much concerned about the ethics of the profession, whether they work for the CBC, for a private station or for a newspaper. I have very often encountered a high degree of concern about the ethics of the profession and what I call professionalism. I am not saying that this concern has yet had results that should be considered as satisfactory by all those involved, and I do not think these people consider that either. However, I think it is an interesting way to approach the problem.

The Deputy Chairman: Before further questions are asked, may I draw your attention to the fact that it is already twenty-five minutes to twelve, and we have two or three other matters that I would like to discuss with members of the committee before we adjourn.

(Translation)

Senator Langlois: I will be as brief as possible. I, myself, was going to bring the late time to the attention of the committee.

The Deputy Chairman: Yes, because we have two or three items to examine.

Senator Langlois: I will make very brief comments on what my colleague, Senator Thompson, said. Maybe I overreacted to his remarks but I will say that if one had attacked his right to criticize me, I would have reacted even more violently to defend his attitude and his right to do so.

Now, to explain to the committee the reason why I really had the intention to bring this program to the attention of the Senate, I must say first, that it was not for the Senate to substitute itself to the CRTC nor the CBC; I wanted the Senate to study it in depth. So, if you share my opinion, you should study the way the CBC and the CRTC should apply their governing statute. The Chairman of the CRTC, Mr. Juneau, has—as I had done before him—emphasized section 3 of the Act. Here are the main provisions of this section. Paragraph (a) creates one single broadcasting system in Canada which is public property and comprises public and private elements.

Paragraph (b) states that this system should be operated by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

And then there is paragraph (c), which the Chairman has emphasized, that concerns mostly the concept of freedom of expression subject only to applicable statutes and regulations.

This is the act I am actually talking about. It is the one that establishes the CBC and I will read section 39 of this Act stating its objects and powers:

The Corporation is established for the purpose of providing the national broadcasting service contemplated by section 3, in accordance with the conditions of any licence or licences issued to it by the Commission and subjected to any applicable regulations of the Commission, and for that purpose the Corporation has power to

Then the objects of the Corporation are enumerated. But, section 3 is subject to regulations of the CRTC. I will now read you paragraph j) of section 3 stating the regulating power of the CRTC:

j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to the scientific and technical advances; and

—and I underline this part—

that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

So, the principal aim of the CRTC is to supervise and regulate the application of this act. For this reason, and because I had some doubts, I thought it best to bring this program to the attention of the Senate, mainly because the first time I saw this program I was in my own town of Quebec City with a group of friends and they unanimously reacted against this program. They thought it was going too far and it was a bit shocking; that this was clearly a separatist message for the people. As it is the responsibility of the Senate and of each senator to express the regional views of the country, I thought it my duty to make known to my colleagues the opinions I received not only from my friends on that night but also the next day in my legal study and from contacts with the population of Quebec City. As I had myself the same reaction, there was only one step to take, that is make this sudden reaction known to the Senate who fully endorsed my motion of reference to this Committee. I think it was only my duty to say this.

I would also like to ask a question to Mr. Juneau. Would he have any objection to provide to our committee a copy of the regulations prescribed by the CRTC concerning the research and the objectives spelled out in the Act I have just mentioned?

Before leaving the floor to another senator, and particularly to Mr. Chairman, I would like to add that maybe this morning we have created a false impression. We have asked Mr. Juneau if he had received any complaints? He replied no. There weren't any other comments. Maybe we have given the impression to those who were not present at the first meeting of this committee that there were no other complaints about this program.

Mr. Chairman, you must remember that we asked a similar question to CBC officials and they had answered yes. They sent us a list of the complaints. Unfortunately, we did not get the letters, but at least we did receive a list of the complaints as well as their reasons. They were quite numerous and came mostly from the province of Quebec and from the City of Ottawa. We have the number as well as the nature of the complaints phoned in. From Montreal, I think that there were 116 negative telephone calls and 70 or 72 positive. Others were calling for information without apparently complaining. It depends on the interpretation given by the telephone operator who received the message. Anyhow, there were complaints and quite numerous at that. There were also comments. So, I think we are quite justified to refer the appreciation of this program to a committee and to invite Mr. Juneau and CBC officials to come and give explanations. They could tell us the way they fulfill the objectives of this Act on Canadian broadcasting. Both the Senate and the House of Commons are responsible for ensuring that public servants respect the aims set out in our Statutes. This is the only goal I had in

mind. I did not want the Committee to substitute itself to Mr. Juneau who, I think, does an excellent job. I would like to thank him for being available this morning.

[Text]

The Deputy Chairman: I am quite sure that Senator Thompson understood what Senator Langlois said, but I think it would only be fair to give Senator Thompson the occasion to say a few words, if he wishes.

Senator Thompson: I will be brief, Mr. Chairman. It may be owing to my Irish temperament that many people think of me as an "imp," when I try to clarify matters in order to support them. If I understood correctly Senator Langlois' concern, it was that he wants to ensure that the objective of the CBC, whether in French or in English, is to emphasize the unity of Canada, so that if there is a consistent and persistent editorial policy by one sector, whether in French or in English, to suggest or promote disunity or separatism, then very rightly he has a grave concern, as other senators have mentioned.

I do not live in Quebec. I do not see the programs.

Senator Langlois: You are really missing something.

Senator Thompson: I would say, however, that this was a legitimate matter to raise, so long as it is not just picking on one particular program, which we look on as perhaps having shown bad taste. I was trying to clarify that that was not the situation which Senator Langlois was emphasizing. But the opinion I formed afterwards, from reading and from talking to people, was that that was the impression created in some of the English-speaking press, and I wanted to clarify that it was a much broader picture that he was looking at than had been presented to Mr. Juneau, and I substantiate his position.

Senator Langlois: Mr. Chairman, I am happy that Senator Thompson referred to the fact that he has Irish blood. My wife has Irish blood, too, but she reacted in the same way as I did.

[Translation]

The Deputy Chairman: Mr. Juneau, after listening to my colleagues' remarks, would you have any suggestions to make so that these unpleasant things do not happen again? Is the CBC control system adequate and could it be improved? Could CBC directors—if I understand correctly, there are 14 according to the Act—be more cautious about programs aired on TV or radio? If you would rather not answer, do not feel you have to. With your experience, you might help this Committee formulate suggestions to authorities, either of the CBC, the CRTC or even of the government, because we have to come to conclusions and offer some suggestions to correct the situation, since complaints have been received. We know by experience that most people do not write or complain.

Senator Langlois: The silent majority.

The Deputy Chairman: The silent majority. That is why we cannot rely only on complaints made by the general public. Personally, I feel it is the responsibility of the CBC and CRTC authorities to take the necessary action to prevent the reoccurrence of such events.

Senator Asselin: Mr. Chairman, are you not actually going into a very difficult field? If we start asking for directions, should we not also talk about the whole issue of freedom of the press? I think that all those questions are interconnected and that it is very difficult for our witness to answer. I am not defending him, for he surely is able to do so himself.

The Deputy Chairman: With his experience, the witness could point out the insufficiencies or the fact that the control board is not adequate. Someone said a while ago—it was Senator Denis—that only one person, Mr. Blouin I believe, had seen the program. Is there a lack of consultation between the authorities at CBC? Is there enough supervision?

Senator Langlois: Mr. Chairman, we could maybe let Mr. Juneau think for a moment about what he is going to answer to your question which is rather embarrassing. May I draw the Committee's attention to the fact that we were referred to complaints; that it was evidenced, during the first hearing, that certain persons were discouraged from complaining to CBC, amongst other things, because of the unwelcoming way that they were answered on the phone. I even think that you were the one to put on record that people were very badly received.

The Acting Chairman: Please feel quite at ease, Mr. Juneau; if my question is too embarrassing—

Mr. Juneau: I am afraid I will disappoint you. I would say that we have, I believe, received no complaint with regard to this program. However, I must say that, in general, we receive less complaints from the French listeners than from the English ones.

Senator Asselin: They are more broad-minded.

Senator Denis: They are more numerous.

Mr. Juneau: I don't know, but I also think that this might be the reason. We are getting here into interpretations that may be misleading, because in general the French are more reluctant to get in touch with government organizations. It is probably true for the municipal governments and for the provincial government in Quebec, but in any case, we received more complaints from the English listeners.

Senator Denis: They are more numerous.

Mr. Juneau: Proportionally. I think it is a question of attitude. They have less communication with official organizations. I think however that because of the spirit of the law, here again, we will have to establish some lines of action. Mr. Chairman, the spirit of the law is that in editorial matters, decisions must be taken by the management of the stations. I remember very well the remarks of Senator McElman, which are very appropriate and of which we will take advantage. But in editorial matters, individual decisions must remain the responsibility of the management of the stations.

Senator Langlois: Subject to the regulations.

Mr. Juneau: Yes. Complaints represent then a reaction of the public, just like the reaction of a Committee like this one, and it is a very normal process. Within the process, the complaints are not useless. That's how the public can participate. That is why we direct these complaints to the responsible persons. I think that the way this responsibility is carried out within the stations depends on the holder of the license. In this case, it depends on the management of CBC, on its administrative council, on its president and on the senior officers of CBC, and very indirectly, on the CRTC.

The Acting Chairman: Thank you, Mr. Juneau. If there are no other questions, I would like to thank Mr. Juneau, in your name and personally, for having accepted our



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 6

WEDNESDAY, MARCH 12, 1975

Second Proceedings on Bill S-5, intituled:

**“An Act to enable Canada to comply with a Convention on the
International Recognition of Rights in Aircraft”**

(Witnesses: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)
(Quorum, 5)	

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

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

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 12, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 9:30 p.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Burchill, Denis, Eudes, Forsey, Graham, Langlois, McElman, Petten, Prowse, Riley, Smith and Sparrow. (13)

Present but not of the Committee: The Honourable Senators Asselin and McGrand. (2)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport.

The Committee proceeded to further consider Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Witnesses:

RoyMarine Leasing Limited:

Mr. Henry S. Miller, President;
Mr. A. Derek Guthrie, Legal Adviser.

Canadian Bankers' Association:

Royal Bank of Canada:

Mr. G. A. Bellevue, Assistant General Manager (*Corporate Lending*);

Mr. W. N. Ancuta, Corporate Counsel.

Canadian Imperial Bank of Commerce:

Mr. F. G. Stanley, Inspector—Credit Division

Mr. Colin C. Coolican, Counsel.

Mr. G. H. H. Read, Observer.

Equipment Lessors Association of Canada:

Mr. Glen Langdon, President;

Mr. B. Frank Kennerly, Counsel.

After discussion and upon Motion it was *Resolved* to refer the subject-matter to the Steering Committee in order to determine what further action should be taken.

At 12:20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Order of Reference

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell King, Chairman

The Honourable Maurice Bourget, Deputy Chairman

Minutes from the Minutes of Proceedings of the
Senate, October 22, 1974.

Present at the start of the day the Honourable
Senator Giguère moved seconded by the Honourable
Senator Proulx that the Bill be referred to the
Senator Proulx seconded that the Bill be referred to the
to enable Canada to comply with a Convention on the
International Recognition of Rights in Aircraft.

read the second reading.

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

The Bill was then read the second time.

The Honourable Senator Giguère moved seconded
by the Honourable Senator Proulx that the Bill be
referred to the Steering Committee on
Transport and Communications.

The question being put on the motion, it was
carried in the affirmative.

Robert Foster
Clerk of the Senate

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 12, 1975.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 9.30 a.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, this morning we are dealing with Bill S-5, an act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft. We have with us three organizations, the first being RoyMarine Leasing Limited; Canadian Bankers' Association; and Equipment Lessors Association of Canada.

I will ask Mr. Miller and Mr. Guthrie, representing RoyMarine Leasing Limited, to come to the table. All members of the committee have a copy of the brief which was sent to us by RoyMarine Leasing Limited. Mr. Miller will make an opening statement, following which members of the committee may ask questions of both Mr. Miller and Mr. Guthrie.

Mr. Henry S. Miller, President RoyMarine Leasing Limited: Mr. Chairman and honourable senators, over the past 18 months our firm has been very deeply involved in the legislative process in the hope of amending the present Bill S-5. We have discussed the implications of the bill with various members of government, within the financial community, and with manufacturers of aircraft and aerospace products. Having studied in detail transcripts of hearings held before the Senate and other committees, the major point of attention seems to be focused on refining legal principles. I find it peculiar and somewhat unfortunate that the essence of the matter has not yet been brought before the persons charged with formulating the law, namely, how aircraft are financed in today's environment, and the concerns of financial institutions in this respect. Nothing would seem to be more important in attempting to promulgate a bill of this nature than to understand why it is necessary at all in the framework of the real world. My comments today with respect to Bill S-5 consequently relate more toward what we would call business points than legal ramifications. Mr. Guthrie of the Ogilvy, Cope firm, and Mr. Kennerly of Canadian Pacific and the Equipment Lessors Association of Canada, are prepared to respond in the latter regard.

One has to consider the aircraft financing problem in the context of world financial instability and the exceptionally high capital cost of aircraft. Commercial jet aircraft in Canadian service today range from the Dutch-built Fokker F-28 to the Boeing 747, and cost from a minimum of about \$5 million to as much as \$35 million apiece. Prices of individual units depend on whether the aircraft are new or

used, the configuration, model type, and the extent of modifications beyond the base price. Jet engines, furthermore, can cost in excess of \$1 million each. As is apparent to one familiar with lending or leasing credit evaluations, even the strongest company is severely impacted by the acquisition of equipment with as high a price tag is noted above.

Many financial mechanisms can be employed to fund the acquisition of aircraft including, inter alia, term borrowings in any of their many variations, conditional sale agreements, and leases. Depending on the method employed, ownership may rest with the user—that is, the airline itself—or it may, in fact, be owned by a third party financial institution and leased for a designated period of time to the airline. The most important criterion behind the willingness to extend credit is confidence in the client's ability to service the obligation incurred. Regrettably, airline earnings are minimal at best. Current trends in cost escalations and diminishing traffic do not provide encouragement or a feeling of optimism, especially for the near future. Moreover, inasmuch as the term of aircraft financings typically extend over the major portion of the aircraft's useful life—10 to 16 years in most instances for new aircraft—a considerable long-term risk is inherent in the financing decision, risks exceeding those shared or borne by many other creditors. Generally speaking, the stronger the substance of the borrower of the funds, the less the concern one has with the actual realizable value of the security that underlies the financing; the weaker the credit, the more one looks toward the value of the security as an intrinsic, critical, and essential part of the credit granting decision. With few exceptions, lenders and lessors insist upon not only obtaining valid and binding security, they must be assured of their ability to enforce it; so much so, in fact, that few borrowers, no matter how strong, could successfully raise funds without being able to give lenders good security. Speaking as a principal in the Canadian marketplace with over \$40 million in commercial aircraft on our own books, I cannot stress strongly enough the critical nature of these facts.

During the course of a long-term financing, the borrower may be subjected to severe negative influences which could seriously impair the borrower's financial well being—even to the point of collapse. As late as a few years ago who would have anticipated the Penn Central bankruptcy, or a moribund Pan American, or a shaky British Leyland or Burmah Oil to mention but a few—all substantial companies with perceived promising futures. In view of potential or even theoretical problems, legal documents evidencing indebtedness are drawn up on the basis that, in the worst case, all parties' rights, obligations, recourses, and remedies are clearly defined. I underlined the fact that any obstacle placed between the credit grantor and his immediate access to his security in the event of default (as would be the case in respect of Bill S-5 in its present form),

is an extremely serious matter, and one which prejudices the position not only of the financial institution but also that of the borrower.

The Canadian airline industry extends beyond Air Canada to CP Air, to the designated regional carriers, to third level airlines, to the major charter airline, Wardair Canada Ltd., and onward to succeeding smaller, more specialized, local, and generally financially weaker companies. In addition, one can neither neglect nor ignore the substantial number of private aircraft in Canada, for both corporate and personal use. The common thread respecting the above is that virtually all users of aircraft are dependent on significant amounts, if not 100 per cent, of external financing to fulfill their equipment requirements.

The decision to exercise a default procedure is not one taken without most serious and careful consideration, and, I might add, with particular reticence. For the creditor, economically, the process is exceptionally expensive. The full outstanding indebtedness may not be realizable out of the proceeds of the sale; a substantial investment in time and human resources must be allocated. In my personal experience—and I have financed in Canada a 747 and several 737s—defaults (other than failure to pay) have occurred, and we have worked with the airline to cure the default without resorting to seizure of the aircraft.

In actual practice, moreover, it is rare that the airline's financial condition would dramatically deteriorate in a matter of days, requiring hasty and precipitous action on the lender's part. Rather, the airline's problems tend to develop over a period of time, whether due to general economic circumstances or difficulties unique to the carrier itself. In both events, the weakening financial position would be observable by creditors and government alike. If all private remedies are exhausted and a determination made that the airline cannot remain viable, then two final alternatives exist—either government can intercede in the public interest to maintain the operation of the airline, or the financial institution should be entitled to exercise the default procedures agreed to between the financing institution and the airline set forth in the documentation. It is absolutely essential, in this latter instance, that the aircraft be seized immediately, that it be protected from possible damage, whether due to acts of third parties, improper maintenance, the elements, et cetera, and that its ultimate disposal be effected as quickly as possible. It goes without saying that it would be imprudent to permit the aircraft to continue serving the public during the completion of the default procedure owing to damage arising from possible corner-cutting on maintenance.

If Bill S-5 is passed in its present version, I can strongly state that our firm would in all probability cease financing aircraft for Canadian airlines due essentially to (1) confusion over priority of registration, provincial or federal jurisdiction, and so forth; (2) the problems and potentially long and expensive delays in crystallizing security; and (3) all the other fine legal and technical matters discussed at length in briefs already in your hands. I would expect other financial institutions, including chartered banks, trust companies, sales finance companies, et cetera, to undoubtedly adopt a similar posture.

As things exist today with respect to airline financing, the financial industry suffers only from (I) the inconvenience of multiple registry and title searching of security interests in aircraft; and (II) loss of protection abroad in countries signatory to the Geneva Convention of 1948. Inasmuch as the bill has been alleged to have been drafted

in order to facilitate aircraft financing in Canada, it hardly seems sensible or appropriate to pass it in a version that would precipitate the absolute reverse effect.

We would be most pleased to cooperate with this committee to redraft the bill in a practical form suited to its original intent and spirit. We are confident that a suitably revised act would receive the endorsement of the financial industry and accomplish the desired objective.

I await your comments and questions.

Senator Prowse: Do you have a copy of the suggested redrafted bill?

Mr. Miller: We have not attempted to redraft the bill, that being somewhat presumptuous. We have, as well as other people, submitted proposed changes which we feel are necessary.

The Deputy Chairman: Before we commence the questioning, Mr. Guthrie, do you have something to add to what Mr. Miller has just said?

Senator Langlois: Mr. Chairman, before we do that, could you tell us if we have any representatives from MOT here this morning?

The Deputy Chairman: Yes, I did ask for a representative to be here. Mr. Shields will be here this morning.

Senator Langlois: But he is not here yet?

The Deputy Chairman: I called him this morning, and I see that he is here now. Good morning, Mr. Shields.

Senator Prowse: Perhaps he should come to the front of the room so we can see him.

Mr. A. Derek Guthrie, Legal Adviser, RoyMarine Leasing Limited: Perhaps I could add two additional remarks to those already made by Mr. Miller, both of which go to the meat of Bill S-5. I am glad that Mr. Shields is here this morning; perhaps he could throw more light on these two points.

My first point has to do with something that everybody is well aware of, namely, the conflict, possible or real, between the federal and provincial jurisdictions in this area. We are well aware of this difficulty, and I understand, Mr. Chairman, that you have communicated with the various attorneys general of the provinces. The remark I would like to make on this area is that the jurisprudence and the case law, of which I am sure most of the senators are well aware—for example, the *Johanneson* case—all deal with aerial navigation, and not with property rights in aircraft. Of course, the expression "property rights" is like waving a red flag before the provincial bulls.

I, as an attorney, express my doubts as to the constitutionality of parts of Bill S-5. I do not intend to waste the time of the meeting this morning going through all the legal concepts, but I do believe that there is a very serious problem here that requires a solution.

Two possible solutions that come to mind immediately are, first—and this is perhaps the obvious solution—that coincidentally with the coming into force of this law there should be provincial legislation in each of the provinces whereby the provinces in question would recognize the supremacy of the federal law in the area of registration of property rights.

Senator Asselin: They will not.

Mr. Guthrie: The second solution, if that is not satisfactory, would be, prior to the law coming into force, that it would be wise to contemplate a reference case to the Supreme Court of Canada. The reason I say, "before bringing the law into force" is a very simple one. Because of the difficulty of the constitutional aspect it may end up that financing institutions will not only have to worry about all the provincial registration offices, but will have a further registration office, namely, the federal one, plus the conflict between the two banks of registration offices. In other words, we will merely be multiplying existing problems. Hopefully a reference case could clear the air once and for all.

I am not speaking for all my confreres in the field. I am sure they have opinions of their own, and I know there is a division of opinion in this area, but the very fact that there is a divided opinion, I think, makes it essential that we try to remove this difficulty before bringing in this law.

The second point I have to make, and the final point, is one that I admit came to me only yesterday evening. Perhaps Mr. Shields may be able to assist me on it. The point I wish to make is that Bill S-5 contemplates the filing of notices of interest, which presumably are something less than the actual instruments or documents forming part of the financing packages. The Geneva Convention talks about the recording of rights, and nowhere does the Geneva Convention contemplate any summary or notice of such rights. I began to have a certain difficulty yesterday evening in contemplating the kind of notice that might be registered in the central registry if it was simply, for example: XYZ Company has a 10-year lease—end of notice. Whether that would comply with the Geneva Convention, which is what this exercise is all about, is a very moot question.

Finally, from the practical point of view, anybody who goes to the central registry not only wants to know the name or names of the people who may have rights in the aircraft, but he certainly wants to know what those rights are, and merely knowing that it is a lease or conditional sale is not going to satisfy him in his preparation of financing of an aircraft that may be valued at up to \$35 million.

The Deputy Chairman: Thank you very much, Mr. Guthrie. Senator Asselin, would you like to lead off?

Senator Asselin: I have a very short question. Would you be in favour, before adopting the bill, of the government's sending it to the Supreme Court to obtain any advice on this matter that they may have to give us as to the constitutionality or the legality of the bill, at which time the provinces could be there to put their cases?

Mr. Guthrie: Yes, I would be in favour of that, assuming it was not possible to have the agreement of all the provinces in recognizing the supremacy of the federal law. The reason I would agree with that is, again, to try and clear the air of this existing difficulty that every lawyer in Canada recognizes, and most major financial institutions also recognize.

Senator Prowse: The problem would be that the provinces would have to name the federal government as their agent in the recording of their right. I am not sure, however, that they can waive a right. Would that be your understanding of it, too?

Mr. Guthrie: I would say that that would be one of the legal ways of clearing the air. I am hesitating, because I

have not thought out whether there might be some other possibilities. That would certainly be one, senator.

Senator Langlois: Senator Prowse, you have in mind, if I understand you correctly, a method similar to the one adopted in connection with the marketing boards of Ontario.

Senator Prowse: That is right. The province names the federal government agency as their agency, and then there is no problem. In other words, they can be challenged in the courts on the grounds that they have abdicated their responsibility, and somebody can catch you off base there.

Senator Forsey: It is an administrative delegation. It is something that arises out of the *Winner* case.

Senator Prowse: Yes.

Senator Forsey: Interprovincial and international modes of transport. The same thing has been done in reverse.

Senator Prowse: There are a number of examples of that sort.

Senator Riley: I gather from some of the reactions of the provincial attorneys general or their representatives that there is a basis for negotiation, which they would prefer, perhaps, between the federal and the provincial governments on this particular point. As Senator Forsey said, it is just the reverse of what was the result of the *Winner* case, and we have a delegation of authority now under an act to give the provinces authority over interprovincial transportation.

I was just glancing at some of these things, and I think that the provinces would be prepared to negotiate with the federal government, and try to work something out, but as it stands now I am firmly convinced that if you send this before the Supreme Court you are liable to run afoul of the whole doctrine of *stare decisis*, which governs the *Winner* case, and I do not agree with that at all. This brief by the Canadian Bar Association is dated May 12, 1964. Well, that is old hat as far as I am concerned, and it seems to me, if this question was brought up by the Canadian Bar Association, and these representations were made as far back as 1964, that we should rush into this. The indication was that we should pass this bill back in November. Is that correct?

The Deputy Chairman: At the end of October.

Senator Riley: I think Senator Flynn—and I agree with him—said that we should refer this back to the attorneys general—

Senator Langlois: It has been done.

Senator Riley: —or to the provinces, and what happened was that there was an indication from the department, off the record, that this had been discussed with the provinces. If it was, it was not discussed with the proper authorities in the provincial governments, and the result of the inquiry that went out substantiates the fact that the provinces had not been properly consulted. We have their reaction now, and if we have to wait from 1964 to 1975 to introduce a bill like this, I certainly think we should take our time now and make very sure that we are not infringing upon the rights of the provinces under the BNA Act.

The Deputy Chairman: Are you through, Senator Riley?

Senator Riley: For the time being.

Senator Forsey: Senator Prowse really made my point, and I illegitimately interrupted and added a few points.

Senator Prowse: I am quite happy to have you interrupt me at any time. It keeps me out of trouble.

Mr. Guthrie: May I make a remark?

The Deputy Chairman: Please do.

Mr. Guthrie: I should like to emphasize that I agree with Senator Riley, the option being to try to have an arrangement or arrangements with the provinces. The other option of a Supreme Court reference was the secondary one. I think we are all aware—certainly, members of my profession are aware—that a good settlement is always better than a bad judgment.

Senator Riley: Some of them have already indicated that there should be negotiations.

Senator Langlois: It seems to me that the remarks which were made this morning should be addressed to the modification or the amendment of the Aeronautics Act rather than to the particular bill before us, which could also be introduced as an amendment to the Aeronautics Act.

The only thing I wondered about this morning was the suggestion of a reference to the Supreme Court. How can we refer a bill to the Supreme Court? Do we not have to wait until the bill has been enacted before referring it to the Supreme Court?

Senator Forsey: No, the bill can be referred.

Senator Langlois: I have my doubts about that.

The Chairman: Perhaps we should ask our legal adviser, Mr. Hopkins, what we can do in the circumstances.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I do not want to speak on matters of policy, which are for the Senate committee, but there have been past occasions when we have indicated that in the opinion of the Senate the government should refer a bill to the Supreme Court for advisory opinion. That is an option open to the committee.

The Deputy Chairman: But can we do that now before the bill is adopted by the Senate?

Mr. Hopkins: Yes, you can report to the Senate recommending that before the bill is passed it be referred to the Supreme Court.

Senator Langlois: Do you know of any precedent for doing that?

Mr. Hopkins: Yes, I do. It has been done. I am sorry I cannot give you a citation now, but I can find references later.

Senator Asselin: Would you then try to find the precedents for us, please?

Mr. Hopkins: Yes, I will.

The Deputy Chairman: I think we should hear the evidence now and discuss that other point later, because it will be up to the committee to decide what kind of action it is going to take.

Mr. Hopkins: It is a policy question.

The Deputy Chairman: Let us come back to Mr. Miller's brief. From what he has said, he is not satisfied with the bill as it is. I should like to ask Mr. Miller, or Mr. Guthrie, to expand further and tell us exactly what are the sections of the bill which they would like to see amended, and in what way they would like them amended. Can you give us an answer to that, gentlemen?

Senator Riley: He just wants more protection. That is all.

The Deputy Chairman: Yes, I realize that. But there are other sections involved. I have read most of the briefs sent to us and they have had in them many references to sections in which they would like to see some amendments made. For that reason I am asking Mr. Miller and Mr. Guthrie to tell us what sections they should like to see amended.

Mr. Miller: I hesitate to take much of your time by reading the points that have been set out in our original brief. My comments this morning were the result of a week's thought on why problems had occurred at all. If I may be allowed, I shall try to re-distill our concern into two areas, and then turn to Mr. Guthrie for consideration of some of the legalities.

A problem today is that, as the law exists, we suffer from inconvenience more than from any other thing. In Quebec, in order to seize an aircraft—and I emphasize in my presentation that that is not a common occurrence, nor is it one which is taken lightly, precipitously or without considerable thought and displeasure—we have the authority in the Province of Quebec to obtain a court order to seize, and if that is the case we can then proceed to seize the aircraft. In other provinces that is not even necessary. We can just go and grab our asset.

The problem in the bill, if there is one central problem, is the interposition of two and perhaps three courts into that process. For example, with respect to the 747 which we presently have, and have conditionally financed in Canada, a six-months delay is not an unlikely occurrence, and we estimate the cost of the interest, non-earning of interest, maintenance, insurance and protection is \$12,000 a day. If you start to add that up on your calculators, over six months it comprises one hell of a lot of money. That only makes the problem worse, because upon final realization of proceeds from selling the asset, one's outstanding principal which has to be recovered is whatever it was at the date of seizure plus all these other accrued expenses, which includes, in addition, attorneys' fees, and you know they are never slight.

Senator Prowse: They are almost as bad as the interest.

Mr. Miller: Worse sometimes—win, lose or draw. The other side of that, in the sense of the way the brief is prepared, is that it gives a tremendous amount of discretion to the judges involved in that process to establish the conditions of the sale, and to determine whether a sale which is validly held fulfills their own beliefs that it was in fact a fair sale.

Let me give you an example. If the court procedures were observed, and a public auction held and a bid made by a small foreign airline—an African airline or an airline from the Far East—and it was subject to financing being obtained, and, after six months of trying, the financing could not be obtained and that transaction fell through, it would simply add to the problems which the creditor, whether he was a lessor, a lender or a vendee, would

already have had as an addition to the expenses. It makes it more problematic. The result of all that is a reluctance on the part of the financial community to finance airplanes. This is a two-edged sword. It impacts the provider of the funds, but indirectly, it certainly will impact the seeker of funds, if people will not lend him money because they do not have security or access to it.

In the strict legal sense, perhaps Derek Guthrie can discuss some of the points which we have spent considerable time in formulating on a point-by-point basis.

Mr. Guthrie: Mr. Chairman, although I am prepared to carry this out, if you wish, I do not feel that it would be worth while repeating the individual points which have been made in the brief. However, perhaps I could add one or two additional problem areas which we recognize and which I think are serious enough. I will pick two just as examples.

Bill S-5 contemplates registering of rights in aircraft, including parts of the aircraft, but does not contemplate the ability to register rights simply in parts themselves. For example, the obvious case would be an engine or engines. As you senators will know, the value these days of engines of the wide-bodied aircraft can be \$1 million or more—in other words they are assets which are, many times, financed by an institution different from that which finances the airframe. Mr. Kennerly may address himself to that point a little further on this morning.

It would seem to RoyMarine that if we are going to go to the trouble in Canada today of adhering to the Geneva Convention, which was passed more than 25 years ago, we should do our best to make sure that the Canadian legislation is up to date, and that it recognizes a situation or situations which did not exist 25 years ago, in that the present value of engines, and even the ability to exchange engines or to pool engines, really had not been contemplated when the Geneva Convention came into effect.

One of the areas in which we feel Bill S-5 can be improved upon is to permit registration of rights against parts of aircraft, and certainly against engines.

The second point, as an example again, comes back to the difficulties placed in the way of a financing institution which has to be forced to realize upon its security. Bill S-5 has set up a fairly detailed procedure to be followed by which you would have to obtain three different judgments from two different courts before you could dispose of the aircraft.

Mr. Miller has already pointed out the tremendous cost of simply keeping one of the wide-bodied aircraft on the ground or out of circulation for a single day, let alone the minimum, the absolute minimum, of six weeks contemplated in the bill. I emphasize "minimum". The cost is really prohibitive. Mr. Miller emphasized that these default procedures are not taken at the blink of an eye, but are taken as an absolute last resort.

Personally, I am not aware of any seizure of any commercially scheduled aircraft in Canada. I do not profess to be an expert in that particular area, but I believe we have not had that problem in Canada. I am now talking about one of the major airlines. Obviously any default would be carefully considered long before to use the expression, "the plug was pulled."

Just as an example of what could happen, there is in Bill S-5 a prohibition against seizing an aircraft on a regularly scheduled commercial flight.

Senator Asselin: What clause is that?

The Deputy Chairman: Clause 5(4). It applies to component parts.

Mr. Guthrie: It is clause 9(4), which reads as follows:

An order made pursuant to subsection (2) shall not authorize the seizure of an aircraft at any time before the completion of any scheduled flight that has been commenced at the time the order is made.

That raises a very interesting practical question. For example, let us take a Canadian aircraft as opposed to a foreign aircraft. If it was necessary, and a decision had been made to exercise default, this would mean a writ of seizure, and whether it emanated from a federal court or a provincial court it would not matter. It could not be served upon the aircraft; therefore, the aircraft could not be secured until such time as it had completed its flight.

Obviously, if it is a scheduled flight from Montreal to Toronto, Vancouver and on to Hawaii, this would create a rather ridiculous situation in which the bailiff would stand there and watch the aircraft take off for Hawaii. I am not trying to be facetious, but that is one of the possibilities that could occur.

Perhaps even more embarrassing, from a Canadian point of view, would be the case of an institution financing a foreign registered aircraft—an international aircraft upon which a default had been called by the foreign company—realizing that that particular foreign aircraft was scheduled to land in Toronto at such and such a time on such a day. Legal counsel for that foreign company communicates immediately with legal counsel in Toronto and informs him of when that aircraft XYZ is going to land, and asks, "Could you arrange for a seizure?" The court called upon to determine whether or not the seizure can be granted is going to have to determine somehow whether that commercial scheduled flight has finished or not. This will have to be dealt with within a matter of hours, not days or weeks. I find it difficult to understand how the judge called upon to make this decision is going to find out in sufficient time whether this internationally scheduled aircraft is, or is not, terminating its flight in Toronto. It raises a situation, I suggest, that is almost impossible to deal with practically.

There are many other problems, but I believe most of them have been dealt with in the brief. If there are any questions, I shall be glad to answer them.

Mr. Miller: What we tried to look into is the element of practicality. Under what circumstances are we likely to have to seize an aircraft? This is one of the pragmatic points to be resolved. That is why we would hope that several people might be called upon to work with this committee in order to redraft the bill on the assumption that the constitutional issue would have to be resolved. That is separate from the practical drafting of the bill in a way that will ensure it's being accepted by the industries. It is intended to assist as opposed to simply taking a shot at it and finding out that we have to come back here all the time and comment on the bill. The unanimity of opinion would be far more helpful than simply taking an actual piece at a time.

Senator Riley: Are there any problems with respect to these larger aircraft such, as the 707 and so forth? Have there been instances where it is considered necessary for the conditional lender to seize one of these aircraft?

Mr. Miller: Not that I am aware of.

Senator Asselin: Or a DC-3?

Mr. Miller: There have been some interesting South American airline failures that have resulted in the rather unique action of repossessing aircraft, but there have been no problems with major airlines. There have been some bankruptcies among certain European charter airlines, but to the best of my knowledge these problems were resolved with reasonable expediency. I know that one of the German charter carriers could not stay in business and the creditors managed to repossess and sell the aircraft without too much difficulty. I believe it was a DC-8, but the key is to be able to do that.

Senator Riley: That is the case of the pilot coming back with the aircraft?

Mr. Miller: You mean the Vesco situation?

Senator Riley: Yes.

Mr. Miller: That was similar, but it was not a commercial flight. I understand in Peru there was a small government-oriented airline that could not make payments, and after a while and not recognizing the creditors' rights, they took their own action. Peru is a signatory to that convention. I understand the action taken would not normally have been considered in line with the usual legal procedures. In effect, they stole it back.

Senator Riley: That is typical of finance companies repossessing cars—just going down and finding the key in the car and taking it?

Mr. Miller: It is a rather more difficult problem than that. It is not that small an asset.

Mr. Guthrie: I think if we gave Mr. Miller a key to the aircraft he would still have a problem.

Senator Asselin: You said that the bill should be redrafted. Do you have any redraft yourself to communicate to the chairman of the committee?

Mr. Miller: We felt that this would be a bit presumptuous of us—at least until we had the approbation of your committee.

Senator Prowse: We have to have the solution to the constitutional problem before we do anything.

The Deputy Chairman: To answer Senator Asselin's question, in their brief RoyMarine do touch on many of the sections they did not talk about this morning. If you look at their brief you will see that RoyMarine has made some recommendations and proposed some amendments, although I would say not in a legal form.

Senator Prowse: They set out the problems.

The Deputy Chairman: Yes, they are setting out the problems. That is the reason why we called Mr. Shields this morning. I do not know whether he has had occasion to read the brief that has been presented.

Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport: No, I received it just now.

The Deputy Chairman: That is too bad. In any event, we will have occasion to discuss the representations made by the three organizations that are here this morning. Are there any other questions?

Senator Langlois: Going back to this registration of security on component parts, I should like to have some explanation of how this could work in practice.

Take the case of A selling an aircraft to B, and taking security on the whole ship, and then that ship running into trouble with its motors—it has to have a motor replaced. If security is given on a motor, what is left for the prime mortgagor? A carcass with no soul? How would that work in practice? I should like you to explain that to us?

Mr. Miller: Over the course of an aircraft's useful life, the only thing of its origin that will be remaining will be the shell, due to the very rigorous overall procedures. An engine is overhauled every several thousand hours as a matter of routine, and consequently what it was in the beginning and what is in the end are very individual items.

Now, when a jet engine is recorded, say, from the point of view of a mortgage, the serial number, or the plaque of the owner, is affixed to part of the spar, which is actually attached to the wing, and that is about the only thing that will not change over the life of the engine. So from that point of view the parts will be moving in and out just like you change the oil filter and spark plug on an automobile.

Senator Riley: The serial number could be changed.

Mr. Miller: If it were changed, in all probability it would have been done—I hate to use the word—fraudulently. It is unlikely that it would be agreed to. That would be unusual.

The problem of spares in a legal sense is a very difficult one. Engines are a very large discrete system, as are flap systems, landing gear train, certain instrument systems, and the inertial navigation system. These are all very easily identifiable parts and normally, as a matter of routine, their value is hundreds of thousands of dollars and up, depending on the aircraft.

Senator Riley: What about the radio equipment?

Mr. Miller: Yes, all of those things. The cockpit is a multimillion dollar expense. Take the Air Transport STOL planes, as example. You have probably been following their progress in the press. The original cost is relatively low, but the final cost of those airplanes, in order to conform to Canadian regulations in respect of commercial airplanes, is high. Avionics add \$750,000 to their cost. They are very expensive. These sorts of things are very carefully identified. I admit that there are spare tires and other things that are called consumables—things that to do wear out and not essentially replaced or refurbished, but there are all sorts of other parts. So long as they remain for the exclusive use of the airline which originally acquired them, they are carefully inventoried because they are very expensive. You have to keep track of the serial numbers. If there is a failure, you want to know why.

Senator Langlois: A similar situation obtains in the shipping industry. You can compare the financing and acquisition of ships to the acquisition of aircraft. We do not have separate mortgages and securities taken on the motors or the electronic equipment of a ship. It would be comparable to a degree with the electronic equipment and engines of an aircraft. Of course, we have had an advantage under the Canada Shipping Act in that the property of a ship is divided into 64 shares, and you can mortgage one share, 10 shares or the whole 64 shares.

Mr. Miller: There are a lot of valuable parallels.

Senator Langlois: Would you not suggest that this should be adopted in the case of aircraft?

Mr. Miller: I don't know whether we have a necessity for 64 shares, but that is the point of a central registry.

Senator Langlois: There is a central registry here in Ottawa for ships.

Mr. Miller: But in respect of ships, particularly today's ships—large tankers and bulk carriers—the engines are rarely removed from the vessel.

Senator Prowse: Whereas in aircraft they are?

Mr. Miller: Yes. You have very few items in a ship which mechanically require constant change. A rudder may break or be damaged, and it is repaired. It is mostly solid steel. A propeller may break. You throw it out or grind it down, and it becomes a propeller on a smaller ship. You do not have the constant change by law. That is one of the big problems in shipping today, that under flags of convenience there is no regulation of maintenance on ships; but in aircraft there are regulations.

Senator Langlois: But, Mr. Miller, you must be financing the acquisition of aircraft?

Mr. Miller: Yes, we do.

Senator Langlois: How do you protect your financing? Do you take security on the shell alone and leave the motors to the first one who will lend money—to the next man who comes after you?

Mr. Miller: That is a very interesting point. Today, for example, we have several aircraft that we financed ourselves. The airframe and engines constitute one package, and the spare engines constitute a separate package. We have separately protected our interest by registering in accordance with provincial law. In the case of one airline a regional airline that happens to travel in several provinces—we were forced to register in every province in which it was conceivable that the airplane might physically be.

Senator Prowse: And every subdivision that had an air field, presumably.

Mr. Miller: That is a possibility. In certain provinces there is only one registration, and it is not difficult; but in other provinces, conceptually that is possible.

For example, let us take Air Canada. Air Canada, in financing its Lockheed 1011s, does have a problem, because the engines, which are English, are financed in a package by English sources separately from the airframes, which are manufactured in the United States. There you have a very definite case of engines and airframes being separately financed. That is a thorny problem and one which they particularly will have to resolve. There is a further problem in that they are leasing some of their later aircraft, the engines of which happen to be leased from the U.K. So you have a definite division of ownership, which can be a very thorny problem.

Senator Langlois: I am surprised that your brief is silent on this important question, which has been raised by other interested parties in this legislation. It concerns the priority of securities, dating from when the securities are registered with the central registry. Do you have any comments to make on that?

Mr. Miller: By priority, do you mean who registers first?

Senator Langlois: Yes.

Mr. Miller: We have alluded to that in the brief as being a problem, because it is conceivable that a junior creditor could physically register his interest ahead of the senior creditor.

Senator Prowse: Or in a province at the present time.

Mr. Miller: Yes, that is a secondary area of conflict.

Senator Langlois: But that is a fact to your knowledge when you finance the aircraft?

Mr. Miller: Not necessarily. The lessee or the vendee could register first. Under the Aeronautics Act, for example, the certificate has to be issued to the operator of the airplane and not necessarily to the owner or the vendor.

Senator Langlois: But you can always inquire from the central registry. We have the same thing with marine mortgages. They take priority from the date of the registration with the registrar of shipping. Then it is transferred to the central registry here in Ottawa. Anyone lending money on that ship can call the registrar of shipping, in Quebec or Montreal, or the central registry, and he will be informed right there if there are any prior mortgages registered on it. I do not see your point in objecting to this.

Senator Prowse: But a ship can only go to Quebec and British Columbia.

Senator Riley: Not to Alberta.

Senator Langlois: They have the prairie schooners there.

Senator Forsey: It was the celebrated "potato" Jones who said he could not see why any British ship could not sail anywhere from Singapore to Saskatchewan. That was during the Spanish Civil War.

Mr. Guthrie: In reply to the remarks on priority, I come back to a remark I made earlier with respect to the provincial-federal problem, et cetera. I emphasize the words "priority of rights", in this whole area of ranking, or priority of rights, and, as an adjunct to that, the delay within which rights should be registered. Let us talk for a moment provincially or federally, and leave Bill S-5. This is a very complicated and sensitive area.

For example, in the province of Quebec, as you gentlemen are well aware, we do not have a basic system of registration of rights for movable property other than the limited commercial pledge and trust deed, but it will take months to find the trust deed in the way it is registered. So we do not have in Quebec a system of registration. We have priorities established by the Civil Code without registration, which raises in itself some very nice legal problems as to how the Quebec Civil Code would require to be either amended or changed to allow Quebec to participate in any kind of a scheme under Bill S-5.

With respect to your point about the delay in registration, sir, most of the provinces, in their systems for registration of movables, chattels, provide a delay within which registration of an instrument can be made, and providing you register your instrument within that delay you retain the priority that you had in accordance with the date of execution of your document.

I do not feel that the delay is that crucial. It may mean that if you do not have a delay within which to register your document, you simply have to run as quickly as you can to the nearest registry office to make sure you get there before some other person who may have acquired rights immediately after you and unknown to you.

So, for purposes of registering, although not crucial, it would seem perhaps practical to contemplate a short delay of possibly up to 30 days to permit a financing institution to register its documentation—just as we have for chattel mortgages and other movable security.

Senator Langlois: Mr. Chairman, In this respect, may I be allowed to read the witnesses the suggestion advanced by the Minister of Justice of Quebec in a letter addressed to you under the date of January 25 in connection with this bill? The suggestion reads as follows:

Thus, it might be desirable that the Federal Act provide for a mechanism that would recognize the validity of registrations made in each province, or which the Federal Department of Transport would have received a copy.

Such exchange of documents should obviously be changed to the central registry. It goes without saying that the proposed mechanism requires prior consultation with the various registrars of the provinces.

What do you think of that suggestion, sir?

Mr. Guthrie: If I understand the paragraph that you have read, that would be a sort of one-way street. In other words, registration of rights in aircraft would take place in the various provinces but immediately, hopefully, by some means of central communication, the information would be fed to the central registry in Ottawa. That, I think, is an improvement, or would be an improvement, but it would still mean that the financing institutions would be obliged to register, if I understand the remarks correctly, in all the various provincial or county jurisdictions, which is one of the major practical difficulties today when we are talking of an aircraft that is going to be landing in airports all across Canada. It would, therefore, be of some assistance, because to do a title search of the aircraft, if the communications system was good, presumably you could go directly to Ottawa, check all the documents that had been registered in the various provinces, and know what the title situation was. But you would still then be obliged to register in all of the country and provincial jurisdiction. It would be an improvement, although it would not be the ideal situation.

Senator Langlois: But from what you have said this morning, I assume that you are not against the concept of a central registry.

Mr. Guthrie: Not at all.

The deputy Chairman: On the contrary.

Senator Prowse: That would work.

Senator Langlois: That would work, yes.

Mr. Miller: There is a certain amount of confusion as to how the bill would affect transactions already completed—that is, whether people such as ourselves would be obliged to register what we have in the central registry, and whether the procedures that would be necessary in the event of crystallization of security would fall under the

new bill, or those provincial acts that were in force when the transaction was consummated.

Senator Prowse: Let us get a new, workable act first, before we have all these troubles.

Mr. Miller: Well, that is our hope.

Senator Asselin: We have enough troubles already.

Senator Denis: Let us suppose you are the owner of an aircraft until you are paid back. What about the kind of protection you would have? You would be the owner of the aircraft until the loan is paid to you.

Mr. Miller: That is the problem. If I were lessor—and a number of aircraft in Canada are leased—I presume that to seize that aircraft, even though it in fact belongs to me, I would still have to go through the procedures of the bill. It is this court problem.

For example, as I understand it—and Mr. Coolican, counsel for the Canadian Bankers' Association, is more aware of this, as is Mr. Kennerly—in the Canada Railway Act that is not a problem. The fact that the rolling stock is leased, and is therefore owned by a non-railway, in no way impedes that creditor, in the event that he has to realize on his security, from taking back his equipment—and I emphasize, "his equipment", because that is what it is.

Senator Prowse: That could be a practical problem too.

Mr. Miller: Yes. Of course, one problem we have not discussed is how do you find your aircraft?

Senator Denis: But you do have the protection of the saisie de revendication.

Mr. Guthrie: May I reply to the honourable senator's remark, Mr. Chairman? It is interesting to note, senator, that should Bill S-5 become law in its present form, the saisie avant jugement, recognized in the Quebec Civil Code or Procedure, would be wiped out. You would no longer have the right to go and seize an asset that belonged to you, even as owner or as pledgee. You would have to obtain a judgment from the court permitting you to make the seizure, which again, from a practical point of view, raises the most extraordinary problems, because by the time you got around to getting your judgment, the chances of your actually being able to seize the asset are probably less than five per cent. So not only would the Civil Code be affected, but even our procedure—the Quebec procedure—would have several articles wiped out with respect to aircraft.

Senator Denis: Yes, but you would be protected. The aircraft would be seized and nobody could use it. It would be in the hands of the sheriff.

Senator Asselin: In order to have the aircraft seized, you would have to obtain a judgment.

Mr. Guthrie: Saisie-revendication, saisie avant jugement.

Mr. Miller: The second problem is that you not only have to seize it, but you have to dispose of it.

[Translation]

Senator Denis: How can you become the owner before the judgment?

Mr. Guthrie: If we are already owners, we have the right to have a garnishee order issued before the judgment.

Senator Denis: That is right.

Mr. Guthrie: And to institute an action against the owner of the aircraft in order to obtain possession of it and of the assets, during the action. But, the important matter is the possession of the aircraft during the action, to avoid damage or a flight not recognized by the authorities etc. Garnishee proceedings are recognized in Quebec and their purpose is of great interest to creditors, that is to protect the assets involved.

[English]

Senator Langlois: Your only solution would be to revert to my prior suggestion, that you should try and convince your legislature to adopt the same principles that are in existence in the Canada Shipping Act. As you know, under the Canada Shipping Act, the mortgagor has the right to sell the ship without any recourse to law. He can give a bill of sale at any time provided his debtor is in default of payment. This is section 50 of the Canada Shipping Act.

Mr. Guthrie: You are right. There are many areas in the Canada Shipping Act that I think could be borrowed, if we are looking at the whole concept, to revitalize the concept of a central registry. I believe there are areas of that act that would be of assistance to the honourable members here.

Senator Langlois: The Aeronautics Act has borrowed many things from the Merchant Shipping Act, including the definition of an aircraft, which is almost word for word the definition of a ship in the Canada Shipping Act.

But you have not commented on my prior suggestion that this bill, S-5, should have been introduced as an amendment to the Aeronautics Act, instead of doing it by a separate piece of legislation as is being done now. Would you agree with this?

Mr. Guthrie: My immediate reaction would be, first, that the setting up of a central registry for the recording of rights in aircraft is perhaps outside the practical sphere of the Aeronautics Act, which deals basically with aerial navigation, et cetera. There is nothing that would prohibit the introduction of the equivalent of Bill S-5 into the Aeronautics Act, but as I say, my reaction would be that you are getting into an area of property rights in aircraft which I do not think is really the main purpose of the Aeronautics Act, although I grant you, some of the regulations under the Aeronautics Act do talk about registration of the owner, et cetera, and they even define an owner. But it seems that the purpose of the regulations under the Aeronautics Act—the relevant regulations—was merely to permit Ottawa to control the flights of aircraft and to have identification numbers for aircraft rather than to deal with rights in the aircraft.

Senator Langlois: Section 6 of the Aeronautics Act empowers the minister to make regulations with regard to the conditions under which aircraft are registered in Canada.

Mr. Guthrie: Again, senator, I am emphasizing that I do not see any legal reason why the kind of articles we are talking of today could not be introduced as an amendment or an adjunct to the Aeronautics Act. I have just not thought through the philosophy. What advantage, for example, would there be to proceeding in that manner rather than having a bill dealing strictly with property

rights in aircraft? Would there be an advantage in doing it? I cannot think of one offhand.

Senator Prowse: For people concerned not with the navigation but purely with the financing of aircraft, could we have a separate bill covering the financing and then refer it, if necessary? It would mean that you could get to know one act instead of having to know an act which has a whole lot of stuff in it which is not relevant to your problem. In other words, this would be more satisfactory from the point of view of an operator, in the sense of a lender, and his solicitors. It would be easier for them to operate with a second act than with a part of another, more complex and complicated, act.

Mr. Miller: Most financing agreements stipulate, in respect of commercial aircraft at least, that the operator of the aircraft operate that plane in accordance with the regulations under the various aeronautics acts.

Senator Prowse: So it is comme ci comme ça.

The Deputy Chairman: On the point Senator Langlois raised, owing to the fact that we have to comply with the Geneva Convention, do we not have to pass special legislation?

Senator Langlois: No. We have done that in the Canada Shipping Act with respect to pollution. We have done it with respect to load line certificates, and so on. They were annexed. The conventions were ratified by adding a part dealing with the particular point as an annex to the Canada Shipping Act.

Mr. Guthrie: May I respond to the general question just asked, Mr. Chairman? If Canada chooses merely to pass the minimal legislation necessary to comply with the Geneva Convention, it can probably be done in a matter of a few paragraphs, because the requirements of the Convention are rather basic and leave a considerable amount of leeway to the national states in question. However, I feel that Canada should be doing more than merely complying with the bare minimum of the Geneva Convention, because of the fact that we are 20 some odd years down the pike from where we were when that convention was passed. I think it would reflect to Canada's advantage and to its credit if Canada attempted to bring forward legislation which not only complied with the Geneva Convention but went as far as possible towards recognizing the factual situation both with respect to commercial aircraft, and with respect to the financing of commercial aircraft.

I feel that many of the ideas presented in the draft of Bill S-5 are excellent. Some of them do go beyond the requirements of the Geneva Convention. That is not to say they are not good. Quite to the contrary; they are good. I think we should be exploring and, perhaps, perfecting some of the additional areas rather than just falling back on a minimal amendment to the Aeronautics Act. That is my own personal feeling.

Senator McElman: Mr. Chairman, I was impressed by the offer of Mr. Miller, on behalf of his industry, to assist in drafting proposed amendments to this bill. That offer raises a question in my mind. Can he tell us whether his industry, the financing aspect of aircraft, was consulted at any point prior to the presentation of this legislation?

Mr. Miller: I can only speak for my own firm. When the bill was originally presented in 1973 as Bill S-9, we caught it in the other place. We presented our comments, which

were not unlike the ones contained in our present brief. Because Parliament was prorogued, we were told that if, as and when a bill—this bill or similar bill—were presented we would in fact be consulted in advance of its being presented to the Senate. Unfortunately, that did not occur. In fact, we spent a considerable amount of time and effort in attempting to see that certain amendments would be made along the lines we are once again discussing. We consulted with people such as De Havilland Aircraft and the Boeing company, and everyone agrees in principle with the concept of the bill. But, to a man, everybody is concerned with the execution of the bill and certain elements in the bill.

Senator McElman: Then so far as you know there has been no direct consultation as to the views of your industry which is very much involved in this. There was no preconsultation before the presentation of the bill.

Mr. Miller: Essentially, no. If there were, they do not seem to have found their way into the bill.

Senator McElman: I find this incredible, Mr. Chairman. Perhaps it is something we should pursue with witnesses representing MOT.

Senator Riley: In respect of the financing of aircraft, am I correct that they are usually purchased by corporations? In other words, even a private individual buying an aircraft of any considerable size usually does it through a separate corporation in the same manner would Air Canada or any of the other airlines would. We have in at least some provinces the Corporation Securities Registry Act, and, as I recall, the securities which are registered take into account any replacements of parts by new parts which are incorporated into an aircraft, or into any other such commodity. If that were done, would that not give adequate protection to the financing organizations?

Mr. Miller: Do you mean such as spares, once they are affixed to the aircraft?

Senator Riley: That is right—things like new radios, new engines and that sort of thing.

Mr. Miller: That is what we consider under the doctrine of accession. Up until recently, for example, the general principle under which most lessors and lenders operated was the doctrine of accession. In other words, "This is our equipment. Anything attached to it becomes part of our security." However, there was a recent case, *Firestone v. IAC*.

Senator Riley: I am not familiar with that.

Mr. Miller: That case went to the Supreme Court. I can briefly suggest what its attributes were. I understand that IAC conditionally sold a truck to an individual. The tires on the truck were from the Firestone Company on a lease to the individual. When it was necessary to repossess the truck, IAC repossessed the entire truck including the leased tires and said that, inasmuch as the doctrine of accession was clearly set out, anything attaching to the security became their property. Firestone said, "No, these are very discreet and identifiable parts and we think they should be removed." As I understand it, the courts upheld Firestone. So there is a certain amount of concern expressed in instances where you have discreet and recognizable parts that become attached to someone else's security. Again, this is particularly true where you may have engines financed quite separately from the airframe. What

used to be the case was that if I had an aircraft with four engines, my security comprised the aircraft with four engines, and any engine which from time to time might be on that airplane I assumed was my security. My engine which may have been in use by another airline in another country, owing to the pooling arrangements that airlines generally have among themselves, I would also assume to be my security.

Senator Prowse: But you do not get the airplane that is attached to it.

Senator Riley: Would it be the responsibility of the conditional seller, or whatever you might call him? Would it not be his responsibility to search the registry for these corporations' securities and determine whether or not the securities took precedence over the conditional seller of the tires, for example? Was the *Firestone* case predicated upon the avoidance of the provisions of a registered corporation's securities?

Mr. Guthrie: Senator, Mr. Miller obviously reads the Supreme Court jurisprudence assiduously. Much more so than I. However, I would suggest that the problem is one of identification of the parts. As long as the individual parts can be identified and you can prove that that is the part that you in fact financed, that is one thing. For example, you may have a serial number or a plaque, something about which there could be no dispute, about which you can say, "That is the one that I financed." That is the crux of the whole problem and it has been recognized as such. As you know, in United States legislation there is provision for registering property rights in engines, propellers, et cetera. The limited amount of American case law that I am aware of shows an example where a charge was placed upon an airplane and all accessory parts. There was a dispute as to who had title to the engines, and the party that had taken security of the aircraft and all its accessory parts was found only to have security in the airplane; not in the engines. Somebody else had title to the engines because it was too general a definition. It was not possible to determine whether the engine that was on the aircraft at the time they repossessed it was the same engine that was originally on the aircraft. The problem came down to being able to specify and identify.

Senator Langlois: When I asked you for your comments on the suggestions made by the Department of Justice of Quebec in regard to the registration in Ottawa, and the securities registered in the provinces, you made the comment that this will create a difficult situation for the financing community due to the fact that they would have to register the securities in all the provinces of Canada in order for them to be fully covered. Am I right in assuming that the only solution to the problem is the vesting of the authority in the federal government?

Mr. Guthrie: I think, senator, this has a full circle to it. The answer is, if we can convince the provinces, yes, without hesitation.

The Deputy Chairman: That will simplify the problem.

Senator Langlois: I do not share your opinion. I think they already have the necessary authority under the general power of the federal government to register with the Government of Canada. This principle was sanctioned by the Privy Council, the Supreme Court of Canada, and I have been told by some of my friends that this decision dates back to 1952.

Mr. Guthrie: It does not matter at all—

Senator Langlois: It does not matter if it dates back to 1867. The older the better.

Mr. Guthrie: You are quite right, senator.

Senator Riley: How could you encompass pieces of an airplane, a radio, or an engine, under the provisions of the Constitution dealing with peace, order, and good government?

Senator Prowse: In any event, what you could have right now is the situation where you have rights in the Federal Court, and the provinces would recognize the rights, you would appear to have under provincial jurisdiction and the provincial courts. Then we really have fun; we get the reference you are asking for.

The Deputy Chairman: I would like to remind the committee, that it is already five minutes to 11, and we have another organization to hear from. I think your question should be asked of the other organization? At that time, if you feel you can add something, you can do so. We will give an opportunity to the other organizations.

Senator Asselin: Mr. Chairman, we have been all very impressed with the presentation this morning, and I wish to express at this time—I am sure I am speaking on behalf of all my colleagues—my appreciation. I wonder whether these witnesses could remain available during the sitting so that we can have the benefit of their further comments.

Mr. Miller: It will be our privilege.

The Deputy Chairman: Thank you very much, Mr. Miller and Mr. Guthrie.

I now call upon the Canadian Bankers' Association.

On my right is Mr. Bellevue, Assistant General Manager (Corporate Lending) of the Royal Bank of Canada, and to his right is Mr. Coolican, who is the legal adviser. Mr. Bellevue, do you have a statement to make?

Mr. G. A. Bellevue, Canadian Bankers' Association: Thank you, senator. Mr. Coolican has prepared a very brief summary of our position following the submission of our brief to you earlier. After listening to Mr. Miller and his associate this morning, I am afraid that you are not going to find very much new in it. However, with your permission, I should like to ask Mr. Coolican to read it.

Mr. Colin C. Coolican, Canadian Bankers' Association: Mr. Chairman and honourable senators, first of all, on behalf of the Canadian Bankers' Association I would again, like to thank you for the opportunity of submitting our brief on Bill S-5, and attending before your committee and discussing or commenting on the bill. We will answer any questions which you have on the brief or on the general role of the banks in financing aircraft in the aircraft industry.

As we have indicated in the brief, the association and the banks welcome the idea of providing for the establishment of a central registry for aircraft. We recognize the need to regulate in certain respects the circumstances under which an aircraft may be seized.

At a time when the value of aircraft and associated equipment has become so high, and the methods of financing have become so complex, we support legislation which we feel was originally intended to provide for a more reliable security in aircraft than what was available in the

past. We hope it will provide for more flexibility in approaching future methods of financing.

In the brief, as well as the addendum that is attached to the brief, we have tried to set out those areas of the bill, and some of the specific provisions, which we feel might be amended to meet more fully the intended purpose of the legislation, and avoid, where possible, unnecessary interference.

We have set out, on page 3 of the brief, our basic areas of concern. I thought it might be useful if I ran through them quickly. You will quickly see the areas of concern to our organization are in many respects the same as the areas of concern of others, although some of our emphasis and some of our concerns are a little bit different.

I think the first problem we have is that it is not clear whether the bill was intended to cover registration of a complete aircraft, or whether it would extend to the separate registration of parts and components. In particular, I refer to the engines on the larger commercial aircraft. Nor is it clear whether the bill was intended to relate only to specific charges against aircraft, or whether it would also apply to the traditional floating charge which may well cover aircraft, parts and components.

I think you have seen, from the other briefs presented to you, that the value of commercial aircraft and the value of separate parts and components make it very desirable to be able to separate them for the purposes of financing and for the purposes of collateral security, whether that security is specific or by way of a general floating charge.

I think the second point that we should like to make is that we feel the bill should clearly establish under clause 7, which deals with priorities, that parties, by agreement amongst themselves, can effect their priority.

Senator Prowse: And third parties?

Mr. Coolican: I think by agreement amongst themselves they should only be entitled to effect their own relationship vis-à-vis third parties. We look to the legislation, and to the priorities registration.

Thirdly, we feel provisions regulating the seizure of aircraft are too cumbersome. We recognize the need to protect the farepaying passengers. Nevertheless, it must be remembered that an important aspect of seizure, as a remedy in those very few situations where you might consider or use it, is the speed with which it could be effected once the decision is made by a lender to exercise that right.

Fourthly, although we acknowledge the need to regulate in some respects the seizure of a commercial aircraft, we do not feel there is any need to regulate the forced sale of an aircraft. In particular, we do not feel that the bill should provide, as it does in section 10, that the court has a right to establish terms and conditions under which an expensive aircraft can be sold for purposes of realizing on it as security. Such sale is unlikely to arise before seizure, and subject to the seizure's being regulated by a court to protect the passengers, we feel that the right should be as agreed upon between the borrower and the lender.

Fifthly, we feel that the transitional provisions may not preserve the security and priorities of some of the existing security holders. We feel that it is very important that they should.

Finally, we would suggest the inclusion of a provision which limits the liability in tort of the holder of a collateral

al security. We have provided in our brief the type of provision we were thinking of, which is not an unusual provision and appears in other legislation similar to this.

You can appreciate that this simply outlines our basic concern or concerns. Our more detailed comments are included in the brief. If it is the decision of the committee that the bill should be revised or amended in some respects, we would hope that you would include at least some of these suggestions. If honourable senators have any questions, our purpose in being here today is to respond to those questions or comments.

The Deputy Chairman: Your suggestions are explained in the addendum.

Mr. Coolican: They are in both the brief itself and the addendum. The addendum tends to address itself perhaps to the more legal points, and in fact there are some suggested drafting amendments in the addendum. But I think our basic concerns are the ones I have outlined here, and perhaps are not entirely legal. Those are the ones that are discussed a little more fully in the brief.

The Deputy Chairman: Thank you. Are there any questions?

Senator Asselin: You appear to have the same problems as the witnesses who were before us earlier this morning.

Mr. Coolican: I think they are basically the same. Perhaps they have some different problems. The floating charge is one that concerns us more, in the sense that a bank may be more inclined in some loan situations to take a charge by way of a floating charge, as opposed to a specific charge on an aircraft or a particular part of an aircraft; although there are some situations, as I understand it, where a bank would certainly be interested in the security of a full aircraft or a pool of engines.

Senator Langlois: Can you tell us under what circumstances such a floating charge could be created?

Mr. Coolican: For example, in a loan to an airline, by way of an operating or term loan, which is secured by a general charge on the assets. That would be a typical situation. The problem we have is that it is not clear in this legislation whether you intend that we register that charge against the various aircraft that may be covered by that charge. We would like that clarified. If you are going to develop a central registry—and we endorse that concept—there should be some provision for the floating charge.

Senator Prowse: It would be a little more satisfactory, would it not, if the floating charge had to be registered against all things that it covered?

Mr. Coolican: Reference was made to the Corporations securities registration act. I am familiar only with the Ontario legislation. If a bank were going to take security by way of a floating charge, we would still register it under those statutes. To the extent we knew there were going to be aircraft or components, we would also register it under the terms of this bill. In that way we would protect ourselves both vis-à-vis the aircraft as well as any other assets. The airline has a lot of trucks and other equipment which would fall within the provisions of this bill.

Senator Prowse: In other words, other creditors would have to protect themselves by looking to both places?

Mr. Coolican: That is right.

Senator Riley: Your floating charge would cover replacement of a complete aircraft?

Mr. Coolican: That is right. One of the questions that was raised during the earlier submission was the question of replacement of spare parts. I may not be as familiar with some of these provisions as Mr. Miller—correct me if I am wrong—but I think that in a lot of the documents which provide for financing of aircraft, there is provision that where you have a replacement—where the airline is making a replacement and has title to it—you acquire the ownership of that replacement part. If you do not, you are obligated to get title to it, purchase it from whoever in fact owns it. I think that is the usual procedure. When you are talking about a particular aircraft, you often have provision in the financing documents to give the owner, who would usually be the financier, the ownership of that particular part, and he releases ownership in the part that has been replaced.

The Deputy Chairman: Are there any further questions?

Mr. Coolican: I might add, we did not address ourselves to the constitutional problem in our brief. Our reasoning was that opinions are so diverse and you can come up with so many different opinions. Our feeling is that it is a problem. We feel that the best solution is the negotiated solution, and we hope this will be pursued. In the meantime, we endorse the other concept of the act—i.e. the central registry—provided we can get it into a form which we feel is workable.

Senator Prowse: From your point of view as a lawyer, a negotiated solution might be attacked by a third party on the grounds that one of the other parties has no right to negotiate.

Mr. Coolican: That is right.

Senator Prowse: I was thinking of an abdication as against the delegation of authority. Which would give you the better protection—the negotiated solution, which might be subject to being upset by the courts, or a decision in the courts, which you know you are going to be dependent upon regardless of how the provinces or the federal government might feel about it?

Mr. Coolican: As a lawyer, I would prefer the decision of the court. My concern would be that if you submitted a very complex bill, the decision you got might not be quite as categorical as you wanted. I wonder if, from a practical point of view, some form of negotiated settlement of the thing might not in the long run work.

Senator Riley: You mean double legislation.

Senator Langlois: In practice, how would you be able to obtain this allowance for priorities as between interested parties? You would have to do that with parties who are obtaining the security at the same time as you are.

Mr. Coolican: I have no problem with registering the agreement to a change of priorities. In other words, if you agree with a senior security holder that his security was to be prior, but the junior security holder registered in advance, you would register that agreement so that it would show what the order of priorities was.

I think clause 7 talks about notwithstanding other agreements to the contrary. If I am misinterpreting that language, I hope someone will point it out to me. My concern is that security holders, in trying to facilitate the operator's point of view, may be prepared to change their secured position. That would be done by agreement, and presumably that agreement would be registered, because it affected the interest of the security holders in the aircraft.

Clause 7 says:

Notwithstanding any other law or agreement to the contrary—

The priority of registration would determine the priorities. I do not think that should be the case if, as between two parties, they agree on the reverse order. I think they should then be entitled to do that.

Senator Langlois: You would have a hard time convincing a mortgagee to step down in your favour, unless you buy him over.

Mr. Coolican: As someone who was prepared to put up additional financing, I am not sure that I would see it as my function. I think it would be the operator of the aircraft who would have to do the convincing whatever considerations he would have to give to them—

Senator Langlois: But he would not have an easier task than you would have.

Mr. Coolican: I presume it would be a very difficult task, but I think that sometimes, or very occasionally, it is done.

Senator Prowse: Now you can help it.

Senator Denis: But an aircraft is no different from any other investment that you make. Whether you make an investment in an aircraft, a house, or a car, they are all the same thing. Perhaps the amount is different.

Mr. Coolican: I think it is more than just the amount. An aircraft travels through territories and geographical areas that are out of the jurisdiction.

Senator Langlois: The problem is the mobility of the aircraft.

Mr. Coolican: Yes, it is the mobility that makes the difference, plus the point that was made earlier, that before you get to the end of the lifetime of the aircraft there is hardly a part of it that has not been changed. With a car or a house or with other traditional forms of security you just do not have those elements.

Senator Prowse: What about interprovincial truck lines?

Senator Denis: That would be so if that aircraft has had a hard time. If you read clause 9, paragraph 4, about the completion of the trip, you might find that interesting. Suppose that aircraft owner is short of money because he cannot meet his debt to the finance company. Is it better for you to let that aircraft complete the trip in order to be able to reimburse the passengers, or—

Mr. Coolican: I think, as long as the aircraft is still going to be in Canada you may be quite right, but the problem arises there that the aircraft may be going to a country where you are not satisfied that your rights will be enforced as they would be in Canada.

Senator Prowse: Like Havana.

Senator Denis: Like a charter aircraft on a trip of 7 or 21 days to Europe and back with 200 passengers. It is to the advantage of the financial people to let that trip be completed.

Senator Prowse: No.

Senator Denis: Otherwise those passengers will get a reimbursement, or something.

Mr. Coolican: The cost of reimbursing the passengers may be minimal in comparison to the price of the aircraft, which might, say, get stuck in Cuba, and you might never get the thing back again. I presume the only thing you, as legislators, are interested in protecting from this point of view is the paying passenger. You do not want him stranded in the middle of nowhere, having paid his fare. But presuming you could satisfy a court that you will take care of that, I cannot imagine that you are concerned at that point with what happens as between the lender and the borrower.

Senator Prowse: If you come in with an agreement from another airline which obviously can perform, they will bring him back, and there should be no objection.

Mr. Coolican: I cannot see your concern.

Senator Langlois: Your interest is not in stopping this aircraft at such and such a point of entry, to prevent him from carrying on. Your main interest is to obtain security before he leaves the country.

Mr. Coolican: It may be to stop the aircraft. We may decide that an operator just cannot operate the thing profitably, or certainly profitably enough to pay our financing, and that it may be going to another country where our rights will not be enforced, and where there may be other creditors who will seize it before we do.

Senator Langlois: If you have security deposited before the aircraft leaves Canada, you are protected.

Mr. Coolican: If you had dollars, and if your payments were made, then—

Senator Prowse: The problem would not arise.

Mr. Coolican: —there would not be a problem in the first place.

Senator Langlois: This would not apply to charter flights. This only applies to scheduled flights, I take it.

Mr. Coolican: No, I think a scheduled commercial aircraft includes a charter.

Senator Langlois: Not in the French text. The French text speaks of regularly scheduled flights.

Mr. Coolican: It was my understanding that it applied to charters as well.

The Deputy Chairman: May I ask Mr. Shields? Does it cover charter flights also?

Mr. Coolican: It refers to scheduled commercial air service, and I thought that included charter flights.

Mr. Shields: No.

The Deputy Chairman: It does not, no.

Mr. Miller: We have set that out in our brief as being something which should be added. May I make a further comment?

The Deputy Chairman: Will you come up to the front here so the reporter can hear you better, and the translators also?

Mr. Miller: On the question of passengers, and the question of their being stranded, or being reimbursed on the charter side today, charter airlines have to be insured against non-performance, and therefore your passengers would be wholly indemnified.

Do not forget that a lot of the problems you have seen in the press with respect to charter flights are in fact due to the failure of tour operators to pay the charter airlines and to fulfill their contractual obligations. Therefore the charter airlines have withdrawn their air claims. With regard to agencies—certainly in Quebec—there is a strong movement to have them bonded so as to save the passenger harmless.

The question of security is an interesting one, and we have addressed ourselves to that point as well, inasmuch as the airline may post a bond in order to seek the release of his airplane. That has pros and cons, but one problem we do see is the possibility of damage to the aircraft that can be disguised. In the Vesco incident, with regard to the repossession of the plane, the pilot very proudly claimed that he had monkeyed around with the controls to a degree that it would take three months for the manufacturer to find out where the problems were. That can be a severe problem.

Senator Prowse: That must be a crime. Is it not?

Mr. Miller: It still does not help the lender to have recourse against an individual.

Senator Langlois: I do not get you when you speak of the disadvantage of obtaining a bond. This is done regularly in shipping. We are seizing ships all over the place in Canada before they leave port. We obtain security in the form of a bond, or of money deposited in court, and there is no problem at all. I have been doing that for the last 35 years.

Senator Prowse: It would depend on the form of the bond, and a whole lot of things.

Senator Langlois: We arrest the ship, and we get the security, and there we are.

Mr. Miller: I hate to make points our of turn, but the point is that maritime law, or admiralty law, is far more developed on an international basis than laws respecting aircraft. I feel much more comfortable on the ships we finance and our ability to seize an asset and dispose of it virtually anywhere in the world under the tenets of admiralty law as they apply almost worldwide. The problem with aircraft is that that has not been the case.

Senator Langlois: One of these days you will say that in public.

Mr. Guthrie: With your permission, may I say something, Mr. Chairman?

The Deputy Chairman: Yes.

Mr. Guthrie: On the question of bond, Senator Langlois, I always like to feel that Quebec gets its proper exposure.

By removing the seizure before judgment, which had as its adjunct the right to post security, we would be, as I said earlier, wiping out the recourse of posting security to permit that aircraft to take off, so I agree with the concept of the bond, and I do not think anybody will dispute it. But at the present moment we have a problem on the basis of this legislation, because in Quebec we would not be able to take advantage of that part of the Civil Code procedure.

Senator Asselin: You mean, to have a seizure before judgment?

Senator Denis: But you want more protection of your investment in aircraft than with anything else. Is that your conclusion?

The Deputy Chairman: You want good protection.

Senator Denis: You want better protection of your investment in aircraft than anything else.

Mr. Guthrie: I would reply to that in two ways. We do not want any better protection than anybody else for their asset, but I believe we must recognize that the asset that we are talking of is, first, an extremely valuable asset in terms of total dollars, and secondly, extremely mobile, as opposed to ships and railways, where you can literally run after the asset in question and catch it; with an aircraft it is a different story.

Senator Langlois: No, no.

Mr. Coolican: Most of the time you can.

Senator Langlois: If you have a Captain Erb you will not do that very easily.

Mr. Guthrie: I think there is a bit of Captain Erb in all of us.

The Deputy Chairman: Are there any more questions of our banker friends? If not, we will ask the Equipment Lessors Association of Canada to come up.

Mr. Coolican: May I add one last remark? That is, again, as in the case of RoyMarine, if the senators choose to amend the bill, or to adopt some of the suggestions that have been made, we would be glad to lend our assistance to any extent that we can in helping with that process.

The Deputy Chairman: Thank you very much.

I now call on the representatives of the Equipment Lessors Association of Canada, Mr. Frank Kennerley and Mr. Langdon. I understand Mr. Langdon is the president of the association, and Mr. Kennerley is the association's counsel.

Mr. Glen Langdon, President, Equipment Lessors Association of Canada: Mr. Chairman and honourable senators, thank you for the opportunity of presenting our brief to you. I sincerely hope that everyone has had a chance to leaf through it. We are in the position of following two particularly concise representations on the part of RoyMarine and the Canadian Bankers' Association. We would not like to waste your time by repeating information which you have already heard, and which basically we subscribe to. We do, however, have some comments to make with respect to the scope of the applicability of the proposed legislation.

We are concerned with the fact that there are over 10,000 aircraft operating in Canada. These are not all commercial

aircraft. There are actually less than 500 commercially operated aircraft. So there is a substantial number not addressed directly by all of the provisions of the current version of Bill S-5.

We also feel that we have a proposal to make with respect to the resolution of potential disputable jurisdictional authorities in implementing legislation.

With your permission, I should like Mr. Kennerly to address you with respect to our position on this point.

Mr. B. Frank Kennerly, Counsel, Equipment Lessors Association of Canada: Mr. Chairman and honourable senators, there is also before you a Canadian Bar Association brief dated 1964, which addresses itself to the constitutional issues. The whole scheme of the proposal of the Bar Association, which, in part, is repeated in our brief, is that you would simply have a central place to record interest in an aircraft. The substantive law of the particular contract or instrument or bill of sale, or whatever it is, would be the law of the province. All you would have would be a registry to register these documents. You would comply fully with the law of the province, but you would also have to record that interest in a central registry, presumably in Ottawa. The effect of recording that interest would be effective notice to any subsequent purchaser or encumbrancer of that aircraft.

I find it difficult to see how this is a constitutional issue in the face of the *Johansson* case, which dealt with property rights in fact. It had to do with the municipality of West Saint Paul which tried to pass a bylaw prohibiting an airport. It was decided in that case that the municipality did not have the authority or the power to so pass a bylaw. Now, that certainly has to do with property rights.

We have had legislation in this country for many years, the Carriage by Air Act, which limits the liability of the air carrier for the death or the injury of passengers. That is all that act provides for except that it also relates to baggage and there is a limitation there. But that certainly has been held to be constitutionally valid and it certainly deals with civil rights directly. It is necessarily incidental, however, to aeronautics which is within the federal jurisdiction.

So I find it very difficult to understand how people have a problem. If the system is one simply of recording the document, and if the person does not record the document in Ottawa, then he loses out to anyone who has recorded the document. It is similar to the shipping register which we have heard discussed here. I see no constitutional problem here at all in this type of scheme.

The bill before you involves itself certainly with substantive law having to do with the rights of people, and a great deal of procedural law is also included in there requiring the court order. I see no reason why you should include this procedural law, because each province has its own procedural law with respect to seizure and repossession, et cetera. In the Province of Quebec I understand a court order is required. It is not so required in most other provinces. So why not leave the procedural law and the substantive law as it is today and simply afford to the subsequent purchaser or the encumbrancer the protection by being able to go to one central registry to find out who has an interest in that airplane. If that person has not registered in that registry, then he can take title or encumber that airplane without worrying that someone else might come along and take the airplane.

There is no practical way in which any lawyer in this country can certify that the title to an aircraft is clear, whether it is a 747 or a Piper Cub, unless he searches in every province, and in some cases in every county in every province, in this country. That is a rather impractical system.

The other advantage of having a central registry is that we can implement the Geneva Convention, which we became a signatory to 25 years ago. And, senators, I assure you that I do not feel you are hurrying it up, having waited 25 years.

The protection afforded by this convention is that with respect to a Canadian aircraft, when it is in a foreign signatory country, a signatory country to the Geneva Convention, the rights of anyone who has recorded an interest in that aircraft in the Canadian registry take priority over any rights any person may acquire in the foreign signatory country over that aircraft, other than certain salvage rights and preservation costs and things of that nature.

This protection is not presently being afforded to Canadian aircraft in foreign signatory countries, because we do not have a central registry. But we in Canada must recognize the rights in foreign signatory aircraft while they are in Canada. So it is a one-way street. The others are taking advantage or having the advantage of this situation, whereas we cannot take advantage of it for our people in our aircraft, because we do not have a central registry.

The situation is, in fact, that many aircraft are financed. They are not airline airplanes. I would suggest that we probably do not have more than about 300 airline jet aircraft in this country under Canadian registry whereas there are more than 10,000 aircraft in total. So the problem is significant to the person who buys a \$10,000, \$20,000, \$30,000 or \$50,000 aircraft. It is quite significant.

This is where the problem is. This is where the repossessions occur. This is where the person buys an aircraft, and then finds an encumbrancer coming out of the woods saying that he has an encumbrance on that airplane that was registered in some very strange county somewhere, and he loses his interest in the airplane. This, in fact, is happening, although it is not happening regularly with large commercial airplanes.

With respect to engines, the question was raised as to how to handle this situation. We would suggest that the engine be registered in the same way as the aircraft is, and that it have a nationality when it is first registered and first comes into service. Then if it goes to a foreign country, the Canadian registry on that engine has to be cancelled before it can be registered in the foreign country, in the same way as aircraft.

You are dealing with engines. The suggestion in our brief, and in the Canadian Bar Association brief, is that engines over 850 horsepower should be registered. We are talking of values in excess of \$10,000 there. All turbine engines should also be registered because you cannot get any of those under \$30,000 or \$40,000. You have heard people say today that the values can go up to over \$1 million.

The two essential reasons are to enable an aircraft purchaser or encumbrancer to search that title and to determine he has clear title, and also to afford to Canadian aircraft abroad in a foreign signatory country the protection of the Geneva Convention.

It is a recording system, and a recording system only, of the document itself, and if you rely upon the substantive law of the province, then I do not see any constitutional problem at all.

I would be happy to answer any questions, if you have any.

Senator Langlois: Mr. Kennerly, when you say in your brief—and you have repeated it verbally—that the substantial validity of the instrument and the validity of the substantive rights under such an instrument would not be affected by the creation of a central registry, how can you say that in the light of the provisions contained in clause 7 and clause 8 of the bill? In clause 7 you read:

Notwithstanding any other law or agreement to the contrary, a person—

And then you have this priority of registration, which gives a priority to the claims, so this would affect the substantial validity of the instrument.

Mr. Kennerly: Perhaps I am suggesting senator, that that is a procedural aspect rather than a substantive law as to whether or not the instrument is valid. Yes, to an extent we are infringing upon the substantive law only to the extent of the registration. So, if it is not registered it is not valid.

I was thinking more of the substance of the document—whether it had a witness, whether it had a particular type of affidavit—and remembering, as well, that initially there will be a requirement to register, according to the provincial laws, where registration is required, and hopefully the provinces will realize there is a central registry in Ottawa, and they will, in time, amend their legislation and not require registration under provincial laws.

Senator Langlois: Would it be much better to have the decision before this bill is passed.

Mr. Kennerly: I think this law should be enacted first and then the provinces would follow suit. I feel it would be a very long time before we would get agreement from all the provinces.

Senator Asselin: Well, we must have that.

Mr. Kennerly: I feel that this legislation can go forward, and we are not suggesting with this legislation that there no longer be a requirement to register in the provinces. The provinces in time, I should think, obviously, realistically, would amend their legislation realizing there is a central registry office in Ottawa, and they are requiring people to make duplicate registration within the provinces.

Senator Asselin: The provinces will not give up their property rights.

Mr. Kennerly: It is not a matter of giving up their rights.

Senator Asselin: They cannot give their jurisdiction to the federal government.

Mr. Kennerly: We are not suggesting they do that—at least our brief does not suggest that. It simply says that we establish in Ottawa a registry.

Senator Asselin: It is too simple in my mind.

Senator Prowse: You get one more—

The Deputy Chairman: Order. I am sorry to interrupt, but I think we should only have one person speaking at one time, because it is very difficult for the reporter.

Senator Asselin: I do not want to raise any legal question with the witness because it would take too much time to deal with it, but I do not agree with what the witness says regarding constitutionality and legality.

Senator Langlois: But he agrees with the Privy Council and the Supreme Court of Canada. He is in very good company.

Senator Prowse: And, I might add, the Department of Justice.

Senator Forsey: Whether those judgments are, in fact, applicable, surely Senator Asselin's point is whether the particular judgments which have been quoted are relevant, and I confess I have some doubt on the point.

Senator Langlois: The Canadian Bar Association said the opposite.

Senator Forsey: Yes, I know, but they are not infallible.

Senator Langlois: Nobody is.

Senator Prowse: May I ask this question to get it clear: I understood from the previous witnesses that their complaint is that there are so many searches necessary now that it is almost an impossibility, and that they are subject to so many different jurisdictions it is practically impossible for them to enforce their security at the present time for all intents and purposes.

What they want is to have a single central registry so they can then go to one federal court and the problems would be solved. Is not this the application, or am I misunderstanding somebody?

Mr. Kennerly: No, not quite, with respect, senator. The situation today is that it is practically impossible to certify that there is no outstanding encumbrance on an airplane.

Senator Prowse: Yes.

Mr. Kennerly: With a central registry you would be able to do this. You would be able to certify how good the title is and what encumbrances there are on the aircraft, because unless a person is registered in the central registry the instrument would not be valid, or the security on the aircraft.

Senator Prowse: Yes, but would that not interfere with the validity of a security which is registered in a county somewhere and not taken on to the central registry. Would that not then be attacked by the superior court order in that province?

Mr. Kennerly: Exactly, and my suggestion is that there is the constitutional ability of the Parliament of Canada to pass such a law requiring registration in addition to provincial registration, and if that registration were not effected it would not be a valid registration to someone taking an interest in the aircraft without actual notice of that instrument.

Senator Langlois: And you are prepared to go along with the suggestion made by the Department of Justice of Quebec when they suggested that this bill, S-5, should recognize the securities registered with the provinces provided they are passed along to the central registry?

Mr. Kennerly: The suggestion in our brief, senator, is that the document would, in fact, be registered with the regional office of the Ministry of Transport, and in that way communicated to the central registry. There are regional offices in Moncton, Montreal, Toronto, Winnipeg, Edmonton, and Vancouver. So that a person could register his interest in an aircraft in any one of those offices, and that information would then be communicated to Ottawa as is done with your shipping registrations in the east and west.

Senator Langlois: In the case of ships, this is done through customs offices.

Mr. Kennerly: Yes.

Senator Langlois: But you are in agreement with this?

Mr. Kennerly: Absolutely, senator, and we would be very pleased to continue an ongoing discussion on this for the purpose of amending the bill and bringing it into line with what we think.

Senator Langlois: So you are suggesting that the creation of this central registry is a solution in the right direction, but it is not the perfect solution; that some further improvements in provincial legislation may be necessary. Have you approached the provinces in that respect?

Mr. Kennerly: No, absolutely not.

Senator Asselin: You should.

Mr. Kennerly: We do not feel—perhaps I do not feel—that it is necessary to go to the provinces. The feeling is that if you pass legislation requiring an interest in an aircraft to be registered at a central office, then that law will be valid law—good law.

The Deputy Chairman: You do not expect any conflict of interest? The answers we have received from most of the provinces say it is *ultra vires*, so we are caught with that.

Senator Langlois: They have left it at that, with no suggestion whatsoever?

The Deputy Chairman: No, some have suggested that the federal government get in touch with them in order to reach some kind of compromise. From what I am seeing now, and from the discussion, I think it would be one way to do it.

Senator Asselin: I think that is a good point, Mr. Chairman. If we adopt that legislation as it is, without consulting with the provinces, we will create, I think, a conflict and the provinces might attack the bill before the courts. We want to avoid this. As I said at the beginning, we should try to send the bill before the Supreme Court and ask the provinces to put their cases before the court, because we received representations from the provinces. We cannot go along without consulting the provinces.

Mr. Kennerly: I find it difficult to understand why the provinces would object to a bill that simply provided for the recording of the instrument in a central registry in Ottawa, without any procedural provisions in the bill, without any reference to the provincial law, other than that the validity of the instrument will be determined according to the law of the province.

I would think it is less likely they would have an objection to a scheme or situation such as that if the bill were so amended.

Senator Riley: Mr. Kennerly, I think you are being rather presumptive, because when this bill first came before this committee a question was asked as to whether or not the provinces had been consulted. We had an unofficial indication that they had, but when we delayed the hearings in order to get an expression of opinion from the different provinces, we learned that they had reservations, although most of them, as Senator Langlois has pointed out in connection with Quebec, have indicated there is an area of compromise, probably, and it could be negotiated. I think it is very presumptive on your part, or anyone else's, to indicate that the Parliament of Canada should ride roughshod over these reservations which the provinces have. The provinces must be consulted. There must be some negotiation, if it is possible, and an indication that they want to delegate the authority to provide for a central registry. But, as I see it, even if the registration is in every county in some provinces, conflicts will arise from time to time. I cannot see this point of suggesting to the committee that Parliament ignore the provinces, in the light of what we have on record here.

Mr. Kennerly: Senator, I am expressing my view as a lawyer, which is substantiated by the Canadian Bar Association, and I have also had discussions with members of the Department of Justice, who have expressed the simple pure legal view that it is within the legislative jurisdiction of the federal government to pass such a recording central registry bill. There are, of course, other aspects of your relationship with the provinces. But from a purely legal point of view, I suggest that you can do this. Whether politically you wish to do this, is another question.

Senator Prowse: Aside from the political aspect, certainly we have a right to pass this bill. You have a right to think you have a perfectly good security. You go ahead and start to make your seizure with through the Federal Court here in Ottawa, and then someone finds out about it in Alberta, and goes down to the court in Alberta and gets an order. We then have fun until you get out of the matter through the Supreme Court of Canada. At \$12,000 a day, you are not going to be out of that operation until you have lost all your money.

Mr. Kennerly: That is true, but it is better to have a central registry than wait another 25 years.

Senator Prowse: I will agree with that.

Mr. Kennerly: I suggest it may take 25 years to get all the provinces to agree to some compromise.

Senator Langlois: A century!

The Deputy Chairman: Are there any further questions?

Mr. Guthrie: Mr. Chairman, I have one last comment apropos Mr. Kennerly's remarks. Once again, one of the great advantages of the second oldest profession is our ability to disagree in a friendly manner among ourselves.

On the suggestion of the central registry—leaving aside the substantive rights to the provinces—I fully agree with that in principle, but I will stick to my own province, Quebec, and suggest that although it sounds very easy when we use the expression “leave the substantive rights,”

one situation that immediately comes to mind is that we do not have a system for registration of movable security other than commercial pledge, but we do have some very specific rights and priorities. This is where the problem arises—the priorities of the rights which are established on movable property by article 1994 of the Civil Code.

One of the immediate problems that I can see recurring would be in respect of an aircraft that happened to be within the jurisdiction of the province of Quebec, where there was an unpaid vendor and he has a specific place in the ranking of the hierarchy on that piece of equipment, and that hierarchy is set up by article 1994. If he should commence a seizure and it turns out that some other creditor—possibly just a straightforward creditor in another province—has a judgment, he comes rushing down to the province of Quebec and says “I have registered my right in the central registry,” and the courts of Quebec are called upon to determine who has what right. Secondly, if it is a question of executing and selling the asset, the aircraft, and who gets paid first, we have a problem in priorities of rights.

Mr. Kennerly: Mr. Chairman, if I may respond to my friend, essentially the provision is in our brief, with respect to possessory liens. A repairer has the right to retain possession of an aircraft until he is paid. In certain jurisdictions possession can be passed back to the owner by contract, and the person can still retain that right to retake possession until he is paid for repairing the aircraft. Our brief suggests that where possession is given up, there must be registration in the central registry. I would suggest, in this instance, where you have an unpaid vendor, if he has not been paid and he gives up possession, he must register.

Mr. Guthrie: If he does not register—

Mr. Kennerly: If he does not register he is out of luck. He would be down on the totem pole.

Mr. Guthrie: This is where I say that I think we have a problem. I know we have one in Quebec. I am not absolutely sure of the situation in the common law provinces.

Senator Llanglois: The same situation obtains in Quebec in connection with shipping. Under the Civil Code you have these privileges of outfitting the ship for the last voyage, crew wages, and so on. There are privileges established there which are in conflict with the privileges under common law for necessities.

Mr. Guthrie: You are quite correct, senator.

Senator Langlois: I have myself found that an advantage. When my client was in a better position under the Civil Code, I would go before the superior court and, under the Civil Code, take advantage of the appropriate provisions. When I thought that my situation was much better under the common law, I would go before the Federal Court and take my action for the necessities there. The same situation obtains.

Mr. Guthrie: I agree. Of course, it provides added flexibility for lawyers.

Senator Langlois: Yes; it is useful at times.

Mr. Guthrie: It is useful when it comes to court proceedings, but when it comes to expressing an opinion to a client on an X million dollar deal, the pros and cons of both sides become rather acute.

My point is, of course, that the area of shipping is specifically dealt with and reserved. In other words, the framework of the constitutional problem has been clearly carved out. I would hope that we could use that analogy and the same argument with respect to aircraft.

Senator Langlois: I made my point not on the constitutional aspect, but on the situation that you have described—the conflict of laws and priorities of rights. You will not be in any worse position than with shipping.

Mr. Guthrie: I am not suggesting it would be worse. I am suggesting it would have an effect on an established ranking set up in the Civil Code. What that effect may be would depend on the facts of the situation. It may or may not get into the categories of the Civil Code. You may not want to get into that.

The Deputy Chairman: Are there any further questions? If not, I would like to thank you gentlemen for coming here today. It was very interesting, and it will be very helpful to members of the committee in reaching some conclusions. I do not know what the conclusions will be. There is not a straight line, as I see it. Thank you very much. If we need you again, we will take the opportunity of contacting you. Will you be able to return if necessary?

Mr. Kennerly: Yes indeed, Mr. Chairman.

The Deputy Chairman: Thank you. Honourable senators, before we adjourn, and after having heard all the evidence this morning, what will be our next step? Should we hear from Mr. Shields and advisers of the Department of Transport? We should give him a chance to read the evidence and the briefs which have been presented, and later on we could call upon him to appear before the committee as a witness.

Senator Langlois: Have we invited the Canadian Bar Association to appear?

The Deputy Chairman: No. They have sent their brief. At our next sitting we could invite the Canadian Bar Association. Mr. Brean, of Winnipeg, is chairman of the loss section of the Canadian Bar Association. If it is your wish, we could call on Mr. Brean or his representative, and at the same time we could hear the legal adviser of the Department of Transport. We would then be in a better position to determine what we should do.

Senator Asselin: The representatives of the provinces seem not to be interested in appearing before the committee.

The Deputy Chairman: Well, I would not say they are not interested. They have answered our letters. You have a copy of their remarks. I do not think it will be necessary to call all the attorneys general or their representatives to come up here.

Senator Asselin: As one witness said this morning, we have a special problem with the province of Quebec with regard to the registration of priorities and rights.

The Deputy Chairman: I am in your hands. If you decide we should call upon somebody in the office of the attorney general, or the minister of justice, as they call him in Quebec, I have no objection. Then we could have representatives of the Canadian Bar and representatives of the legal division of the Department of Transport.

Senator Langlois: Am I right, Mr. Chairman—and correct me if I am wrong—in saying that the province which took a positive attitude is the province of Quebec. All the others took a negative attitude, and did not make a suggestion, or offer to appear before this committee. In that situation I think we should invite them all to come, to see how serious they are about this problem.

Senator Prowse: They will write back and say that if they have any problems they will discuss them with the Minister of Justice themselves.

The Deputy Chairman: Well, some of them have expressed their views very clearly. As a matter of fact, I think it was Prince Edward Island that said, "You realize it is *“it ultra vires”*, and if we do pass the bill they will appeal. They will take the question before the courts.

Senator Langlois: That is their privilege.

Senator Asselin: We want to avoid that, though.

The Deputy Chairman: Yes. I think that is one thing we should look into, taking into account the evidence before us this morning. We should also try to get somebody who will perhaps arrange some kind of a compromise. I do not know if I am a good lawyer in those circumstances, but I feel that we all agree that it is a good thing to have the central registry. That is the main point. Now, how do we arrive at that?

Senator Riley: By negotiating with the provinces.

The Deputy Chairman: Well, that is the way I feel.

Senator Langlois: But not for half a century. It will take about half a century before we get this agreement.

Senator Riley: I do not think so.

The Deputy Chairman: Take Quebec, for instance. They have suggested one way to do it. That means that at least they are open to discussion.

Senator Langlois: They have not taken the position that this legislation would be *ultra vires* of the government of Canada.

The Deputy Chairman: If we could take that suggestion by the province of Quebec and send it to the other provinces, asking for their reactions to it, that might be of some help.

Senator Langlois: I have no objection to that.

The Deputy Chairman: Well, instead of having all the attorneys general here, or their representatives—to which I have no objection, of course—I think the best way will be to put this matter to our steering committee. They should look into it. Either the committee, or the steering committee, should decide what to do next.

Senator Burchill: Is Quebec the only province that raised any objection?

Senator Langlois: It did not raise any objection. It is the only province that did not.

The Deputy Chairman: Quebec made a suggestion. Of course, Quebec is with the other provinces. They say it is *ultra vires* because it affects civil rights and property. That is the point they raise. So now it is up to us.

Senator Langlois: They did not say that in their second letter at all. They make a suggestion. They are very positive.

The Deputy Chairman: Yes, but they do mention in their letter that they think it comes under the jurisdiction of the province. This, I think, has been expressed. Of course, being a lawyer, you may see something else in it, but that is the way I read it and that is the way I understood it. If you are agreeable, gentlemen, we will leave it to the steering committee.

Senator Riley: I move that the steering committee decide what kind of witnesses they want.

The Deputy Chairman: But before we do that we shall have to have another meeting, and tell the members what we intend to do as far as other witnesses are concerned.

Senator Asselin: Agreed.

The Deputy Chairman: Are there any other points?

Senator Riley: I would just like to point out that New Brunswick has indicated that that province, through its attorney general, or minister of justice, is prepared to work something out in respect to this.

The Deputy Chairman: Well, that is what I think, but I am not sure.

Senator Riley: I agree that we should hear a representation of the Canadian Bar Association because their brief is dated 1964. There may be a change of thinking in respect of this.

The Deputy Chairman: Mrs. Pritchard, have we not received a letter lately from the Canadian Bar Association saying that they are still of the same views that they expressed in 1964? Mrs. Pritchard has a letter on file, saying that the Canadian Bar Association still has the same views that it expressed before.

Senator Langlois: Would you mind reading that letter into the record?

The Deputy Chairman: Would you read it, please, Mrs. Pritchard?

The Committee Clerk: This follows the announcement that the brief was coming from the Canadian Bar Association.

Re: Bill S-5 "Aircraft Registry Act."

As I mentioned to you on the telephone this morning, we are sending to you copies of our 1966 brief to the Minister of Transport, stating the views of the Canadian Bar Association on the subject of Central Aircraft Registry. In order to avoid delays in the mail, we are having the brief delivered to you by Air Canada through the courtesy of Cameron Des Bois, Immediate Past Chairman of the Air Law Section.

You will note from the brief that the Canadian Bar Association strongly supports the concept of Central Aircraft Registry. That was the position of the Canadian Bar Association in 1966; that is the position of the Association to-day.

As I mentioned to you this morning, if your Committee does not have at its disposal a comparison of the Geneva Convention with Bill S-5, and if the Committee thinks such would be useful, please let me know, and I will prepare one for you.

Thank you for sending to me the replies of the Provincial Attorneys-General. You will see that the Canadian Bar Association brief is of the view that Central Aircraft Registry is within the competence of Parliament.

Out of an abundance of caution, I enclose a copy of the brief.

Senator Riley: Mr. Breen mentions a 1966 brief. The one I have here is dated May 12, 1964.

The Committee Clerk: I think they have sent something subsequently, sir.

Senator Riley: We do not have that.

Senator Prowse: It was reconfirmed in 1966, perhaps.

The Deputy Chairman: In any event, I think we can clear up that point.

Mr. Kennerly: Mr. Chairman, perhaps I can clarify that, since I wrote the Canadian Bar Association brief as well. Mr. Breen is in error in the date. The brief is dated 1964. He was talking about the same brief.

The Deputy Chairman: It is probably a typographical error.

Senator Langlois: They should be invited to send somebody, too.

The Deputy Chairman: To our next meeting?

Senator Langlois: Yes, I think so. This does not prevent you considering the other solutions that were offered so far as the attorney general is concerned.

The Deputy Chairman: Is that agreeable to the members of the committee? Of course, we have the brief in which they explain everything, but I am in your hands again. If you want to call upon the representatives of the air loss section or the Canadian Bar Association, I am in your hands.

Senator Asselin: Mr. Chairman, it would be interesting if we were to call other witnesses to discuss the constitutionality and legality of the bill. The committee is divided on this important question. I think all of the members of the committee should meet to decide whether to continue with the bill as it is, or to refer it to the Supreme Court of Canada in order to have the provinces make their cases before the Supreme Court of Canada. In my opinion, we should look at that very closely.

Senator Forsey: Yes, I agree.

The Deputy Chairman: As I have said, and as you know quite well, I am not a lawyer and I am caught here in this situation. However, with your help—

Senator Asselin: You were doing very well.

The Deputy Chairman: I am trying to do my best.

Senator Prowse: You are learning.

The Deputy Chairman: Yes, I am learning. I am learning the hard way, I would say.

Senator Langlois: Mr. Chairman, perhaps I have a view which is opposite to that of my friend, Senator Asselin, on the validity of any legislation in that field, but I am prepared to agree to a referral of this legislation to the Supreme Court. However, I do not think that should stop us from hearing further evidence.

Senator Asselin: I agree with that.

The Deputy Chairman: Would you leave it to the steering committee, then, to make some suggestions later on.

Senator Forsey: That was Senator Asselin's motion, was it not?

The Deputy Chairman: Yes, I believe it was. I believe the motion was that the question should be left for the steering committee to decide, and report back.

Senator Asselin: Yes.

The Deputy Chairman: The second point is with respect to other witnesses. We should call the Canadian Bar Association and representatives of the legal branch of the Department of Transport, but what about officials of the Justice Department?

Senator Langlois: I have no objection to that.

Senator Forsey: I would think so.

The Deputy Chairman: Because they are our advisers.

Senator McElman: You may as well have as many conflicting legal views as possible.

The Deputy Chairman: Senator McElman is not a lawyer, but that is pretty good.

Senator Prowse: He has had dealings with them, though.

The Deputy Chairman: Honourable senators I think the committee could now adjourn.

The committee adjourned.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 7

Thursday, April 17, 1975

Complete Proceedings on Bill C-48, intituled:

“An Act to amend the Railway Act”

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*,
P.C.

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Darvey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
April 8, 1975:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Paterson, that the Bill C-48, intituled: "An Act to amend the Railway Act", be read the second time.

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Order of Reference

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

Thursday, April 17, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m. to consider Bill C-48, intituled "An Act to amend the Railway Act".

Present: The Honourable Senators Haig, (*Chairman*), Bourget, Burchill, Denis, Forsey, Langlois, McElman, Petten, Riley and Smith. (10)

In attendance: Mr. R. L. du Plessis, Legal Adviser, Department of Justice.

The following witness was heard:

Mr. Yvon Soucy,
Railway Systems Officer,
Ministry of Transport.

After discussion and upon Motion of the Honourable Senator Burchill, it was *Resolved* to report the said Bill without amendment.

At 10:05 a.m. the Committee proceeded to consider the next order of business *in camera*.

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, April 17, 1975

The Standing Senate Committee on Transport and Communications to which was referred Bill C-48, intituled: "An Act to amend the Railway Act" has, in obedience to the order of reference of Tuesday, April 8, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, April 17, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-48, to amend the Railway Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Good morning, honourable senators, I am very pleased to be back. I wish to thank Senator Bourget for chairing the committee while I was away.

The procedure this morning will be that Mr. Yvon Soucy, Railway Systems Officer, Ministry of Transport, will explain Bill C-48, which was introduced in our house by Senator Cook on April 8. It received first and second reading and was referred to this committee.

Following that, we will adjourn and hold an *in camera* session to discuss the French television program. We will also discuss the bill in regard to aircraft registration. In the meantime, we will hear Mr. Soucy explaining Bill C-48.

Senator McElman: Mr. Chairman, before the witness begins, on behalf of the committee may I say how delighted we are to have you back?

The Chairman: Thank you.

Mr. Yvon Soucy, Railway Systems Officer, Ministry of Transport: Mr. Chairman, honourable senators, with your permission I shall summarize the intent of the legislation and explain the purposes of the bill. We wanted a bill to provide the Canadian government with information with respect to railway costs, because at the present time that information is provided to the Canadian Transport Commission for its use alone. The second point is that we wanted to provide the information on railway costs for the confidential use of the provinces with respect to policy formulation purposes. Thirdly, we wanted to provide information with respect to railway costs for the use of a province arguing cases before the CTC. At present when the provinces appear before the CTC they have no information with respect to railway costs. The reason for this is that the Prime Minister, at the Western Economic Opportunities Conference in 1973, told the Western provinces that he would do whatever was necessary to make such information available to them. In view of this, and before this bill was introduced, the railways have meanwhile provided information with respect to specific cases. They have co-operated, but the provinces still feel that it takes too much time and that maybe in a few years the mechanism will go down and they would lose such access to information. They therefore requested the Minister of Transport to introduce legislation ensuring that such railway costs will be provided to the provinces on a long-term basis.

Bill C-48 gives power to the Minister of Transport to ask the railway for railway costs. When the provinces want railway costs, they must first ask the Minister of Transport, and the minister goes to the railway and asks for those costs, making sure that the demands or requests of the provinces are reasonable. We did not want the provinces to be able to go directly to the railways and make unreasonable demands or requests. The provinces ask the Minister of Transport for information on railway costs, they say how they are going to use that information, and the Minister of Transport obtains the information from the railway through the CTC. When the information comes back to the minister, the minister decides what shall be given to the Western provinces.

The information generally is given to the provinces on a confidential basis. When the provinces want to use railway costs information at CTC hearings, the minister is told about it, and we would seek the advice of the CTC as to whether it can be done in the national interest without creating problems. When the minister is assured that the information will be used at CTC hearings in the national interest, he gives permission to the provinces to use the confidential information at CTC public hearings. That is a summary of the intent of the bill.

Senator Smith: Does that exclude the possibility of having *in camera* meetings with the provinces, or whoever else is interested, and using that confidential information at *in camera* meetings, so that the public would not have access to it?

Mr. Soucy: The provinces have to make sure, when the information is given to them on a confidential basis, that they protect that confidentiality.

Senator Smith: Would there be sufficient protection for the confidentiality if the CTC, at their hearings, excluded the press and those who were not directly concerned, and held those hearings *in camera*?

Mr. Soucy: The CTC hearings are public hearings. They always have transcripts, and those transcripts are public. You can ask the CTC to provide you with the transcript of the hearing. Before the information is provided to provinces to be used at CTC hearings, they must have the prior permission of the Minister of Transport.

Senator Forsey: Is that under the new section 331.4? Section 331.3(3) says:

Any information furnished under section 331.1 or 331.2 that is relevant to any proceedings under this Act, the National Transportation Act or the Transport Act may, for the purposes of those proceedings, be published or communicated—

Is that what you are speaking about now?

Mr. Soucy: You are asking about subsection (3)?

[Translation]

Senator Forsey: My question refers to sub-section (3) of section 331.3, which begins by the following words:

"Any information furnished under section 331.1 or 331.2 that is relevant to any proceedings under this Act . . .," etc.

Do your comments refer to this article?

Mr. Soucy: My comments refer to the whole bill. I have summarized the intent of the bill as a whole.

Senator Forsey: Yes, I am aware of that. However, the reason why I am asking this question is that I do not find here, in this particular section, any provision concerning the authorization of the minister. Maybe I have not quite well understood.

Mr. Soucy: Senator, the authorization of the minister is implied in the whole bill. Presently, when provinces ask the minister for information, they have to give the reason why they need such information. If, for example, they need it in connection with a Canadian Transport Commission inquiry, they have to inform the minister accordingly. Then, the minister advises the provinces on how exactly they can use the information and that they are not allowed to use it for another purpose. That is to say that when the minister provides the provinces with the information they need, he tells them exactly how they can use it.

Senator Denis: In section 331.1 (1)b), we read the following:

"relative to the costs of the company in moving specified commodities generally or between specified points".

There is nothing about passengers, even though the same problems may arise for them.

Mr. Soucy: If the provinces want to use that for the railway costs concerning passengers, they are allowed to.

Senator Denis: Why does the Act not say that? I quote:

"relative to the costs of the company in moving specified commodities generally or between specified points"

Is a passenger a commodity?

Mr. Soucy: No. I mean that railway costs are very complex. When we try to establish railway costs, we must take into account the allocation for passenger transportation. Then, automatically, if the provinces want to examine railway costs regarding freight, passenger transportation and express transportation, in order to establish how these costs are distributed, they are allowed to ask for such information. However, the provinces are particularly interested in obtaining information concerning freight. They are aware of that situation.

Senator Denis: But we are not aware of that. A province may wish to know how many passengers have used railways.

Mr. Soucy: The province may obtain this information without this bill.

Senator Bourget: Mr. President, may I ask a question following that of Senator Denis? When the minister tabled this bill in the House of Commons, it was stated on page 3337 of Hansard of February 18, 1975, in the French version:

[Text]

For this purpose the information on costs is defined as cost of "transportation services and operations" or "costs of a specified movement of specified commodity," for example, a car load of cattle from Edmonton to Montreal.

[Translation]

Coming back to the question of Senator Denis, I wonder whether passengers are considered as commodities? I do not know if "commodity" is a generic term.

Mr. Soucy: Senator, when you have mentioned "transportation services", you have given the answer. Those "transportation services" for passengers are indeed transportation services. However, generally speaking, the interest of the provinces in the Bill concerns the freight transportation. They are not really interested in the passengers' transportation. You ask if the provinces wish to get information on the costs of passengers transportation and if they want to use this bill to obtain it. I tell you it is possible. Indeed, if the provinces want to know what are the costs of freight transportation and those of passengers transportation, they can obtain the information they want. For example, the same locomotives are often used on the same railway line both for passengers and freight transportation. Then, if provinces really want to establish the distribution of costs between freight and passengers transportation, in order to make sure that it is fair and that the costs are really fair also, they can ask the Minister of Transport to authorize them to obtain the information they need. However, the Minister may refuse their request.

Senator Denis: Do you have further objections to raise? It would not be difficult to add a few words such as "and the passengers", in order to make the bill much more clearer.

"Relative to the costs of the company in moving specified commodities generally or between specified points, and passengers".

Do you object to such an amendment?

Mr. Soucy: Personally, I have no objection to raise. However, I want to tell you that when the Prime Minister discussed the question of providing the provinces with the cost of freight transportation, the four provinces seemed to be satisfied with the explanation given to them. Presently, Bill C-48 meets the needs of the four provinces. I wonder why you want to give them more than what the Prime Minister intended to give them on July 1973? At the moment, the provinces are satisfied. If you offer somebody \$1. and if he is satisfied, why should you tell him that he can get \$1.50? He would not refuse \$1.50.

Senator Denis: Yes, but the Government of Canada is interested to know.

Mr. Soucy: As far as the passengers transportation is concerned, the Government of Canada obtains this information from the Canadian Transport Commission. Presently, however, the Canadian Transport Commission use this information concerning the costs only for its own use. At the moment, the Government of Canada does not face any problem concerning the cost of passengers transportation, as far as the use of those costs is concerned. There is no problem on that matter.

[Text]

Senator Burchill: This information, I understand, is to be kept confidential. It will not be disclosed publicly.

Mr. Soucy: It will be kept confidential, senator. If any one of the provinces wishes to use some of the information in public hearings, through the Canadian Transport Commission, it must seek permission of the minister to do so. The provinces do not have the right to use such confidential information in public hearings without the permission of the Minister of Transport.

Senator Burchill: Is the minister satisfied that he can control the provinces? I concede that he can control the CTC, but I am wondering whether he can control the provinces.

Mr. Soucy: If the provinces do not respect the confidentiality of this information, it is open to the minister to choose not to provide any further information of this type to them in the future.

Senator Argue: I am wondering why this information should be confidential at all. The railways are important to this country, and competition is important. It seems to me that it would be in the interest of the nation for the public to be aware of the costs, without going through this rather circuitous method of obtaining that information. In any event, if the provinces obtain the permission of the minister to use such information publicly, the outcome will be that it will be public. It would seem to me to be far better if this information were public in the first place.

Mr. Soucy: I would only say, senator, that the bill before you is viewed by the Minister of Transport as an interim measure pending the introduction of a comprehensive bill which will cover all modes of carriers coming under federal jurisdiction. The present bill is simply to satisfy the commitment of the Prime Minister and the Minister of Transport to the four Western provinces. It is not a comprehensive measure covering transportation.

Senator Argue: I suppose a good deal of it will automatically become public once a more comprehensive bill is passed.

Mr. Soucy: As I say, this is an interim measure aimed at satisfying the commitment the Prime Minister made to the Western provinces in July, 1973. A more comprehensive bill will be introduced to cover all modes of transportation.

Senator Argue: The Railway Act provides that railway companies must keep records of all shareholders, but the number of shares held by each individual shareholder is not public information; whereas under the general corporation law of this country all other corporations have to disclose that information. That is another instance where the railways have been secretive under the law about their operations. I am very much a layman, but I can see no reason why the railways should not make public the number of shares held by each individual shareholder.

Senator Langlois: That would be quite a task in respect of CNR, because the people of Canada are the shareholders.

Senator Argue: Yes, but obviously we are after that information in respect of the CPR.

Senator Riley: Is there not a section in the National Transportation Act which makes reference to the confidentiality section of the Railway Act?

Mr. Soucy: Perhaps I can read section 331 of the Railway Act:

Where information concerning the costs of a railway company or other information that is by its nature confidential is obtained from the company by the Commission in the course of any investigation under this Act, such information shall not be published or revealed in such a manner as to be available for the use of any other person, unless in the opinion of the Commission such publication is necessary in the public interest.

Senator Riley: That is the Railway Act. Is there not reference to that in the National Transportation Act?

Mr. Soucy: Section 82 of the National Transportation Act deals with the powers of the minister. Under that section the minister has the power to ask railway companies for any information.

Senator Riley: I am talking about the National Transportation Act. This question came up during the Bell hearings. At that time the commission was governed by this confidentiality section of the Railway Act.

Mr. Soucy: When the Canadian Transport Commission is given confidential information concerning railway companies, it is given that information on a confidential basis for the sole use of the commission. That is dealt with under section 331 of the Railway Act.

Senator Riley: This confidentiality section was applied in the Bell hearings. I take it that it would also apply to other utilities which might come under the regulatory power of the CTC.

Mr. Soucy: I am not in a position to answer that question, senator; I am not so familiar with Bell Canada.

Senator Riley: I understand that, but has it been taken into consideration that, if the CTC is governed in respect of railway companies by this confidentiality section, it would also apply to information in respect of telephone companies and other utilities?

Mr. Soucy: I cannot answer that.

Senator Riley: I think it is important.

The Chairman: Are there any further questions?

Senator Smith: You mentioned that this bill came about as a result of the Western Economic Opportunities Conference.

Mr. Soucy: Yes.

Senator Smith: I think I know the answer, but I should like to be sure that this legislation will apply to all provinces of Canada, including the Atlantic region. I take it it will.

Mr. Soucy: It will apply throughout the country, senator.

Senator Smith: One further question. What are the sanctions with respect to railway companies for non-compliance under the terms of the act?

Mr. Soucy: The minister has full power under section 82 of the National Transportation Act now. Paragraph (d) says that the minister can:

require the production of all material books, papers, plans, specifications, drawings and documents.

The minister has the power. If the railways do not want to comply with the minister's request, the minister has the power. We do not think the railways will not comply, because they are smart businessmen.

Senator Smith: That is true. I would think the railways would have complied with the request for information long before now without having to have an act to compel them to supply it. I may have a false vision, but I can envision that a time might come when the information would not be assumed to be complete, or the kind of information that is useful for making applications to the Canadian Transport Commission. Under those circumstances, what would be the sanctions against a railway company that did not comply fully with the terms of the act? It may be covered in some other act.

Mr. Soucy: If the minister wants to go through the CTC, he gets the information from the railway, but we cannot expect the railway to provide ten more man-years to provide that kind of service to the western provinces and the Canadian Government. That information is available in the CTC in all kinds of detail, because in considering subsidies in connection with uneconomic branch lines and uneconomic passenger train services the CTC has all that information. If the Minister of Transport asks the railways for information and they do not want to give it to him, I guess it is a theoretical question. They know they do not have a choice; it is just like breaking the law not to comply.

Senator Smith: Does what you have just said with regard to information already in the possession of or available to the Canadian Transport Commission apply also to section 331.1, relative to the costs of a railway company in respect of the transportation services and operations of the company? Relative to the costs of the company in moving specified commodities generally or between specified points, that information is assumed now to be in the possession of the Canadian Transport Commission?

Mr. Soucy: Yes.

Senator Forsey: I am still not satisfied about section 331.3(3). It looks to me as if once the minister has released the information to the government of a province, if that government wants to use it in proceedings under the National Transportation Act or the Transport Act there is no specific provision that it must get the permission of the minister. If under section 331.1(2) the minister releases the information to the government of a province and that government has undertaken to treat the information as confidential, that is one thing. Once the province has got the information, it seems to me that under section 331.3(3), if it wants to use it for the purposes of proceedings under the National Transportation Act or the Transport Act, it is apparently released from the requirement of confidentiality. That is the way it looks to me.

Mr. Soucy: No. If the provinces are given information on a confidential basis, then it is confidential and they cannot use it in public hearings.

Senator Forsey: Wait a minute. That is just the point I am getting at. Under the new section 331.3(3) it looks to me

as if they do not have to get the permission of the minister. I do not think it is clear at all. I defer to my legal colleagues here. Perhaps it is perfectly clear to them, as apparently it is to you, but it looks to me as if section 331.3(3) lets them out from the requirement of confidentiality. I would be interested to know what any legal gentlemen here think about that, because it bothers me.

Mr. Soucy: In my opinion, the bill, as it is drafted, is supposed to do what I have described to you in theory. It is supposed to do that.

Senator Langlois: It does not do it in this case.

Senator Bourget: When the railways get the costs, would that also include a fairly reasonable return on their investment, and would they also take into account the subsidies they are getting from the government? Will all that information be supplied?

Mr. Soucy: Subsidy payments are based on railway costs.

Senator Bourget: That is public.

Mr. Soucy: The subsidy payment is public information. The way the subsidies are calculated for passenger and branch lines, the cost breakdown in the subsidy payment, is public. Subsidies are calculated from the railway unit costs. The railway unit costs given to the provinces will be the same kind of unit costs as those developed for the Canadian Transport Commission. The commission uses gross to net for investment costs and there is a figure used for return on investment. The provinces will be given the costs, with the knowledge of what is used as a return on investment, whether it is 10, 12 or 13 per cent, or 6, 7 or 8 per cent. They will know that. If they like to play around with it, if the railway gets 10 per cent or 6 per cent on investment, they will be able to manipulate the unit costs.

Senator Bourget: I should like to go back to Senator Argue's question about the shareholders. Can the minister get that kind of information about shareholders? I am not talking about CNR but about CPR. Can he get a list of the shareholders, and could it be transmitted to the provinces?

Mr. Soucy: The minister could be asked for that, and under section 82 of the National Transportation Act the minister has a lot of power. If the minister felt it was in the national interest, then such information would have to be given. The Minister of Transport would have to be asked for it, and he would have to make up his own mind what to do about it.

Senator Argue: Do I understand correctly that when the railways apply to obtain a subsidy, not only do they give some detailed costs as they affect branch lines on which they are asking for a subsidy, but those submissions on the costs are available to the public?

Mr. Soucy: Not the unit costs in themselves. It is acceptable breakdowns, but not the unit costs. What the provinces are interested in is how much it costs per train mile, how much it costs to move a ton one mile. They have a unit cost breakdown, and you can use that basic information and build the total cost. The provinces are interested in the building blocks of railway costs. Right now they can get overall costs through branch lines, but not for the building blocks. They cannot use that information at some other time for some other purpose in policy formulation, because they did not get the building block of these total costs. The act gives power to the Minister of Transport to provide the

four western provinces and the other provinces with the building blocks so that they can do their planning, policy formulation and so on.

Senator Argue: In obtaining the subsidies now on these cost submissions on a rail branch line out in my country, are the costs of the head office, administration let us say, including the salary of the president, apportioned to this poor little branch line which is having a difficult time to survive?

Mr. Soucy: When the railways file for subsidies on branch lines, the subsidies are calculated by taking the revenue from the branch line, minus its full costs in the branch line itself, minus the variable costs of moving the carload on the main line. This results in a deficit, which becomes the subsidy. With respect to the costs, mathematical models are used and these include regressions. It is possible that a few pennies of the president's salary would

go on the branch line. It is very technically oriented. Overhead and administrative expenses at the headquarters are spread throughout the system, inasmuch as it is variable with traffic. If, for example, it is found that it is not a variable but a fixed cost, it will not be billed back to the branch line.

The Chairman: Are there further questions? Is it your wish to deal with the bill clause by clause?

Senator Burchill: I move that the bill be reported without amendment.

The Chairman: It is moved by Senator Burchill, seconded by Senator Langlois, that this bill be reported to the Senate without amendment. All in favour? Opposed? Carried.

Thank you very much, Mr. Soucy; you have explained it very well.

The committee continued *in camera*.

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FIRST SESSION—THIRTIETH PARLIAMENT

1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 8

WEDNESDAY, MAY 21, 1975

Third and Final Proceedings on Bill S-5, intituled:

**“An Act to enable Canada to comply with a Convention on the
International Recognition of Rights in Aircraft”**

REPORT OF THE COMMITTEE

(Appendix: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 21, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 5.00 p.m. to consider Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Present: The Honourable Senators Bourget (*Deputy Chairman*), Burchill, Denis, Eudes, Flynn, Graham, Langlois, McElman, Molgat, Petten, Prowse and Riley. (12)

In Attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee proceeded to the consideration of the Report of the Steering Committee.

It was moved by the Honourable Senator Burchill that the correspondence exchanged between the Committee and the provincial Attorneys General, including letters and telegrams, be printed as Appendix "A" to these Proceedings. The motion was *carried*.

After discussion, it was *Agreed* that the Report of the Steering Committee met with the approval of the Committee.

After discussion and upon motion of the Honourable Senator Riley, it was *Resolved* to adopt the Report of the Committee which recommends that the said Bill not be proceeded with further in the Senate for the reasons set forth therein.

At 6.10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, May 21, 1975

The Standing Senate Committee on Transport and Communications to which was referred the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", has in obedience to the order of reference of October 23rd, 1974, examined the said Bill and now reports as follows:—

Your Committee recommends that this Bill be not proceeded with further in the Senate for the following reason:

This Bill, which would establish in Canada a central aircraft registry, deals with the protection of certain property rights and other interests in aircraft and, in the considered view of your Committee, its enactment by the Parliament of Canada would, in the absence of a clear judicial determination of its constitutionality, give rise to considerable uncertainty as to whether or not the matters to which it extends come within a class of subject over which the Parliament of Canada has exclusive jurisdiction.

Your Committee further reports that in the course of its consideration of the constitutional aspects of this Bill, a letter from the Chairman was sent to each of the provincial attorneys-general to solicit their views on the proposed legislation. In replying to the letter, the provinces expressed concern over the constitutional problems the Bill would create in the absence of clearly valid complementary federal and provincial legislation. The provinces, as well as the witnesses heard by your Committee, expressed the view that the Bill, if enacted, would result in confusion, unless some effort were made in consultation with the provinces to resolve in advance potential conflicts with existing provincial statutes relating to property rights and mortgages.

Respectfully submitted.

Maurice Bourget,
Deputy Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, May 21, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 5 p.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, the first item on the agenda this afternoon is Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft.

The committee at the last meeting authorized a steering committee to make a study in connection with Bill S-5 and to report back to the whole committee. All honourable senators have now been provided with a draft of the recommendation made by the steering committee.

Are there any comments in connection with the draft which has been prepared by Mr. du Plessis on the recommendation of the steering committee?

Senator Riley: Is the procedure correct?

Senator Langlois: There are many precedents for it.

The Deputy Chairman: I have been advised by Mr. du Plessis that the procedure is a correct one. As far as the draft is concerned, I should like to have an expression of the views of the committee.

Senator Flynn: I think it reflects the views members of the committee have expressed in previous meetings.

Senator McElman: I agree with it.

Senator Riley: I see nothing wrong with it.

The Deputy Chairman: Senator Hayden appeared before the steering committee and introduced an amendment. Not being a lawyer, I cannot comment on the amendment from a legal point of view. Perhaps Senator Flynn can explain the amendment proposed by Senator Hayden.

Senator Flynn: Senator Hayden assumed that there was no doubt about the constitutionality regarding the provinces in this area, and he was endeavouring to correct the bill in order to make the processes conform with the existing legislation. To my mind, the amendment does not dispose of the confusion that would result between the new federal legislation coming into force and the existing provincial legislation remaining. I do not believe Senator Hayden disputed that.

His suggestion might be something for the Ministry of Transport and the Department of Justice to consider, but it is not a suggestion which the committee should adopt as there would still remain a great deal of uncertainty.

Senator Burchill: In other words, there has to be complementary federal and provincial legislation?

Senator Flynn: The ideal situation would be to have it finally decided by the Supreme Court or by agreement between the federal and provincial governments that the federal Parliament has authority over property and civil rights in aircraft in the same way as it has authority over ships. We could then have the provinces withdraw from this area as of a certain date, and from that date onwards the federal legislation would apply. That would be the ideal solution.

Senator Burchill: Would there have to be provincial legislation?

Senator Flynn: No, there would be no need for provincial legislation. However, there would still be some questions remaining, such as whether aircraft engines would come under federal jurisdiction.

Senator Langlois: I have been advised that if aircraft engines are dealt with separately, a great many problems will be created. These engines are not only used to propel aircraft; they are used extensively, for example, to provide the pressure needed in pipelines. As far as the engines are concerned, they would come under provincial jurisdiction. There is strong objection to including the engines separately.

Senator Flynn: Aircraft engines or parts.

Senator Langlois: Yes.

The Deputy Chairman: I think I can say that most, if not all, of the provincial attorneys general have stated in the correspondence that they accept the objective of the bill in having a central registry. They feel such a registry would be of great benefit. On the other hand, they do say it would not be constitutional. For that reason, members of the steering committee, having studied the correspondence from the provinces, thought that it would be better not to proceed with the bill, but to send it back to the other place so that the department concerned can contact the provinces in an effort to arrive at some kind of an agreement which would meet the wishes of all interested parties.

We are all aware that financial institutions, particularly, which are involved in loans, hypothecs or mortgages with the aircraft companies are anxious to get this bill passed so that Canada is in a position to sign the Convention on the International Recognition of Rights in Aircraft. However, to pass it in its present form would create more confusion. For that reason, we feel it should not be proceeded with in its present form.

Senator Flynn: One approach might be to have a central registry in each province to enable the provinces to conform with the Convention, with the provinces agreeing that there should be one central federal registry where all

provincial registrations could be transferred for the information of all concerned.

The Deputy Chairman: As a matter of fact, that suggestion was contained in the letter from the Province of Quebec.

I cannot remember the contents of all the letters from the provinces, but I think they are willing to co-operate. We feel it is now up to the government to try to reach some kind of agreement with them.

Senator Flynn: I found it surprising that the legal advisor to the Ministry of Transport admitted that they had not consulted the provinces before bringing this legislation down.

Senator Langlois: Mr. Chairman, at least one of the witnesses who appeared before this committee made the statement that this bill would merely create a central registry. The bill goes much further than that. Clause 9 of the bill deals with seizure and sale of aircraft, and clause 10 deals with the execution proceedings. In that sense, it goes beyond the federal jurisdiction, to my mind, and into the area of provincial jurisdiction. Because of that, I think we should be very careful in our consideration of the bill.

The only way to deal with it in a safe manner, to my mind, is to send it back to the other place for a second look, with the suggestion that the Minister of Transport discuss it with the provinces.

We are not going that far in our report. We are merely sending it back for further consideration. However, when the minutes of our proceedings in connection with Bill S-5 are read, as well as the correspondence which will be attached to our proceedings, the government should see the light and consult with the provinces to find ways and means of dealing with this matter.

Senator Prowse: There is a whole area of conflict which should be cleared up before we proceed with this legislation.

The Deputy Chairman: Senator Langlois, in making the comments you have made, have you taken into account the suggestion made by Senator Hayden when he appeared before the steering committee?

Senator Langlois: Yes.

The Deputy Chairman: As you know, I am not a lawyer. Nevertheless, what you say makes sense. In terms of the legalities, I am somewhat at a loss.

Senator Langlois: I think we should make sure we include everything that was put before the committee. For example, you have referred to the suggestion made by Senator Hayden before the steering committee. That was not made to the committee as a whole, and will not be included in the record unless at this meeting we take cognizance of it and decide, by way of a motion, to make it an appendix the report of these proceedings. The same thing should be done with the letters received from the various provincial attorneys general.

The Deputy Chairman: If it is the wish of the committee, I could have Mrs. Pritchard read Senator Hayden's proposed amendment.

Senator Langlois: If it is read into the record, it will become part of our proceedings.

The Clerk of the Committee: It is in draft form, and reads as follows:

DRAFT OF PROPOSED AMENDMENT TO THE
AERONAUTICS ACT TO BE INCLUDED IN BILL
S-5

6.1 Any contract evidencing the lease, conditional sale, hypothec or mortgage of an aircraft, registered in Canada, an aircraft engine or either of them shall be in writing, duly executed by the parties thereto, and the same or a copy thereof may be registered pursuant to the Aircraft Registry Act and the interests created by any such contract so registered are, subject to the provisions of the Aircraft Registry Act, valid against any person.

Senator Flynn: You can skip the paragraphs numbered 1, 2 and 3 and go right to the paragraph commencing, "The particular section . . .".

Mrs. Pritchard: It continues:

The particular section of S-5 with which we should be concerned is Section 17, which is a transition section. This section is necessary in order that mortgages, hypothecs, conditional sales, etc. registered provincially may be valid, notwithstanding the provisions of this Bill and the amendment to the Aeronautics Act. However, there should be a time limit within which any such holder would be required to register in the Central Aircraft Registry in order to maintain the validity of his security. It has been suggested that possibly a year would be sufficient for this purpose.

Secondly, there should be another amendment to Section 17 to deal with the Quebec situation where I understand a security of the nature of a chattel mortgage, etc., may be created and be effective without registration. This should be made a specific exception and its validity should be, although not registered anywhere, recognized and the same time limit should apply, requiring registration of such instrument on the Central Aircraft Registry.

That completes it.

Senator Flynn: The explanation verifies what I said about the proposal of Senator Hayden's not solving all the problems. He recites a certain number of problems that will have to be dealt with eventually. We would have to redraft the whole bill, and even at that we may not overcome all of the problems.

Senator Prowse: The solution, then, is simply to send the bill back.

Senator Flynn: Yes, that is right.

Senator Prowse: Why, then, are we going through all of this?

Senator Flynn: We want to have everything on the record for the information of the department.

Senator Langlois: It should be added that when Senator Hayden appeared before the steering committee he made it quite clear that his was not a perfect solution.

The Chairman: Senator Hayden has merely made an attempt at a solution. To be fair to Senator Hayden, he is my desk-mate and I discussed this matter with him and he very kindly offered to take a look at it to see whether or not he could come up with a solution. Even with that kind of amendment, it does not solve all of the problems.

Senator Burchill: Mr. Chairman, I move that the correspondence exchanged between the committee and the provincial attorneys general, including letters and telegrams, as well as the report of the steering committee, be printed as an appendix to the record of today's meeting.

The Chairman: Does the draft of the report of the steering committee prepared by Mr. du Plessis meet with the approval of the committee?

Hon. Senators: Agreed.

The Chairman: Is it agreed that we adopt Senator Burchill's motion to have all of the correspondence and the report printed as an appendix "A" to today's record?

Hon. Senators: Agreed.

(For text of documents see Appendix A.)

Senator Riley: Mr. Chairman, I move the adoption of the report.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: That completes the committee's consideration of Bill S-5.

The Committee adjourned.

Senator Burchill's motion was adopted. The correspondence and the report of the steering committee will be printed as an appendix to the record of today's meeting. The Chairman thanked Senator Burchill for his contribution and adjourned the meeting.

Senator Riley's motion was also adopted. The report of the steering committee is being prepared and will be presented to the committee at a later date. The Chairman thanked Senator Riley for his contribution and adjourned the meeting.

The Chairman thanked all the senators for their contributions and adjourned the meeting. The meeting was held in the Senate Chamber of the Parliament Buildings, Ottawa, Ontario, on May 21, 1975.

The Chairman thanked all the senators for their contributions and adjourned the meeting. The meeting was held in the Senate Chamber of the Parliament Buildings, Ottawa, Ontario, on May 21, 1975.

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APPENDIX "A"

AIRCRAFT REGISTRY BILL

CORRESPONDENCE EXCHANGED BETWEEN THE STANDING SENATE COMMITTEE
ON TRANSPORT AND COMMUNICATIONS AND THE ATTORNEYS GENERAL
OF THE PROVINCES AND CERTAIN FEDERAL DEPARTMENTS

November 12, 1974

The Honourable C. Mervin Leitch, Q.C.,
Attorney General of Alberta,
Madison Building,
9919-105 Street,
Edmonton, Alberta.
T5K 1B1
Dear Mr. Leitch:

RE: Bill S-5 "An Act to enable Canada to comply with a
Convention on the International Recognition of
Rights in Aircraft".

The Senate has referred the above bill to the Standing
Senate Committee on Transport and Communications. The
following documents relate to the legislation in question:

1. Bill S-5 "An Act to enable Canada to comply with
a Convention on the International Recognition of
Rights in Aircraft".
2. First proceedings on Bill S-5, dated October 31,
1974.
3. Copy of submission by the Federated Council of
Sales Finance Companies.
4. Supporting statement respecting the above brief.

From a perusal of the enclosed documents you will see
that members of the Standing Senate Committee on Trans-
port and Communications were concerned about several
aspects of the bill under consideration. This concern was
prompted by the facts that

- (a) the bill is being considered in the first instance by
the Senate, and that
- (b) according to the evidence, there has been as yet no
official consultation with the provincial governments
on the matter.

The Department of Justice has expressed the view that
the bill in its entirety is within the legislative competence
of the Parliament of Canada. Nevertheless, the field of
protection of proprietary and other interests in aircraft is
now evidently occupied in large measure by provincial
laws and it was feared that there might arise some confu-
sion and uncertainty in this area, at least in the absence of
a clear judicial determination as to the constitutionality of
the bill and in the absence of any reaction to the bill from
the provinces.

I have, accordingly, been requested by the committee to
solicit your views on the foregoing matters.

Hoping for an early response, I am

Yours sincerely,

J. Campbell Haig,
Chairman,
Standing Senate Committee on
Transport and Communications.

The Honourable J. Campbell Haig, Q.C.
Chairman,
Standing Senate Committee on Transport and Communi-
cations,
The Senate,
OTTAWA, Ontario.
K1A 0A4

December 17, 1974

RE: Bill S-5 "An Act to enable Canada to comply with a
Convention on the International Recognition of
Rights in Aircraft"

Dear Senator Haig:

In further response to your letter of November 12, 1974,
the various documents which were provided along with a
copy of the above bill clearly establish the need and desira-
bility for some type of central registry system for property
interests in aircraft. However, I do have some doubt as to
the constitutional validity of the bill.

Admittedly there has been no definitive judicial deter-
mination concerning the matter in question, but the bill
unquestionably deals with property rights in their most
basic sense in that it provides for their protection, as well
as defining the parameters and extent of such rights. As
the bill, particularly in light of Section 17, purports to
supersede all present provincial legislation which provides
for the protection of property rights insofar as they relate
to aircraft and may, apparently alter common law rules
relating to the rights of repairmen, it attempts to set up a
complete code of property interests relating to this subject
matter.

As such, my reaction, as a result of some research and
thought on the matter, is that such legislation is properly
within the legislative competence of the various provinces.
While certain provinces already have central registry sys-
tems for interests in chattels which are defined in the
various provincial personal property security statutes suf-
ficiently broadly to include aircraft in Manitoba, our Per-
sonal Properties Security Act (SM. 1973, c.5) has not yet
been proclaimed. Certainly, the implementation of such
legislation by all the provinces might provide an effective
means of protecting security interests in aircraft.

I thank you for soliciting my minister's views on this
matter.

Yours truly,

Gordon E. Pilkey,
Deputy Attorney-General,
Province of Manitoba.

January 14, 1975

Quebec City, Quebec,
January 25, 1975.

Mr. J. Campbell Haig
Chairman
Standing Senate Committee on
Transport and Communications
The Senate
Ottawa, Ontario
K1A 0A4

Senator J. Campbell Haig,
Chairman of the Standing Senate Committee
on Transport and Communications,
The Senate,
Government of Canada,
Ottawa, Ontario.
K1A 0A4
Dear Sir:

RE: Bill S-5 "An Act to enable Canada to comply with a
Convention on the International Recognition of
Rights in Aircraft"

The Office of the minister has forwarded to us your
letter of last November 21, concerning Bill S-5 "An Act to
enable Canada to comply with a Convention on the Inter-
national Recognition of Rights in Aircraft".

Dear Mr. Haig:

It seems that the Department of Justice cannot reason-
ably take a final stand regarding Bill S-5 as long as the
government has not brought down the amendments it
apparently wants to introduce.

I have had an opportunity to review the material
enclosed with your letter of November 12, 1974, in relation
to the above bill.

On the other hand, it is certain that the Government of
Quebec wishes to retain full jurisdiction on the registra-
tion of all movables. Indeed, it is emphasized in the brief
submitted by lending institutions that they will cautiously
keep on recording such rights in each province in addition
to doing so with the central registry.

As you point out, aside from the constitutional problem
(which in my view is a very real one) there would appear
to be potential conflict with existing provincial laws. A
number of provincial statutes of general application, as
well as the rules of civil procedure in this Province deal
with proprietary rights in chattels, and methods of protect-
ing and enforcing those rights.

Thus, it might be desirable that the federal act provide
for a mechanism that would recognize the validity of
registrations made in each province, of which the Federal
Department of Transport would have received a copy.

While the proposed legislation may be desirable, it seems
to me that confusion and uncertainty will be the inevitable
result unless some effort is made, in consultation with the
provinces, to resolve these conflicts, many of which are
referred to in the evidence of the Senate committee pro-
ceedings enclosed with your letter. Even if the provinces
were to enact legislation excluding aircraft from those
statutes of general application which relate to property
rights in chattels, it seems to me that the constitutional
problem still remains.

Such exchange of documents should obviously be
charged to the central registry. It goes without saying that
the proposed mechanism requires prior consultation with
the various registrars of the provinces.

Yours truly,

André Gélinas,
Research Director.

(Copy of telegram sent to Provincial Attorneys General)

February 21, 1975

Pursuant to previous letters re Bill S-5, your views
urgently required by committee to complete consideration
of above bill. Please forward reply March 1, 1975, latest.

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications.

(Telex)

February 24, 1975.

Neither I nor officials of my Department have had an
opportunity to make a thorough examination of the consti-
tutional question. However, it does seem to us that certain
portions of the proposed Act relate to property and civil
rights and civil procedures, and not to aerial transporta-
tion. Section 10 in particular, on the face of it, seems to fall
within those classes of subjects reserved to the provincial
legislatures by Section 92 (13) and (14) of the British
North America Act. Even if, after more thorough research,
the Provincial Attorneys General were to agree with the
view apparently expressed by the Department of Justice
on the constitutional problem, members of the private
sector who are affected could challenge the legislation, so
that uncertainty would continue until there has been a
judicial pronouncement.

The Honourable Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario.
Dear Sir:

My department would be pleased to consult further on
this problem with other provincial and federal officials.

The examination of the implications of Bill S-5 as they
affect the Province of New Brunswick has required careful
consideration by this office. After serious deliberation on

Yours very truly,

Allan E. Sullivan,
Attorney General,
Province of Nova Scotia.

the matter it is felt that this province cannot agree to simply abandon its jurisdiction over aircraft which are chattels and fall within the legislative jurisdiction of this province.

The proper method of creating and implementing the scheme proposed by Bill S-5 would be by means of federal/provincial agreements supported by compatible federal legislation based thereon rather than the federal government's simply assuming a jurisdiction which it is submitted it does not have thereby further confusing the situation which Bill S-5 presumes to clarify. While it is accepted that the idea of Bill S-5 is basically sound and that federal legislation is necessary to implement the international convention, it is the means of implementation without clear guarantees of provincial rights in aircraft as chattels to which this province objects.

It is urged by the Province of New Brunswick that the method above suggested for the implementation of the scheme proposed by Bill S-5 be carried out. Otherwise, those having 'interest' in aircraft will be in no clearer position if Bill S-5 were to be passed with the ever present possibility of constitutional challenge from the provinces. Interest holders will simply have to register in one more registry office with no more certainty of protection thereunder than under the current practice.

It is hoped these suggestions will be considered by the committee in deliberations on Bill S-5 in furtherance of good federal-provincial relations and in light of this province's real concern for the constitutional issues involved.

Yours truly,

Paul S. Creaghan
Minister
Department of Justice
Fredericton, N.B.
E3B 5H1

(Telex)

February 27, 1975.

Mr. Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on Transport
and Communications.
Ottawa, Ontario.

Further to your correspondence regarding Bill S-5, this will advise that Saskatchewan is not in agreement with the opinion of the federal Department of Justice that Bill S-5 falls entirely within the legislative competence of the Parliament of Canada. It is our view that the bill in many respects involves matters reserved by the British North America Act to the provinces as being in relation to property and civil rights in the province. In addition Saskatchewan is concerned that the establishment of a central registry system limited to aircraft could create more legal and administrative problems than it resolves. Accordingly it is our position that consultation with the provinces rather than legislation is indicated at this time.

Roy J. Romanow,
Attorney General,
Province of Saskatchewan.

(Telegram)

February 23, 1975

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Canada.

Further to letter of November 12, 1974, of J. Campbell Haig to Merv Leitch, Attorney General, Alberta's view is that bill S-5 is largely legislation affecting property and civil rights and within provincial jurisdiction. We concur in the views of the Province of Manitoba as set out in the letter of December 17, 1974, of G. Pilkey, Deputy Attorney General, Manitoba.

Acting Deputy Attorney General
For Alberta.

February 27, 1975

The Honourable J. Campbell Haig,
Chairman,
Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.

Dear Senator Haig:

On behalf of the Attorney-General for British Columbia I wish to enclose the text of the Telex sent to you on February 27, 1975, in which British Columbia's views on Bill S-5, as requested, were embodied.

Thank you once again for your consideration in waiting for the reply.

Yours very truly,

Norman J. Prelypchan,
Solicitor,
Attorney General's Department,
Province of British Columbia.

(Telex)

February 27, 1975

The Honourable J. Campbell Haig,
Chairman, Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.

*British Columbia's Reply to the Senate of Canada Standing
Committee on Transport and Communications—Request
For Comments on Bill S-5*

It is respectfully submitted that in its consideration of Bill S-5, the Senate Standing Committee on Transport and Communications consider the following views of the Province of British Columbia.

Constitutional Considerations

1. Legislation relating to the registration of financial interests in aircraft is clearly within provincial jurisdiction under the provisions of Section 91(13) of the B.N.A. Act (property and civil rights).

2. The proposed federal legislation is seen as going beyond the jurisdiction of the Parliament of Canada, as the dominant aspect and effect of the legislation relates to property and civil rights. The proposed legislation would

not merely touch on some aspects of exclusive provincial jurisdiction in an ancillary manner, but would rather effectively and primarily deal with property and civil rights, under the guise of aeronautics legislation.

3. That if the federal bill is enacted and the suggestions that applicable provincial legislation be repealed are accepted, existing property rights derived from valid provincial legislation would appear to be abdicated in favour of Ottawa.

Practical Considerations

1. British Columbia has established and presently maintains a central registry for the filing of security interests in chattels. The registry system embraces security interests in aircraft. The procedure can be found to exist in the Conditional Sales Act, the Bills of Sale Act, and the Companies Act.

2. The Mechanics' Lien Act of the province deals specifically with protecting the security of workmen and suppliers who have expended labour and materials on the repair of aircraft.

3. Some of the submissions advocate somewhat of a self-interested and convenience-oriented position.

4. The federal scheme would deprive the provincial resident of the convenience of the existing system of registration. Presumably he would need to retain an Ottawa agent to effect searches, etc. The establishment of a federal regional office in the province would only serve to replace the existing system with a similar one.

5. Existing provincial legislation makes mandatory the registration of security interests thereby establishing recognized priorities. The proposed federal legislation in favour of a less desirable system would provide only information to those interested with the ranking of priorities only effective between the parties who had registered.

6. The passage of the federal legislation would result in a duplicity of registries in respect of those provinces, such as British Columbia, which would not wish to remove the application of its registry system to aircraft.

7. The proposed federal legislation may disentitle owners of aircraft in the Province from the extensive benefits of the "seize or sue" legislation, presently existing.

Summary

Leaving aside the constitutional issues, the practical benefits to be derived from such legislation, that is, the claim of greater protection for the financial institutions, reduced cost of financing to the borrower, and the practically enforced compliance to a registration system in jurisdictions not presently enjoying one, may have merit. Those benefits, though attractive in the abstract, do not arise, solely from the concept of the suggested single registry in Ottawa.

Although British Columbia is opposed to recommending this proposed legislation it should not be taken as rejecting other alternatives which may be explored to derive similarly practical results. The establishment of central registries in all the provinces could be urged forthwith, through

the medium of the Uniformity Commissioners recommending the enactment of reciprocally compatible legislation by the provinces, without a compromise of constitutional jurisdictions and local interests.

Respectfully submitted,

The Attorney-General for the Province of British Columbia.

February 28, 1975.

Mr. Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario,
K1A 0A4

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Dear Mr. Bourget:

Further to my letter dated January 31, 1975, to the Honourable J. Campbell Haig, this is to further advise you that this province feels that an authorization for seizure of an aircraft should be made to the Supreme Court of the province and not to the Federal Court of Canada. This province is concerned about the progressively expanding jurisdiction of the Federal Court of Canada.

Yours sincerely,

T. Alex Hickman,
Minister of Justice,
Government of Newfoundland.

January 31, 1975

The Honourable J. Campbell Haig, Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario, K1A 0A4.

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Dear Senator Haig:

Thank you for your letter and enclosed documentation of November 12 relating to the above-noted bill. As the proceedings before your committee revealed there was no official consultation with our province on this matter.

It is the opinion of the Province of Newfoundland and Labrador that the proposed bill deals primarily with property rights and therefore the Parliament of Canada lacks jurisdiction in this matter. Our province is certainly not willing to ignore the constitutional implications of the bill because of the practical benefits that would be afforded to financial institutions.

If the bill is passed in its present form, uncertainty in this area will continue in the absence of a clear judicial decision and the Province of Newfoundland may therefore

have to refer this matter to the courts for judicial determination.

Yours sincerely,

T. Alex Hickman, C.R.,
Minister of Justice,
Government of Newfoundland.

February 28, 1975.

(Letter addressed to Attorneys General of all Provinces)

February 28, 1975.

Please find enclosed herewith copies of the replies received, to date, by the Chairman of the Standing Senate Committee on Transport and Communications, to his two previous letters to the Attorneys General of each of the provinces requesting their views regarding Bill S-5 "An Act to enable to comply with a Convention on the International Recognition of Rights in Aircraft".

As Deputy Chairman of the Committee, I have been authorized by the committee to forward this correspondence to you for your information.

It is the wish of the committee to proceed with its study of above bill as soon as possible and, to this end, a committee meeting is being arranged for the early part of March.

Yours sincerely,

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications.

March 3, 1975.

The Honourable J. Campbell Haig, Q.C.
Chairman, Standing Senate Committee on
Transport and Communications
The Senate
Ottawa, Ontario
K1A 0A4

RE: Bill S-5—An Act to enable Canada to comply with a Convention on International Recognition of Rights in Aircraft.

Dear Senator Haig:

The Premier and Attorney-General, the Honourable Alexander B. Campbell has requested that I reply to your letter of November 12, 1974 concerning the above captioned matter.

I have examined the materials enclosed with your letter and researched the problem posed by Bill S-5. After discussing the matter with the Deputy Attorney General, it is our opinion that Bill S-5 is related to the property and civil rights, a field assigned by the B.N.A. Act to the provinces. As such the matter should be thoroughly discussed with the provinces before any legislation passed.

I thank you for soliciting my minister's views on Bill S-5 and the Department of the Attorney General would be

pleased to consult with federal and provincial officials on this matter.

Yours truly,

Arthur J. Currie,
Departmental Solicitor,
Department of Justice,
and Attorney General,
Province of Prince Edward Island.

February 24, 1975

(Telegram)

Maurice Bourget, Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.

Provincial government views will be expressed directly to the Government of Canada and therefore I anticipate making no personal submissions before your committee.

John T. Clement,
Attorney General of Ontario.

April 4, 1975

The Honourable Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
OTTAWA, Ontario.
K1A 0A4.

Dear Senator Bourget:

The Attorney General, the Honourable John T. Clement, has requested that I reply to your letter of February 28th, enclosing correspondence and referring to Senator Haig's earlier letter with respect to Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

I fully appreciate the desirability of the objective of Bill S-5 to establish in each country a single internationally recognized central registry for the recording of all interests in aircraft of the nationality of the country. It would give protection to Canadian interests and convenience and certainty to commercial transactions relating to aircraft. In accordance with this view, my comments are put forward in a cooperative spirit. However, an examination of the bill has led me to the conclusion that, in its present form, it will not accomplish this objective and will be attended by unnecessary legal problems. Two main aspects of the bill concern me.

In my view, the bill in its present form is at least in part of doubtful constitutional validity. Its validity would appear to be intended to rest on Parliament's authority to legislate in relation to aeronautics and aerial transportation and to legislate for the purpose of implementing an International Convention. The scope of the authority of Parliament in relation to both of these matters is not clearly defined. Certain provisions of the bill would seem to go beyond either of them even if the most favourable view is taken of Parliament's authority and to relate to matters of provincial competence. For example, the bill abrogates the rights of a creditor to seize under provincial law a non-commercial Canadian aircraft in the exercise of a contractual right to enforce a security interest acquired under such law if the security interest is unrecorded in the

central registry, although no person other than the debtor and creditor has any claim with respect to the aircraft (cl.8(b)). Such a provision does not appear to be required by the terms of the Convention (Art. 1, para. 2) nor does it seem to be legislation in relation to aeronautics or aerial transportation, but seems to be legislation strictly in relation to property and civil rights in the province. The validity of this and other more significant provisions of the bill can only be finally settled by the courts and until this is done, will remain uncertain.

Again, the provisions of the bill do not seem to have been prepared with sufficient thought given to integrating them with existing provincial laws. In some provinces, statutes require registration under them to give validity to security claims over chattels as against third parties. It would appear that the validity of an interest recorded in the central record is to be determined in part under provincial law. What is the position of an unregistered but recorded interest? Also, the transitional clause (cl.17) leaves the operation of provincial laws with respect to securities given before the coming into force of Bill S-5 uncertain and indefinite as to the period during which they will operate. Other examples are given in the submissions already made to your committee.

Until all these uncertainties are resolved, I suggest that the objective Bill S-5 will be substantially defeated since lenders desiring to ensure protection for security interests in aircraft will probably find it necessary to comply with both provincial laws and Bill S-5. Even then their rights will not be clear until the extent to which the bill overrides provincial law is established. I am sure no one will contend that the existence of such uncertainties in a field where significant commercial transactions must be founded on certainty of the law can be justified.

I have given some thought to the ways in which these uncertainties could be eliminated.

I do not think that a reference to the bill to the courts would be of assistance. The question of its validity arises with respect to several of the provisions of the bill and raises many questions that it would be undesirable to deal with in the abstract. Moreover, it would not, I suggest, be possible to refer questions to the courts that would settle the operation of the provisions of the bill in all of the 10 provinces.

For these reasons, I would respectfully suggest that Bill S-5 should not be proceeded with until after a consultation between the appropriate federal and provincial ministries has taken place. The bill might be revised to establish a scheme enacted by clearly valid complementary federal and provincial legislation. Its terms could also be revised to clarify and make certain the effect of recording in the new central record under the law of each province.

I should also add that I feel that it is undesirable from the point of view of cost and delay to confer discretionary jurisdiction on the Federal Court to regulate seizures of aircraft operating on scheduled air services where a judgment of a superior provincial court authorizing such seizure has already been obtained. Any special considerations governing the seizure of such aircraft should be written into the bill and could be applied in the provincial courts.

This new extension of the already over-extended jurisdiction of the Federal Court is unnecessary.

I thank you for soliciting the views of this ministry on this matter.

Yours Truly,

F. W. Callaghan,
Deputy Attorney General,
Province of Ontario.

February 21, 1975.

Mr. F. E. Gibson,
Director, Legislation Section,
Department of Justice,
OTTAWA, Ontario
Dear Mr. Gibson:

The Standing Senate Committee on Transport and Communications is presently considering Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft". Some time ago I was instructed to seek the views of the provincial Attorneys General on said bill. To date, the three attached replies to our queries have been received.

This morning the committee instructed me to renew our request to the Attorneys General, forwarding at the same time copies of the replies already received. I was also instructed to acquaint you with these developments and to seek your advice as to the possibility of our committee amending the legislation without violating the terms of the treaty which it seeks to implement.

I should like to hear from you as to your availability to so advise our committee, either by appearing before it or submitting a written opinion. Your advice should also deal with the constitutionality aspect of the said bill.

Thanking you for your kind attention to my request, I remain,

Yours truly,

Maurice Bourget,
Deputy Chairman.

March 5, 1975

Senator Maurice Bourget
Deputy Chairman
Senate Committee on Transport and Communications
The Senate
Parliament Buildings
Ottawa, Ontario
K1A 0A4

RE: Bill S-5 And Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft

Dear Senator Bourget:

In your letter of February 21, 1975 to Mr. F. E. Gibson, Director, Legislation Section, you inquired as to the possibility of the Committee on Transport and Communications amending Bill S-5 without violating the terms of the Convention on the International Recognition of Rights in Aircraft signed at Geneva on the 19th day of June, 1948. You

also requested a reply providing an opinion as to the constitutional aspect of the bill, i.e., an opinion on the authority of Parliament to enact legislation to give effect to the Convention.

With respect to your inquiry as to the possibility of amending the bill without violating the terms of the Convention, there are undoubtedly amendments that could be made without violating its terms but each of these would have to be considered in light of the Convention. It is, in the circumstances, impossible to advise you in a specific manner without knowing the nature and scope of the proposed amendments.

The bill is based on the federal power in respect of aeronautics which arises from two well known judicial decisions. The first is the decision of the Privy Council, *in re The Regulation and Control of Aeronautics in Canada*, (1932) A.C.54. The second is the decision of the Supreme Court of Canada in *Johannesson vs the Rural Municipality of West St. Paul* (1952) 1. S.C.R. 292.

As an officer of the Department of Justice and a legal adviser to the Government I am unable to give you an opinion on constitutional aspects to which you refer. Such a request should be addressed to the Minister responsible for the bill.

Yours very truly,

M. H. Pepper,
Department of Justice.

Senator Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
Parliament Buildings.

Subject: *Central Aircraft Registry Act, Bill S-5*

You have requested comments on behalf of the Department of Transport in respect of the briefs and opinions expressed by the parties appearing at the Senate hearings on Bill S-5 particularly in respect of the objections made on behalf of the financial institutions.

I have been requested to point out to your committee that the principles set out in Bill S-5 have been promoted by the Department of Transport principally at the request of the Canadian Bar Association and of financial institutions interested in aircraft financing for the purpose of accommodating what was considered a public need in the area of aircraft financing. Other than that, the Department of Transport has no particular interest in Bill S-5. The failure of Bill S-5 to be passed would not in any way adversely effect the operations of the Department of Transport. In saying this however, it is recognised that the Department of Transport is perhaps the only agency of the government which could further the bill or carry out its provisions and give effect to the Convention on the International Recognition of Rights in Aircraft.

It is noted that all the provincial Attorney Generals have taken the position that the bill infringes upon property and civil rights and thus upon provincial legislative jurisdiction. Some of the provincial Attorney Generals are of the opinion that the passage of the bill would create uncertainty in this particular area which would continue in the absence of a clear judicial decision. The position of the

Department of Transport is based upon the opinion of the law officers of the Department of Justice that the bill is within federal legislative jurisdiction and does not unnecessarily infringe upon the provincial sphere. Although the opinion of the Department of Justice is being relied upon, it is accepted that this does not settle the law on the matter and until a court decision is taken it must be admitted that there will be uncertainty in the minds of persons registering financial interests in aircraft as to the protection afforded by Bill S-5 and they will perhaps necessarily be obliged to continue registering in accordance with provincial legislation.

The briefs from the financial agencies concerned in aircraft financing objected to the provisions of the bill upon a number of common grounds, some of which are:

- (a) that a floating charge is not provided for;
- (b) provision is not being made for interests to be registered against aircraft engines only;
- (c) that the provisions relating to seizure and sale of an aircraft are unnecessarily complicated and time consuming.

In relation to these particular objections it must be recognised that the purpose of the bill is to comply with the Convention on the International Recognition of Rights in Aircraft in order that financial interests registered against aircraft in Canada will be recognised in other countries adopting the Convention. The Convention provides the rules under which recognition will be given to registered financial interests in aircraft. One of the fundamental rules is that interests be registered against *an aircraft* registered in a country as to nationality, that is to say it must be an identifiable aircraft registered as to nationality. The only way an aircraft can be registered as to nationality is pursuant to the Aeronautics Act, which has been held to be federal legislation. If provision in the bill was made for a floating charge or for registering an interest against engines only there is in such cases no identifiable aircraft and accordingly such interests would not come under the Convention and there would be no protection. In addition such provisions would undoubtedly infringe on provincial legislation.

Also the provisions relating to seizure and sale of an aircraft particularly the requirement that six weeks notice of sale be given are provisions required, by the Convention for International Recognition. If the bill provided for a shorter period of time again the protection of the Convention would be lost.

Another objection by the financial institutions was that no provision is made for parties agreeing among themselves as to priority of registered interests under the bill. This is correct by there is nothing in the bill preventing parties from changing the order of priority of registered interests, for example a prior registered interest can be voluntarily removed and re-registered at any time which would permit another interest to be registered ahead of the one which had first priority. Further there is nothing in the bill which would prevent the continuation of the common possessory lien such as can be had for hangarage or repairs to the aircraft. In such cases the aircraft can be held until payment or satisfactory arrangements made.

A further objection by the financial institutions was that once an aircraft had been seized on the security interest, it was necessary to continue with the process of applying to a court for authority to sell the aircraft and the parties concerned could not agree among themselves as to the manner in which the security interests might be satisfied. There is nothing in the bill to this effect provided there is to be no sale. We are all aware that many court actions have been commenced but very few proceed to the ultimate end provided by law, so also with the provisions of the bill. They are there to be used if necessary but there is nothing to prevent the parties having registered interests under the bill to agree at any stage to a re-financing of the aircraft and to a reshuffling of the priority of registered interests.

It should also be noted that aircraft can only be registered as to nationality in one state. Therefore a Canadian

registered aircraft to be sold outside Canada, the registration of the aircraft in Canada would have to be cancelled. The provisions of the bill provide that this cannot be done without the consent of all those who registered their interests under the provisions of the bill. This is something that provincial legislation could not possibly provide for.

In conclusion I would like to point out that the bill was drawn principally to provide for the International Recognition of Rights in Aircraft registered in Canada. Accordingly, the bill was drawn so that it would not determine the substantive rights of the parties registering interests under it but would contain the provisions which are essential to the Convention in order that rights registered under it would receive international recognition.

L. J. Shields,
Counsel,
Air Administration,
Ministry of Transport.

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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 9

THURSDAY, MAY 29, 1975

Complete Proceedings on Bill C-5, intituled:

“An Act to establish the Canadian Radio-Television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions”.

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*,
P.C.

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 1, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Forsey, seconded by the Honourable Senator Heath, for the second reading of the Bill C-5, intitled: "An Act to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions".

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

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, May 29, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10:00 a.m. to consider Bill C-5, intitled: "An Act to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions".

Present: The Honourable Senator Heath (Chairman),
Senators Forsey, Robson, Gagnon, and Patten. (7)

Present but not of the Committee: The Honourable
Senator Connolly (Ottawa West)

In attendance: Mr. R. L. de Plessis, Legal Advisor to
the Committee

The following witnesses were heard a part of the
Communications Department:

Mr. Robert J. Buchan,
Special Policy Advisor to the Deputy Minister

Mr. André Thériault,
Director, Legal Services Branch

Mr. Sylvain Deschamps,
Legal Advisor

After discussion and upon Motion of the Honourable
Senator Heath, it was Resolved to report the said Bill
without amendment.

All in all, the Committee adjourned in the call of
the Chairman.

ATTENY:

Mr. Alain Fournier,
Clerk of the Committee.

Minutes of Proceedings

Thursday, May 29, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10:00 a.m. to consider Bill C-5, intituled: "An Act to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provision."

Present: The Honourable Senators Haig (*Chairman*), Blois, Bourget, Eudes, Flynn, Graham, and Petten. (7)

Present but not of the Committee: The Honourable Senator Connolly (*Ottawa West*).

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The following witnesses were heard on behalf of the Communications Department:

Mr. Robert J. Buchan,
Special Policy Adviser to the Deputy Minister;

Mr. André Bluteau,
Director, Legal Services Branch;

Mr. Miville-Deschênes,
Legal Adviser.

After discussion and upon Motion of the Honourable Senator Flynn, it was *Resolved* to report the said Bill without amendment.

At 11:10 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, May 29, 1975.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-5, intituled: "An Act to establish the Canadian Radio-Television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions" has, in obedience to the order of reference of Thursday, May 1, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, May 29, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-5, to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and others Acts in consequence thereof and to enact other consequential provisions, met this day at 10 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we are considering Bill C-5, the Canadian Radio-television and Telecommunications Commission bill. This bill was reprinted from the original bill and reported on April 11, 1975. It is the reprinted version we will deal with this morning.

We have with us this morning Mr. Robert J. Buchan, Special Policy Adviser to the Deputy Minister of Transport and Communications; Mr. André Bluteau, Director, Legal Services Branch; and Mr. Miville-Deschênes, legal adviser. Mr. Buchan will lead off with a short statement.

Senator Bourgei: Mr. Chairman, before we proceed to that, may I point out to the committee that the second item on our agenda this morning, namely, consideration of the draft report relating to "Les beaux dimanches", will not be dealt with this morning owing to the fact that the English translation of the report needs to be revised extensively. We will probably be in a position to proceed with that in one or two weeks from now.

The Chairman: Thank you, senator. We will now hear from Mr. Buchan..

Mr. Robert J. Buchan, Special Policy Adviser to the Deputy Minister of Transport and Communications: Thank you, Mr. Chairman. Honourable senators, by way of general introduction to Bill C-5, there is little I can profitably add to what was said in the Senate on April 24 by the Honourable Senator Forsey when he moved second reading of Bill C-5. I would expect that this morning there might be some minor technical points of clarification regarding the bill with which I or the department's legal advisers, Mr. Bluteau and Mr. Miville-Deschênes, may be able to be of assistance to you.

With your permission, and in order to refresh everyone's memory as to the purpose and the essential elements of Bill C-5 which we have before us, I will briefly recapitulate what has been said on earlier occasions.

The essential purpose of this bill, which is purely of an administrative nature, is to entrust the regulation of all federally-regulated telecommunications to a single agency which would be known in future as the Canadian Radio-

television and Telecommunications Commission. The initials CRTC would be preserved, as the word "Radio-television" in the title would be hyphenated and the "t" in "television" would be small case.

In order to effect this rearrangement of responsibilities of the regulatory agencies, the bill provides that when the act is put into force the new commission will continue to exercise the present powers of the CRTC over broadcasting undertakings, and the new commission will also apply the provisions of the Railway Act and the National Transportation Act to the telephone and telegraph companies.

In effect, the responsibilities of the existing Telecommunications Committee of the Canadian Transport Commission will be transferred to the new, enlarged CRTC.

The existing CRTC has five full-time members and ten part-time members. The new commission would have a maximum of nine full-time members and a maximum of ten part-time members. So you can see that there will be an addition of a maximum of four full-time members to the CRTC.

This bill represents the first phase of the government's two-stage revision and modernization of federal statutes relating to telecommunications. The second phase of this legislative program will contain a number of proposed changes in policy, as suggested in the government's position paper entitled, "Communications—Some Federal Proposals," which was tabled in the House of Commons on April 25 by my minister, the Honourable Gérard Pelletier.

Bill C-5, however, does not contain what might be described as policy proposals. It is purely administrative, or, as some have referred to it, is of a housekeeping nature.

Mr. Bluteau and myself, Mr. Chairman, are at your disposal to answer questions which the committee members may have with regard to the contents of the bill.

The Chairman: Thank you very much, Mr. Buchan.

Mr. Bluteau, would you care to add anything to that?

Mr. André Bluteau, Director, Legal Services Branch, Department of Communications: No, Mr. Chairman. Thank you.

The Chairman: Mr. Deschênes, have you anything to add to that statement?

Mr. G. Miville-Deschênes, Legal Adviser, Department of Communications: No, Mr. Chairman.

Senator Bourgei: Mr. Chairman, I would like to ask Mr. Buchan the following question. The new setup will

have four new full-time members: what is the reason for adding four new full-time members and not keeping the five members who are there now?

Mr. Buchan: The CRTC currently has five full-time members, as I explained, and the Canadian Transport Commission has 17 full-time members. The Canadian Transport Commission now has six committees. When Bill C-5 is proclaimed and comes into force, the work and responsibilities of one of the six committees of the Canadian Transport Commission, the Telecommunications Committee, will be transferred to the new CRTC.

Of the 17 full-time commissioners on the Canadian Transport Commission, three have generally been responsible for the work of its Telecommunications Committee. It was felt necessary and desirable by the government to provide an additional number of full-time commissioners to deal with the enlarged responsibilities that the new commission will be charged with, once the transfer of the responsibilities of the Telecommunications Committee to the new CRTC has been effected.

Senator Bourget: Does it mean there will be only one new member? The CTC now has a committee of three persons. Will those three persons be transferred to the CRTC, plus one new member? Is that the way it will be done?

Mr. Buchan: Might I reply that I understand the question, and certainly the reason for the conclusion? The answer, simply put is, no, there will be four new commissioners, because there will not be a reduction in the number of commissioners on the Canadian Transport Commission. That number will remain at 17, and their responsibilities will now be divided amongst the work of five rather than six committees. There will simply be an addition of four full-time commissioners to the new CRTC, so that there will be four new commissioners added.

Senator Connolly: Is the jurisdiction that the committee, or the CTC, now holds, to continue in respect of radio and television?

Mr. Buchan: Yes. The jurisdiction that the CRTC now holds will continue in exactly the same form with regard to broadcasting activities.

Senator Connolly: What is the relationship between the organization it is proposed to set up here and the Canadian Transport Commission?

Mr. Buchan: The responsibilities that the CRTC now has with regard to broadcasting activities will remain the same. The responsibilities and the manner of procedure of the Telecommunications Committee of the CTC will remain exactly the same when transferred over to the new commission. There will therefore not be any changes in the nature of the work, or of the responsibilities of the committee. Under the new bill, however, there will not be a formal committee structure in the CRTC. The Telecommunications Committee, as it presently exists under the Canadian Transport Commission, will not continue as a separate committee in the new CRTC.

Senator Connolly: All right. That is useful information. However, would you mind outlining what is the relation-

ship between the body that it is proposed to establish by means of this bill and the Canadian Transport Commission? Is there an appeal from one to the other? Are there overlapping functions? Does the Canadian Transport Commission deal with the same area of activity that the proposed new body will deal with?

Mr. Buchan: Mr. Chairman, there will be no overlapping of functions. There will be no redundancy. It was thought desirable at this time to transfer the responsibility of the Telecommunications Committee—just simply one of the six committees of that commission—to the new CRTC, in order to reflect properly changes in technology that have taken place in the past 20 years.

When the Canadian Transport Commission and its predecessor were established, telephone and telegraph lines traditionally followed the railways, and it was considered natural that the federal regulation of telegraphy and telephony should be the responsibility of the same body that was charged with federal regulation of the railways; but in view of today's technology, with the use of microwaves and satellites, and since we are now into the world of coaxial cable and cable television, it is really a question of telegraphy and telephony coming closer in its application and use to the hardware in particular, and also in some respects to the activities, of the world of broadcasting. The government therefore considered it desirable at this time to transfer responsibility for the regulation of the telegraph and telephone activities, which it regulates, to the body that is primarily responsible for regulating communications activities which take the form of broadcasting.

Senator Connolly: Is it accurate to say this, that there is not actually to be a transfer now? I suppose there is to some degree, but what in fact you propose to do by this legislation is to discontinue any jurisdiction in the Canadian Transport Commission in respect of the areas you have just described, and to have that work done by the body to be set up by this bill. Is that so?

Mr. Buchan: That is a very accurate description, senator, with one caveat, and that is with regard to pending cases that would be before the CTC.

Senator Connolly: Until those work through the system, the jurisdiction of the Canadian Transport Commission will continue. Thereafter, all such cases will be before the body to be set up by this legislation.

Mr. Buchan: Yes, this is correct.

Senator Graham: I am just wondering if the personnel presently involved in handling this particular type of legislation, and handling the affairs of the Telecommunications Committee, will be transferred automatically from the CTC.

Mr. Buchan: Mr. Chairman, it is my understanding that there are discussions going on at this time with regard to the transfer from the CTC of some of those people who had been working primarily on regulation of telegraph and telephone activities to the new CRTC. The number of officials involved is relatively small. It is my understanding that it is in the nature of 10 or 12 who have been working predominantly in the area of telecommunications. Some of the staff of the CTC have been working

in part on telecommunications and in part on some of the other activities of the CTC.

Senator Graham: So your full-time commissioners will now be nine instead of five.

Mr. Buchan: That is right.

Senator Graham: Is it fair to say—I have heard this reported in the past—that the work load on the CRTC at some of its hearings has been so great that they had to divide the hearings, and have some of the commissioners hear some applications, while other commissioners heard others at the same time in different convention rooms, as it were? Is that true?

Mr. Buchan: That is true, sir.

Senator Graham: Has that affected the efficiency of the CRTC in any way?

Mr. Buchan: Mr. Chairman, I do not think, with respect, that it would be appropriate for me to comment on the work of the CRTC.

Senator Connolly: No, but you can answer the question, perhaps, in another way, or indeed, perhaps by answering this question: Do you think the addition of the larger number of personnel to the CRTC will work towards improving the efficiency of the CRTC in respect of hearings? Your answer will not be a reflection on the present activities of the organization, because we will not embarrass you by asking you policy questions, but we will try to find out what the purpose of the changes is.

Mr. Buchan: I believe that the one comment I might pass on the work of the CRTC is that it has been commended in many quarters for being very flexible and also because it has been prepared to leave the national capital region to go out into the country to hold its hearings. It has acquired the reputation of being responsive, flexible and quite quick in rendering its decisions, when one considers its nature as a regulatory body. As to whether or not it would be overloaded by taking on the responsibilities of the Telecommunications Committee, I think that is primarily the reason for the addition of four new commissioners. The new commission, the new CRTC, will also proceed to hire additional support staff and officials as soon as this bill is proclaimed and comes into force. It is my understanding that they will be hiring beyond the number presently employed solely in working with the Telecommunications Committee of the CTC.

Senator Connolly: Is the volume of work now done in this area, both by the CTC and its committees—one of which will be abolished—and the CRTC growing?

Mr. Buchan: Yes, the volume of work is growing as the use of telecommunications facilities in Canada expands.

Senator Connolly: Would you say that the rate of growth is great or small, or can it be anticipated that it will continue to grow? You see, the government comes here and says, "We want to add five members to a board." What we want to find out is why that many additional members are required to do the work now being done by fewer people, presumably—at least one fewer, in the light of Senator Bourget's question.

Mr. Buchan: Mr. Chairman, I do not really wish to get into the area of government policy.

Senator Connolly: You do not have to go into policy. All you really have to talk about is workload, the prospect in the industry and what is required to run an efficient operation, because this operation that is contemplated is a regulatory operation. If a requirement for more help in the field of applying these regulations is indicated, then there is no problem about this bill on that point.

Mr. Buchan: Mr. Chairman, the function is a regulatory one but it is also quasi-judicial. As a quasi-judicial function, it deals with an activity which in the past few years has received an increasing amount of attention. I can point to one particular activity of the Telecommunications Committee which the new CRTC with the enlarged number of commissioners will be handling in future—that is, applications by common carriers, and I might refer in particular to Bell Canada, for rate increases. In saying that I think that senators are aware of the amount of publicity and public interest that surround an application by a company such as Bell Canada for an increase in rates, and I think that senators are also aware of the increased amount of consumer interest and consumer activities in this area, and the consequent need for a quasi-judicial body of this nature to be adequately staffed and to be available to the Canadian people to hear the representations they have to make on a question such as an increase in Bell rates. Of course, this does not apply just to Bell; there are also the other common carriers which are federally regulated.

Senator Connolly: Any type of communications common carrier will now come before this new body in respect of rate applications.

Mr. Buchan: Rate applications regarding telephony and telegraphy which are regulated by the federal government.

Senator Flynn: Cablevision is presently under the committee of the Transport Commission?

Mr. Buchan: Cablevision is presently regulated by the existing CRTC.

Senator Flynn: How was it attributed to the CRTC rather than to the Transport Commission? Was it simply because it was connected to television? I do not think it is mentioned in the act.

Mr. Buchan: I think, senator, this question really gets close to the heart of one of the reasons that the government thought it desirable to move the Telecommunications Committee over to the new CRTC in that on a *prima facie* basis the hardware of cablevision may look like telephony because we are talking about coaxial cable, but the activity is deemed to be a broadcasting activity.

Senator Flynn: The transmission of a broadcasting activity.

Senator Connolly: Now we are being rather technical but it is important.

Senator Flynn: It is one of the main reasons for this bill in any event.

Senator Connolly: If I may pursue that for a moment, I hear a great many people, for example, talking about

cable in the Ottawa area and in particular with respect to cable on what they call channel 5 where reception is very, very poor. Will it be within the purview of this body to do something about that kind of service which is sold to the public and which does not seem to be quite as satisfactory as the service provided on other channels?

Mr. Buchan: Yes, it is within the purview of the CRTC, in its regulation of broadcasting activities and broadcast receiving undertakings, which is the legal terminology referring to cable television companies, in the review of their licences, to take whatever steps are necessary to ensure that the services provided are in keeping with the appropriate standards.

Senator Connolly: Has it that capacity and responsibility now?

Mr. Buchan: It has that responsibility now because cable is referred to as a broadcast receiving undertaking and therefore falls under the jurisdiction of the existing CRTC.

Senator Flynn: Was it intentional when you used the word "responsibility" but did not use the word "capacity" which was suggested by Senator Connolly?

Mr. Buchan: There was no intention in my mind to make a specific distinction.

Senator Flynn: Well then, what is "capacity"? Do all people who are providing cable television get a permit from the CRTC at the present time?

The Chairman: Yes.

Senator Flynn: I would like the witness to reply, Mr. Chairman.

The Chairman: I was just trying to be helpful.

Mr. Buchan: Mr. Chairman, I would prefer if this question were dealt with by our legal adviser, Mr. Bluteau.

Senator Connolly: It is perhaps a little unfair to ask any of these questions, but if any light could be shed on this it would be helpful.

[Translation]

Mr. André Bluteau, Legal Services, Department of Communications: The cable companies must send an application to CRTC. Obviously, some Quebec companies prefer not to send an application to CRTC for reasons other than that of the Federal government. But, at the present time, all the commercial broadcasting systems, such as the Ottawa Cablevision Company and so on, apply to the CRTC. The small community television systems, whose aerial is on an apartment building, for instance do not send applications because presently, the CRTC...

Senator Flynn: No decision has been taken by the Federal and the Provincial Governments on the matter of cablevision?

Mr. Bluteau: No. At the present time, you probably know that there is a conflict between the Federal, Quebec and other provincial Governments. There is for example Rogers Cable and this matter is presently before the Supreme Court.

Senator Flynn: This is to eliminate any possible doubt on the jurisdiction between the Transport Commission and the CRTC that all come under the same authority now?

Mr. Bluteau: I think that the operation is now what is called Phase 2. It is believed, the government believes that it is preferable to have one agency regulating both aspects, that is the transmission and broadcasting aspects so that it may work better. The constitutional question is apart from this.

Senator Flynn: This is because in the case of the telephone, at the present time, when one company operates in several provinces, there is no doubt that the Transport Commission has the jurisdiction?

Mr. Bluteau: Yes.

Senator Flynn: Now, in the case of telephone companies operating in only one province, this is still under the jurisdiction of provincial commissions?

Mr. Bluteau: Unless there has been a declaration on the general interest of Canada under Section 92.

Senator Flynn: I know, but there is none for the moment.

Mr. Bluteau: Yes, there is the B.C. Telephone.

Senator Flynn: Has B.C. Tel made an application?

Mr. Bluteau: Well, they had minor extensions.

Senator Flynn: It's very useful for them to get out of the Province of British Columbia.

Mr. Bluteau: Yes.

Senator Flynn: It is also very useful to have this declaration at the moment.

Mr. Bluteau: Yes.

[Text]

Senator Connolly: Could I return to the other point we were discussing and ask this: Under the present arrangement, does the CRTC have any responsibility for monitoring the adequacy of the service supplied by various licensees, such as regarding channel 5, in this area?

[Translation]

Mr. Bluteau: The problem with this system depends on the quality of installations. The present policy is progressive, the systems are gradually replaced. The level of regulation, at the technical level, is of an increasingly better quality, but there are sometimes historical cases. There was the same problem ten or five years ago and slowly the technical directors of communications attempt to improve the quality of services.

[Text]

Senator Connolly: But you do not supply the service; the service is supplied by the licensee.

[Translation]

Mr. Bluteau: No. But, they must get a technical certificate from the Minister of Communications stipulating that their system is able to transmit satisfactory programs

according to CRC standards. Then, the present policy, in view of the amount of investment is to do it gradually.

[Text]

Senator Connolly: In my opinion, the simple response of the consumer to the answer you have given is that, taking channel 5 in the Ottawa area as an example, it has bad quality and has had for a number of years. However, the quality of channel 7 is quite good. If one can give good service why cannot the other? Surely it is a matter of the proper type of installation?

[Translation]

Mr. Bluteau: Mr. Chairman, this question asks for a technical answer and I am not qualified. The channels are submitted to the interference of conventional television programs. I do not know much about the configuration of the channels here, but it is quite possible that the inferior quality of Channel 5 or Channel 7 is due to possible interference by other companies. In this case, the CRTC must decide which channel should be transmitted on an inferior quality channel.

Senator Flynn: This is mostly a geographical problem. It is so because in Quebec, CBC does not operate very well in many areas of the city, whereas Channel 4, CFCM Television is excellent just about everywhere, except in the lower part of the city, at the foot of Cap Diamant.

Mr. Bluteau: Moreover, conventional television creates interference on the television broadcasting channels.

[Text]

Senator Connolly: Allow me to ask a question with respect to clause 5 of the bill, which provides that persons who have any outside interests are not eligible for appointment to the commission. I presume that is to avoid a conflict of interest in the case of those to be appointed to this body. In view of a clause of that nature, is there any danger of not being able to obtain adequate, informed and experienced personnel to carry out the work proposed for the body to be established? Do you go to the industry mainly for these appointees, or are you seeking, rather, those who are not technically competent, but have judgment and other attributes?

[Translation]

Mr. Bluteau: If we refer to past experience, the industry has not provided all the commissioners. Moreover, in the past, there has been no prohibition as to the hiring of qualified people to work for both the CTC and the CRTC. The CTC has a similar clause.

Senator Flynn: A similar clause?

[Text]

The same situation applies with respect to the Canadian Transport Commission

[Translation]

Senator Bourget: Do the standards mentioned in section 5 apply to both full-time members and part-time members?

Mr. Bluteau: Yes.

[Text]

Senator Connolly: But you would not have any difficulty obtaining sufficient experienced appointees to staff the commission, notwithstanding such a clause.

[Translation]

Mr. Bluteau: In the past, the answer would have been, no. In the future, I believe that we can suppose that it will be the same thing.

Senator Bourget: With respect to these appointments, when the bill was introduced to the Senate by Senator Forsey, he mentioned that the Minister had made some propositions to the provincial government, whereby they could appoint some members of the Commission. Then, as Senator Forsey explained, he was not sure if the provinces had agreed to the offer of the Minister. Have new developments taken place since then?

Mr. Bluteau: I think that I could answer this way: the provinces, although it may not be enough, have received an offer of participation to the appointment to the Commission of part-time commissioners. The discussions are engaged at the present time and as you well know, the Conference of the communications Ministers has been adjourned to the month of July. For these reasons, my answer must be general. These discussions will resume in July.

Senator Bourget: And what are exactly the functions of the part-time members of the Commission? How many times do they meet? Do they often meet?

Mr. Bluteau: Yes. They have a part-time job, their functions are limited to radio broadcasting. They have responsibilities with respect to radio broadcasting, but not as far as telegraph or telephone are concerned. They are at the present time involved in the granting of radio broadcasting licenses. They attend auditions, give advice and take part in the final decision. But their functions are strictly related to radio broadcasting. Their participation is subject to the request of the president of the CRTC.

Senator Bourget: These part-time members represent the ten provinces? Ten members have been appointed?

Mr. Bluteau: No. The number ten was there before. They represent the regions, in a global way, this means that there are people from Montreal, Toronto, the Prairies, and the Maritimes. But they are appointed without consultation with the provinces, as it is the case for all the other commissions.

Senator Bourget: But the offer that the Minister made to the provinces did not suggest that later on, when this problem will be solved, this political question, there would be one part-time or permanent member for each of the provinces?

Mr. Bluteau: But I believe that the offer made with the Bill C-5 relates to a consultation with the provinces with respect to the appointment of the nominee who would be a part-time member, even if some wish him to be a full-time member. It is only a consultation. The appointed person will not be able to represent the province, since he must be a member of a federal commission, be submitted to the control of normal courts, and then to his oath of office. I think that this is all there is in the federal offer, in this case.

Senator Bourget: Thank you.

Mr. Bluteau: It was my pleasure, Senator.

[Text]

Senator Connolly: In my opinion, clause 5 is a very important clause to include in a bill such as this because in this industry there may be some vulnerability to situations involving conflict of interest. However, I suppose that the answer to the earlier general question I asked is, if you need people with technical competence to be appointed to this board, either as full-time or part-time members, they will simply have to sever their connections with any industrial background.

Mr. Buchan: Mr. Chairman, clause 5 refers to "pecuniary or proprietary interest". In the general sense of broadcasting, if we stay in that domain, currently on the CRTC the Vice-Chairman, Mr. Harry Boyle, is well known as a former broadcaster and is very experienced in the field of broadcasting.

The conflict of interest clause, clause 5, referring to "pecuniary or proprietary interest", would, as is normal in a case of this kind, require a commissioner to divest himself of his holdings.

Perhaps your concern relates to how we will get people who are technically competent and who may have had managerial experience in the industry and may therefore have an equity interest in a broadcasting undertaking. It should not be forgotten that there will be a permanent staff of officials who, presumably, would bring their technical competence and experience in the industry to bear when advising the commissioners prior to the commissioners' taking a decision.

Senator Flynn: Someone would not be able to buy shares of a telephone company operating in only one province and not coming under the jurisdiction of the commission. He could not purchase or hold any shares of that type, even if the transaction was not relevant to his responsibilities. I can understand that you have to define a very wide area.

[Translation]

Mr. Bluteau: Do I have to answer this question?

Senator Flynn: No, it is only an observation.

[Text]

The Chairman: Are there any further questions?

Senator Flynn: I move that we report the bill.

The Chairman: Should we report the bill, or should we go through it clause by clause?

Senator Connolly: We are familiar with the clauses of the bill and we have had very good comments from the witnesses.

The Chairman: It is moved by Senator Flynn, seconded by Senator Eudes, that the bill be reported to the Senate without amendment. Is it agreed?

Hon. Senators: Agreed.

The Chairman: I wish to thank the officials for their clear and concise statements on the purpose of the bill.

The committee adjourned.

Senator Bourget: Thank you, Mr. Minister. I am sure that the Commission will be able to provide the necessary information to the Government and the public.

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Senator Bourget: Thank you, Mr. Minister. I am sure that the Commission will be able to provide the necessary information to the Government and the public.

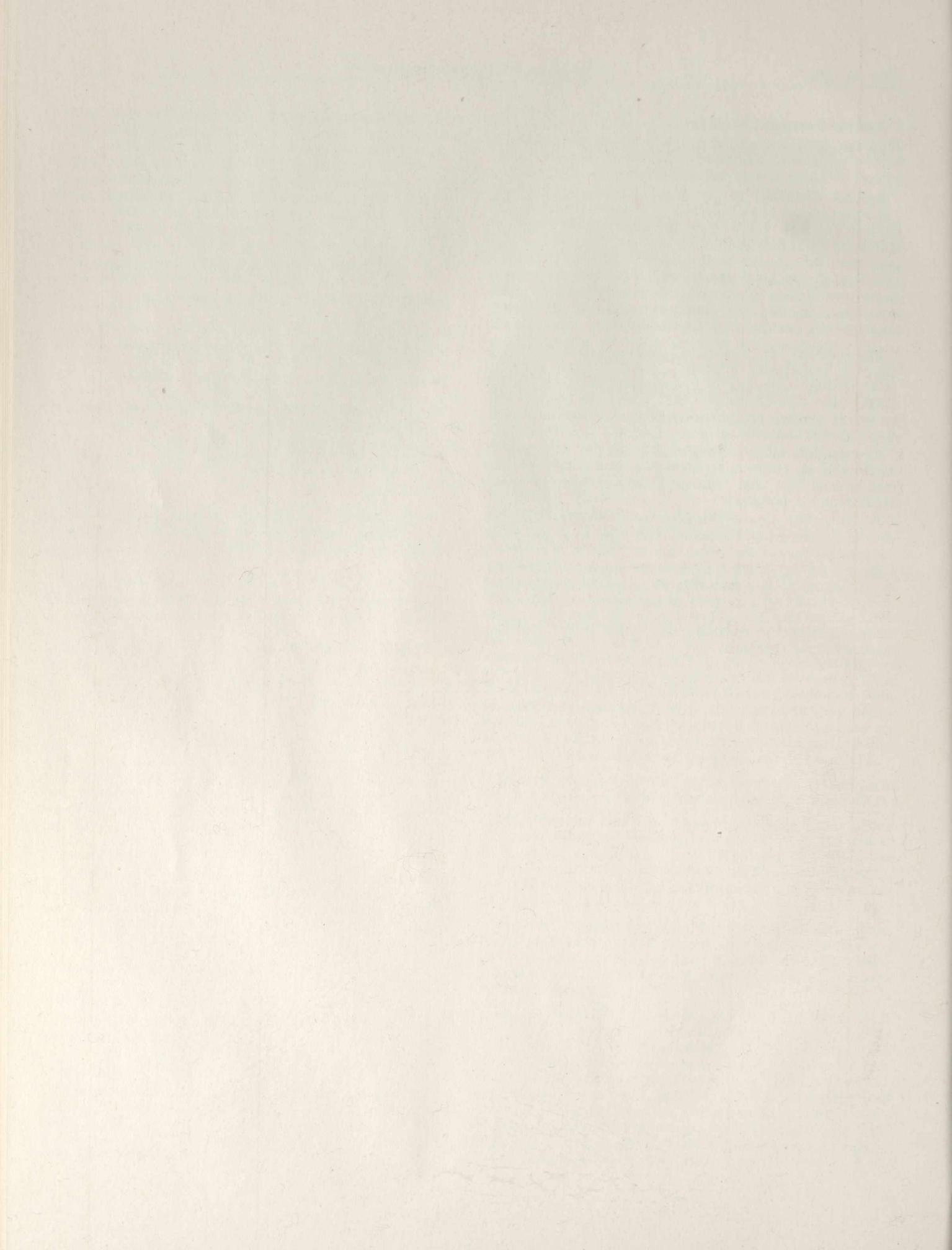
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FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA
PROCEEDINGS OF THE
STANDING SENATE COMMITTEE ON
**TRANSPORT AND
COMMUNICATIONS**

The Honourable MAURICE BOURGET, P.C., *Deputy Chairman*

Issue No. 10

WEDNESDAY, JUNE 18, 1975

Examination of the Television Program entitled:

“Les Beaux Dimanches”

REPORT OF THE COMMITTEE



STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, P.C.,
Deputy Chairman

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members

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"Les Beaux Dimanches"

REPORT OF THE COMMITTEE

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

"The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

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

Robert Fortier,
Clerk of the Senate.

Report of the Committee

Wednesday, June 18, 1975.

Pursuant to the Senate order of reference, dated October 31, 1974, the Standing Senate Committee on Transport and Communications reviewed the program entitled: "UN SHOW QUI M'TENTE AVEC DU MONDE QUE J'AIME" which was part of the television series entitled: "Les Beaux Dimanches", broadcast on April 28, 1974, on the French network of the Canadian Broadcasting Corporation.

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The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

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After debate, and—

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

Robert Fortier,
Clerk of the Senate."

As it appears in the Debates of the Senate of October 31, 1974, the purpose of the motion concerning the order of reference was to use this program to allow for a review of the Canadian Broadcasting Corporation programming by the Committee, as far as the achievement of the goals aimed at by the *Broadcasting Act* is concerned.

Your Committee held two study sessions on the review of the said program, on November 28, 1974 and February 19, 1975. At the first sitting, Mr. Laurent Picard, President of the Canadian Broadcasting Corporation and Mr. Raymond David, Vice-President and General Manager, French Services Division were heard as witnesses. Also present at that sitting but not heard were: Mr. Ron C. Fraser, Vice-President, Corporate Affairs, Assistant to the President; Mr. Don MacPherson, Vice-President and General Manager, English Services Division; Mr. Pierre Desroches, Vice-President, Planning; Mr. Denis Harvey, Deputy Assistant General Manager, English Services Division; Mr. Jean-Marie Dugas, Director of French Television; Mr. Marc Thibault, Director of Information Pro-

grams, French Services Division; Mr. Jacques Alleyn, General Counsel.

During this sitting a videotape of the program was shown and a simultaneous translation of the sound track was provided for the benefit of the English-speaking senators.

Evidence given by the witnesses from the Canadian Broadcasting Corporation revealed that the text of the program had been written by five authors. It was disclosed that the text of the program had not been submitted to either the programming branch or the officers of the Corporation for prior approval. The only evaluation made was by the Chief of the Variety Section of the Corporation. No evidence whatsoever was given that the Corporation had exercised any kind of control over the quality of the programming, despite the existence of a booklet entitled "Program Policy" prepared with the approval of the Board of Directors for the guidance of producers, journalists and senior officers. At the request of the members of the Committee, the President of the Corporation made this booklet available to the Committee.

Opinions were expressed by members of the Committee that the program was in very bad taste, that the text contained several vulgar, offensive and ambiguous expressions and that the program was aimed at ridiculing the constitutional authority of the country. Further, it appeared that the program was aimed at destroying national unity by attempting to demonstrate alleged inequality of treatment between the diverse ethnic groups of the country. In reply, the witnesses from the Canadian Broadcasting Corporation said that it was simply a satire that could lead to several interpretations but was altogether acceptable if judged in accordance with criteria established in other countries, namely in Great Britain and France. The witnesses were reminded that the program had rather to be judged by taking into account the political context of Quebec, and that, in this context, the text according to some senators contained a separatist message.

The Canadian Broadcasting Corporation officers questioned the comments of some senators to the effect that the program contained a message in favour of separatism. However, it is well known that in several instances the producers or commentators of the Canadian Broadcasting Corporation take undue advantage of their functions to propagate separatist ideas. Such an attitude has been denounced a number of times. For example, on April 1st, 1975, Mr. Claude Ryan, in an editorial in the newspaper *LE DEVOIR* from Montreal, referred to the attitude of

the Canadian Broadcasting Corporation employees in the following terms:—

[Translation]

"In other fields, namely in the broadcasting field, Ottawa has accustomed us for a long time to an entirely different approach; the Canadian Broadcasting Corporation, in particular, is an agency which comes under the authority of the central government. Yet separatism has not found in any other place as in the Canadian Broadcasting Corporation a better means of expressing itself as freely. Quite often—without anybody from *Le Jour* having expressed their astonishment about it—the impression has been created that the protagonists of this idea were more solidly entrenched in the Canadian Broadcasting Corporation than its opponents. Numerous critics, scandalized by this fact, have, on several occasions, questioned if it is a normal situation that federal funds that support the Canadian Broadcasting Corporation could thus be used to destroy Confederation."

At the Committee sitting on February 19, 1975, the only witness heard was Mr. Pierre Juneau, Chairman of the Canadian Radio-Television Commission.

Questioned with respect to section 3 of the *Broadcasting Act*, which sets out the broadcasting policy for Canada, and section 16 of the Act, which describes the powers of the Commission, Mr. Juneau answered that the Commission, in a general manner, was vested with a regulating and supervisory power. He added that there seems to be in section 3 an insistence on the part of the legislator to make the licence owners and not the Canadian Radio-Television Commission bear the responsibility for individual programs—subject only to generally applicable statutes and regulations.

Mr. Juneau also mentioned Canadian Radio-Television Commission Regulation no. 5 which prohibits a station or a licence carrier from broadcasting:

- (a) anything contrary to law;
- (b) any abusive comment on any race, religion or creed;
- (c) any obscene, indecent or profane language;
- (d) any false or misleading news with the knowledge that it is false or misleading.

With respect to infringements of the Regulations and related penalties, Mr. Juneau stated that as a first step legal action must be taken following any breach of the Regulations. It is thus the courts that have the responsibility of determining the penalty. He added that when the Commission finds that the regulations have not been followed, the Commission notifies the station concerned, and if there is evidence of negligence or ill-will, it brings the matter before the courts.

To a question pertaining to subparagraph (b) of section 3 of the Act, Mr. Juneau answered: "I think that the intent of the Act was not that the Canadian Radio-Television Commission express a judgment on each of the radio and television programs in Canada." Later on, Mr. Juneau added that it would be contrary to the intent of the Act if a public or private network were to have a general editorial policy aimed at the destruction of national unity. He also stated, in response to a ques-

tion, that, in his opinion, the best way to prevent abuses in the future, would be for the public to inform the Canadian Radio-Television Commission and Canadian Broadcasting Corporation authorities of its disapproval.

Referring to the matter of Canadian Radio-Television Commission intervention, a member of the Committee asked the following question: "It has been suggested that over a long period of time there is an editorial thread that runs through the programming, particularly in Quebec, with the French network, that leans towards separatism. Where there is such a thread, are you dependent upon public complaint, or do you have any mechanism that monitors to check whether a particular station, a network, or any element of the broadcast media coming within your purview, is developing a trend of editorial approach that is contrary to the mandate for national unity?" In brief, Mr. Juneau answered in the following manner: "There is no such mechanism. We do not provide systematic supervision, if we mean by that that we would have to determine, through meticulous calculations, if not mathematical, whether there is an imbalance, whether greater importance is given to certain views to the detriment of diverging opinions." He added: "I do not mean by that that we should not do it".

Following this answer by Mr. Juneau, it was pointed out to him, *that under the mandate of the Canadian Radio-Television Commission, it was the Commission's duty to provide a certain degree of supervision, especially when national unity is at stake and that in such a case, it would be appropriate to set up a permanent mechanism to fill this gap.*

It is clearly evident from Mr. Juneau's statement that the Canadian Radio-Television Commission does not exercise any direct supervision with respect to the quality of Canadian Broadcasting Corporation or private station programs, insofar as the objectives set out in the *Broadcasting Act* and regulations are concerned. Moreover, Mr. Juneau admitted that the Canadian Radio-Television Commission was not equipped to supervise programs, and acts only after having received a complaint. It would appear that the Canadian Radio-Television Commission is thus restricting its supervisory function, by interpreting too narrowly paragraph (c) of section 3 of the *Broadcasting Act* which states that:

"(c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;"

Such an interpretation of the above paragraph is characterized by Mr. Juneau's opinion when he adds:

"The Act clearly states that in those areas there must be freedom of speech and, when established, freedom of speech inevitably implies abuses."

With regard to this attitude of the Canadian Radio-Television Commission it is well to note the following objectives listed in section 3 of the *Broadcasting Act* which provides for a broadcasting policy for Canada:

"It is hereby declared that:—

- (a) broadcasting undertakings in Canada make use

of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian Broadcasting system, comprising public and private elements;

(b) The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

(c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;

(d) the programming provided by the Canadian Broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;

(g) (iv) the national broadcasting service should contribute to the development of national unity and provide for a continuing expression of Canadian identity;

(j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances;

and that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority."

The Canadian Radio-Television Commission was established by Part II of the *Broadcasting Act* and section 15 of the Act determines the objects of the Commission, which are to regulate and supervise all aspects of the Canadian Broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act. Part III of the Act provides for the establishment of the Canadian Broadcasting Corporation. Section 39 sets out the objects and powers of the Corporation and subsection (1) states clearly that the Corporation was established "for the purpose of providing the national broadcasting service contemplated by section 3 of the Act." Subsection 39(3) states that the Corporation is bound by Parts I and II of the Act.

The Canadian Broadcasting Corporation is absolutely bound to meet the objectives set out in section 3 of the *Broadcasting Act* for the implementation of the broadcasting policy of Canada.

CONCLUSIONS

- 1) The Committee does not wish to pose as a censoring body of the Canadian Broadcasting Corporation pro-

gramming. But, although the program under study may not contain sufficient elements to warrant a severe criticism of the Canadian Broadcasting Corporation programming in general, this program belongs to a class that the Corporation should avoid presenting to the Canadian public. However, the Committee was justified in availing itself of this opportunity to review the programming of the Corporation and the control exercised by the Canadian Radio-Television Commission with a view to meeting the objectives set out by the *Broadcasting Act*.

- 2) The Committee wishes to point out to all those responsible for the administration of the *Broadcasting Act* that the Canadian Broadcasting Corporation is, under Section 39 of the Act, particularly responsible for providing the national broadcasting service contemplated in Section 3, which includes the obligation to "contribute to the development of national unity and provide for a continuing expression of Canadian identity." This obligation is not imposed on private stations. The Canadian Broadcasting Corporation must not be placed on the same footing as the owners of stations in the private sector relative to this particular obligation, as the Canadian Broadcasting Corporation and the Canadian Radio-Television Commission seem to believe.
- 3) Considering the evidence obtained, the statutes and other texts studied, the Committee believes that neither the Canadian Broadcasting Corporation nor the Canadian Radio-Television Commission is meeting entirely the objectives sought by the *Broadcasting Act*. It is imperative that these shortcomings be brought to the attention of the Ministers responsible for broadcasting in Canada and for the Canadian Broadcasting Corporation respectively, as well as of the officers of the Canadian Radio-Television Commission and the Canadian Broadcasting Corporation.

Respectfully submitted,

Maurice Bourget,
Deputy Chairman.

of public facilities that are public property and such undertakings constitute a single system, hereby referred to as the Canadian Broadcasting system, comprising public and private elements;

(b) The Canadian broadcasting system should be effectively owned and controlled by Canadians in order to conserve, enrich and strengthen the cultural, political, social and economic fabric of Canada;

(c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to receive information and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;

(d) the programming provided by the Canadian Broadcasting system should be diverse and comprehensive and should provide maximum educational opportunity for the citizen, and should be of high quality in matters of public interest and the highest standard, using professional journalistic practices and other methods;

(e) the Canadian Broadcasting system should be operated in the public interest and should be operated in a manner that will provide the highest quality of programming and services;

(f) the Canadian Broadcasting system should be operated in a manner that will be compatible with the public interest and the objectives of the Broadcasting Act.

and that the objectives of the Broadcasting Act for Canada may best be achieved by providing for the ownership and supervision of the Canadian Broadcasting system by a single independent authority.

The Canadian Radio-Television Commission was established by Part I of the Broadcasting Act and section 11 of the Act, respectively, which is the Commission, which are to regulate and supervise all matters of the Canadian Broadcasting system with a view to implementing the broadcasting policy set out in section 3 of the Act. Part III of the Act provides for the establishment of the Canadian Broadcasting Corporation, Section 15 sets out the objects and purposes of the Corporation and subsection (1) states that the Corporation was established for the purpose of providing the national broadcasting service set out in section 3 of the Act. Subsection 15.2, which states that the Corporation is bound by Parts I and II of the Act.

The Canadian Broadcasting Corporation is bound to meet the objectives set out in section 3 of the Broadcasting Act for the implementation of the broadcasting policy of Canada.

CONCLUSIONS

1) The Commission does not wish to present a competing body of the Canadian Broadcasting Commission.

approving. But, although the program under study may not contain sufficient elements to warrant a review of the Canadian Broadcasting Commission programming in general, this program belongs to a class that the Corporation should avoid presenting to the Canadian public. However, the Commission was justified in availing itself of this opportunity to review the programming of the Corporation and the control exercised by the Canadian Radio-Television Commission with a view to meeting the objectives set out by the Broadcasting Act.

2) The Commission wishes to point out to all those responsible for the administration of the Broadcasting Act that the Canadian Broadcasting Corporation is, under Section 15 of the Act, particularly responsible for providing the national broadcasting service contemplated in Section 3, which includes the obligation to "take steps for the development of national unity and strength by encouraging expression of Canadian content." This obligation is not imposed on private stations. The Canadian Broadcasting Corporation must act to fulfill this obligation as the owners of stations. The Commission relative to this particular obligation to the Canadian Broadcasting Corporation and the Canadian Radio-Television Commission seem to believe.

3) Considering the evidence obtained, the statistics and other facts studied, the Commission believes that neither the Canadian Broadcasting Corporation nor the Canadian Radio-Television Commission is meeting entirely the objectives sought by the Broadcasting Act. It is imperative that these shortcomings be brought to the attention of the Minister responsible for broadcasting in Canada and for the Canadian Broadcasting Corporation respectively, as well as of the officers of the Canadian Radio-Television Commission and the Canadian Broadcasting Corporation.

Respectfully submitted,

Maurice Bourget,
Deputy Chairman.



FIRST SESSION—THIRTIETH PARLIAMENT

1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

**TRANSPORT AND
COMMUNICATIONS**

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 11

WEDNESDAY, MAY 19, 1976

**Complete Proceedings on Bill S-34, intituled:
"An Act to amend the Aeronautics Act"**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



FIRST SESSION—THIRTIETH PARLIAMENT

1974-75

THE SENATE OF CANADA

THE STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*;

The Honourable Maurice Bourget, *Deputy Chairman*.

The Honourable Senators:

Blois, F. M.	Lawson, E. M.
Bourget, M.	McElman, Charles
Burchill, G. P.	Molgat, G.
Davey, Keith	*Perrault, R. J.
Denis, A.	Petten, W. J.
Eudes, Raymond	Prowse, J. H.
*Flynn, Jacques	Riley, D. A.
Forsey, E.	Smith, D. (<i>Queens-Shelburne</i>)
Graham, B. A.	Smith, George (<i>Colchester</i>)
Haig, C.	Sparrow, H. O.—(20)
Langlois, L.	

**Ex officio* member

(Quorum 5)

Issue No. 11

WEDNESDAY, MAY 19, 1975

Complete Proceedings on Bill S-34, entitled:
"An Act to amend the Aeronautics Act"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, 18th May, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Thompson, seconded by the Honourable Senator Carter, for the second reading of the Bill S-34, intituled: "An Act to amend the Aeronautics Act".

After debate, and—

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

The Bill was then read the second time.

The Honourable Senator Thompson moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

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

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 19, 1976

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10:30 a.m., the Chairman, the Honourable Senator Haig, presiding.

Present: The Honourable Senators Bourget, Burchill, Denis, Eudes, Haig, Lawson, Molgat, Riley, Smith (Colchester) and Sparrow. (10)

Present, but not of the Committee: The Honourable Senator Thompson.

The Committee proceeded to the consideration of Bill S-34, intituled: "An Act to amend the Aeronautics Act".

Witnesses:

From the Ministry of Transport:

Mr. Stuart Grant,
Executive Officer, Civil Administration, (Security);

Mr. L. Shields,
Counsel, Air Administration.

The witnesses answered questions put to them by Members of the Committee.

After discussion and upon Motion of the Honourable Senator Burchill, it was *Resolved* to report the said Bill without amendment.

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, May 19, 1976

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-34, intituled: "An Act to amend the Aeronautics Act", has, in obedience to the order of reference of Tuesday, May 18, 1976, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The members of the committee have had the honor to receive from the Department of Transport a copy of the bill and to have had the opportunity to discuss it with the officials of that department. The bill is a technical amendment to the Aeronautics Act and is intended to clarify the provisions relating to the appointment of members of the Aeronautics Board. The committee has no objection to the bill and recommends that it be passed without amendment.

The committee has also had the opportunity to discuss the bill with the officials of the Department of Transport. The bill is a technical amendment to the Aeronautics Act and is intended to clarify the provisions relating to the appointment of members of the Aeronautics Board. The committee has no objection to the bill and recommends that it be passed without amendment.

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The Standing Senate Committee on Transport

and Communications Evidence

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The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, May 19, 1976.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-34, to amend the Aeronautics Act, met this day at 10.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We are discussing Bill S-34, to amend the Aeronautics Act, which was introduced by Senator Thompson on May 13, and the debate was continued by Senator Grosart last night.

We have, as our witnesses from the Ministry of Transport, Mr. Stuart Grant, Executive Officer, Civil Administration (Security). We have also Mr. L. Shields, Counsel, Air Administration.

We had an explanation of this bill on May 13 by Senator Thompson, and it was followed by a speech by Senator Grosart last night. The two officials are here for the purpose of answering questions that were not raised, or which were raised in the house but not answered. Are you gentlemen prepared to make a statement first or to answer questions? How do you wish to proceed?

Mr. Stuart Grant, Executive Officer, Civil Administration (Security), Ministry of Transport: Mr. Chairman, Senator Thompson was going to ask a few questions as we got into the subject.

The Chairman: Senator Thompson, are you prepared to proceed?

Senator Thompson: Thank you, Mr. Chairman. Mr. Grant, in my presentation I referred to the Tokyo, the Hague and the Montreal conventions. I also mentioned the number of signatories to those conventions. In my presentation I may have placed a stress, with respect to the conventions, which was not in relation to this bill. I wonder if you would clarify that.

Mr. Grant: Senator Thompson, there is no direct relationship between those three conventions and the legislation before us. Those conventions date back some years, as you know. I think that 1963, 1970 and 1971 are the dates. They were simply mentioned in our brief to indicate that Canada has been a forerunner in having ratified those conventions and in having done its work with respect to civil aviation security; and also to indicate our concern for the way unlawful acts towards civil aviation security were going at that time.

Senator Thompson: I had mentioned the conventions and the signatories. As I went through the conventions—Tokyo, the Hague, and Montreal—from your department I obtained a diminishing number of signatories by the time of the Montreal convention. Senator Grosart inferred from this an indication that perhaps there are countries which

are not signing these conventions, that less and less countries are prepared to sign them.

Mr. Grant: I think the numbers relate more to the date of the conventions—that is, the dates they were first introduced. It takes a long time to have full ratification of an international convention. I think it is just because Tokyo was first, in 1963, that more ratified that convention than the other two, which came after.

At the same time, there are many small countries which really do not have any aircraft. They are still member countries of the U.N., but they would not really have any interest in ratification of those conventions. However, I can say that most of the large, responsible nations which operate civil air transportation internationally have, insofar as possible, ratified those conventions. There are individual reasons why they cannot be ratified or why they are slow in ratifying. They could be administrative or legislative. Perhaps, as I mentioned, there is no interest because there are no aircraft. There are all sorts of reasons, peculiar to a particular country.

In ICAO, which is the International Civil Aviation Organization and a technical arm of the United Nations, every effort is being made to encourage member countries to ratify these conventions, but all they can do is encourage.

As I say, the three conventions have no specific bearing upon the legislation which we are now putting forward. What did happen in ICAO was that they took another tack and they came forward with an annex to the Chicago Convention of 1944. It is Annex 17, which is on civil aviation security. It lays out recommended practices and standards that countries should attempt to meet in order to provide the proper level of security in civil aviation.

The workings of ICAO are such that the annex is issued and states are asked to give reasons why they cannot abide by the conditions of the annex. If they do not respond within a given time or by a given date, it is assumed that they will meet those standards and recommended practices.

This, again, on the international scene, is the best that can be done to try to encourage and obligate states to meet certain standards. Not all of the states meet the same standards. Nor do they feel the same obligation as we do, as well as most of the other major countries such as France, Germany, Switzerland and Scandinavia which fly into Canada.

Senator Thompson: I have one further question. We realize the necessity of the immediacy of this legislation, with Habitat and the Olympics. Certainly, a question in many of our minds is, why so late in bringing this before Parliament, and why was it not brought in 1971, for example, when there had been cases of hijacking in Canada?

Mr. Grant: In 1971, or that era, we were more concerned with people coming into Canada and creating a hijacking here. In fact, there were seven or eight hijackings that occurred between 1969 and 1972 in Canada. That was our concern. We put together, with the help of the Department of Justice, some legislation which is now part of the Aeronautics Act, which compelled Canadian air carriers in Canada to do a screening of passengers; and we in the Ministry of Transport took other measures ourselves to enhance the level of security which we thought was necessary.

As you know, the threat to civil aviation in Canada has moved to some extent. In a sense, we have not had a successful hijacking in North America in the three years. There have been some unsuccessful ones but not successful ones. We think that two things have helped this. It is the airport security which we are maintaining at our airports, and also the bilateral agreements which Canada, the United States and Mexico made with Cuba early in 1973. This was for the repatriation of hijackers if they wound up in that country.

Senator Sparrow: Would you explain to me what is a "successful" and what is an "unsuccessful" hijacking? What is an unsuccessful hijacking?

Mr. Grant: If we refer to the hijacking that happened in 1972, or 1971, in Calgary, you may recall that a chap by the name of Cini hijacked an Air Canada aircraft out of Calgary and demanded that the aircraft land at Great Falls, Montana. He wanted \$1 million. He took off again. He was going to some other country. I think the stewardess had some bearing on the outcome, because she really played a part and prevailed upon him to land and let the passengers off. The aircraft landed, once again, at Great Falls, Montana, and took off without the passengers. The hijacker, having received the ransom, had intended to parachute from the plane. This was the first of that type of attempt at extortion. It was while the hijacker was putting on his gear that the captain of the aircraft hit him on the head with an ax, following which the aircraft was able to return to Calgary.

Senator Sparrow: You refer to that as an unsuccessful attempt at hijacking?

Mr. Grant: Yes, indeed.

Senator Sparrow: But since the aircraft left the ground, it was hijacked for a period, was it?

Mr. Grant: Yes.

Senator Sparrow: So, in fact, it was a successful hijacking.

Mr. Grant: Well, the person involved is now under sentence. It was not a successful hijacking in the sense that he got away with it.

Mr. L. Shields, Counsel, Air Administration, Ministry of Transport: The offence was committed.

Mr. Grant: The offence was committed, yes.

Senator Sparrow: That is right, and it seems to me that if he only once got the plane off the ground, it would constitute a successful hijacking. He was in control of the aircraft for a period.

Mr. Grant: For a period, yes, but he did not achieve his ultimate aim.

Senator Sparrow: Oh, criminals never do.

Senator Bourget: Mr. Grant, can Canada, as a member of ICAO, unilaterally implement a program of security such as is now being proposed without the consent of the other members of ICAO?

Mr. Grant: Yes, senator. Our obligation to ICAO is to meet at least the level of the standards and recommended practices which are set out in Annex 17 to the Chicago Convention. Anything we do beyond that is our own business.

Senator Bourget: In his presentation to the Senate, Senator Thompson indicated that the same type of legislation was passed six months ago in the United States.

Mr. Grant: That is correct.

Senator Bourget: Are you aware of the reactions of countries that opposed that type of legislation, or were there countries that did oppose it?

Mr. Grant: Not in any vigorous sense. They all agreed that this was a proper measure. They were aware of the concern of the United States and the reason for it acting as it did in changing the legislation to include these measures.

Senator Bourget: What are the main reasons put forward by those countries which do not want to sign Annex 17 to the Chicago Convention?

Mr. Grant: All members of ICAO have signed Annex 17. However, within a given period of time, all countries must either abide by, and are obligated by, the conditions of Annex 17, or they must file reservations setting out why they do not abide by them, and this has not been done.

Senator Bourget: Reading the remarks of Senator Thompson, I note that on March 22, 1974, the Council of the International Civil Aviation Organization adopted Annex 17 to the Chicago Convention. That is two years ago.

At the end of that paragraph, Senator Thompson says:

... but not all countries have done so. That is, not all countries have implemented the requirements of Annex 17. Why such a delay on the part of other countries? If they accept Annex 17, why do they not implement those requirements?

Mr. Grant: We would like to know that, too, Senator Bourget.

Senator Bourget: You have no information as to why they are not implementing the requirements of Annex 17?

Mr. Grant: We really do not know why they have not, but we can surmise that perhaps it is because they do not have the same interest as Canada or the United States. They do not perhaps have large aircraft operating around the world. There are many members of ICAO which do not have a national airline that includes a 707 or a DC-8, or some aircraft of that type.

Senator Bourget: Would it be possible to have a list tabled with the committee setting out those countries which have not implemented these requirements?

Mr. Grant: I cannot supply the committee with a list of those countries which have not implemented the requirements of Annex 17, but I can with respect to the earlier conventions; that is, the Tokyo, the Hague, and Montreal

Conventions. I have that list and can deposit it with the committee.

Senator Thompson: Are there any major carriers flying into Canada that have not signed Annex 17? In other words, are there foreign carriers with landing rights in Canada which are not signatories to Annex 17?

Mr. Grant: All members are signatories to Annex 17, it being a part of the Chicago Convention. Annex 17 is an altogether different document than the conventions I spoke of, being the Tokyo, the Hague and Montreal Conventions. What I have with me is a list of those countries that have ratified those conventions.

Annex 17, on the other hand, is a chapter, if you like, which deals with security, of the Chicago Convention, which is the manner in and rules upon which countries will fly between countries and how they will act as they do so. It is a highly technical convention.

Senator Thompson: If I could emphasize my point, I am wondering whether there are any carriers coming into Canada which are not signatories to Annex 17.

Mr. Grant: Carriers that are not carrying out the conditions of Annex 17?

Senator Thompson: Yes.

Mr. Grant: We suspect that there are such carriers. We are not particularly pleased with some of the security measures that have been implemented in some countries that have been sending aircraft direct to Canada.

Senator Thompson: I think the concern of the committee in this respect is how the department arrives at these suspicions. What kind of inspection takes place in other countries; and, if your suspicions are justified, do we have sufficient muscle, particularly with Habitat and the Olympics coming up, to force these countries to comply with adequate security measures to ensure the safety of visitors to the Olympics and Habitat?

Mr. Grant: We feel that the legislation will certainly accomplish that. As to how we become aware of which carriers are involved and what they are doing by way of security, we accomplish this through the Canadian air carrier that operates a reciprocal air service. For example, CP Air flies to Madrid, and Iberia to Montreal; British Airways flies to Montreal and Toronto, and Air Canada to London. So, we are able to assess the security measures taken in other countries by means of the Canadian air carriers flying into those countries.

Also, we have in-flight inspectors who fly with our Canadian air carriers once or twice a year to each of these foreign airports for the purpose of making inspections. The Canadian embassies and high commissions in these other countries also have people who are geared to look at these measures, and the RCMP has personnel who have made inspections at airports in foreign countries.

Senator Bourget: Do you feel that the information coming only from our own Canadian carriers is sufficient to know that the foreign carriers are implementing the security program you are now putting forward?

Mr. Grant: One of the conditions will be that we will be asking the foreign air carrier to provide us with a manual or written statement with respect to what it is doing in its own country and also what it intends to do in Canada by way of security. Foreign air carriers must establish and

maintain security measures, and we wish to know what those measures are. That is one of the conditions imposed on foreign carriers.

Senator Lawson: I can understand some of these procedures applying to carriers as such, but with Habitat and the Olympics coming up, are we not going to have a lot of military aircraft, private government aircraft, and private aircraft generally, coming into Canada? If so, who will conduct inspections on those aircraft? How is it proposed we deal with that situation?

Mr. Grant: If a foreign military aircraft comes to Canada, it will land at a military base in Canada. I can assure you there is a great deal of security in each one of these, and we would not anticipate any real problems there. If it were government aircraft, I suspect it would be a government charter of an airline, because there are not all that many actual government aircraft in the world that would be used to carry these dignitaries to Montreal. I foresee that an airline would be involved in most cases.

Senator Lawson: Do you think the penalty of \$5,000 would act as any kind of deterrent? Do you think it is a sufficient penalty?

Mr. Grant: We do. We have reasonable agreement that this has worked in the past. It is a penalty that is in the Aeronautics Act; it has been there for some time, and we are using that same measure of penalty that has been in effect and has proven to be adequate.

Senator Lawson: Has the penalty ever been assessed? Is it an appropriate penalty, because of its lack of application?

Mr. Shields: The full penalty has never been charged against an air carrier for violation. It has always been some lesser amount. It is a penalty up to \$5,000, but to my knowledge the full \$5,000 has never been imposed on an air carrier.

The Chairman: Is it charged against the airline or the pilot?

Mr. Shields: It would be against either one. In no case has the full penalty ever been assessed.

The Chairman: But if the penalty is assessed, is it against the airline or the pilot?

Mr. Shields: It would depend upon who was being charged. Either the pilot or the airline could be charged, depending upon the offence.

The Chairman: Is the security required from foreign aircraft arriving in Canada the same as we have for foreign aircraft leaving Canada to go to a foreign city or another Canadian city? Is it the same in all places?

Mr. Shields: We would expect that the procedures a foreign carrier would take in respect of passengers arriving in Canada would be the same that we now require Air Canada to take, whether leaving Canada or coming into Canada. Under the act, Air Canada or any other Canadian air carrier has to maintain security procedures both inside and outside of Canada.

The Chairman: For persons and baggage?

Mr. Shields: For persons and baggage, yes. Similar security measures would be required by other air carriers before arriving in Canada. Once they have taken off you

cannot expect them to stop at any place, so they are going to have to do it in their own country, or at their last place of landing before coming here. We cannot legislate that they do it in their country, but we can legislate that they must show they have done this before landing in Canada, and they will be required to file their procedures for searching passengers and that type of thing. They would be told the system Air Canada and other Canadian air carriers now use and be told that they are required to adopt those procedures, and if they do not adopt them they cannot land in Canada; if they do so land they will have committed and offence. No carrier is interested in being fined; that is not the mentality of the operators of air carriers, that they want to be fined by any other country.

The Chairman: If an aircraft comes from a foreign country and has not done this, do you seize the aircraft and check the passengers and baggage before they get off the airport.

Mr. Shields: No. Under the Aeronautics Act we are concerned with the transportation of passengers. Before they get on the aircraft, the department has the right and jurisdiction to require protective measures in respect of the flight of those passengers. Once they have landed here the flight is all over.

The Chairman: What about baggage?

Mr. Shields: They take the baggage off. With respect to protection here, you will perhaps remember that the immigration people have had passed a special act in order to refuse entry to Canada of persons who are not Canadian residents, who may be suspected to be terrorists, and so on. There is a recent act that they have had passed to add on at the spot where we cannot legislate, because once these people have arrived at the airport we are all through with them, our jurisdiction has expired, because they are not then passengers. They have to go through immigration, and that is where they would be picked up. That is the reason for that recent act.

Senator Smith (Colchester): I remember the minister responsible for immigration came before the appropriate committee to explain this. He was questioned at considerable length, but he made no reference to that kind of problem.

Mr. Shields: We were aware of the Immigration Act procedures, because the matter had been discussed with them in view of the possibility of these people coming in; we could not do anything about them once they had landed. They have to go through customs and immigration, and if they are bringing in any unlawful weapons they would be picked up there. If they are suspected, there are security procedures that are current between various countries so that Canada will be informed that somebody may be on a certain aircraft and he should be searched. These things are brought forward and acted upon.

Senator Molgat: I should like to follow up on the question asked by Senator Lawson about aircraft landing at military bases. I have frequently travelled by that route, both on a military plane and as a so-called VIP. Although I make no criticism of the security checks, my impression is that because it comes under the description of VIP there is very little security check. You are telling us that aircraft will be landing at military airports, and I would question what security check will in fact be made. Again I intend no criticism, but in the past I know from personal experience

it has been accepted that those who arrive have been checked somewhere else, or presumably are above check.

Mr. Grant: Military aircraft are subject to the Minister of National Defence. The Minister of Transport has absolutely no jurisdiction over military aircraft. We really cannot answer that question on military aeroplanes.

Senator Molgat: If aircraft from other nations are landing at military airports...

Mr. Shields: No.

Senator Molgat: You won't?

Mr. Shields: No. They would need to have special permission from the military. Any aircraft attempting to land at a military aerodrome without prior permission and everything being arranged would be intercepted.

Senator Molgat: I do not mean that. Let us assume a country is sending one of its military or their department of transport aircraft to Ottawa. They will land at Uplands, but they will not be going to the Air Canada base, they will be going to Hangar No. 10, whatever it is. There is no security check there.

Mr. Grant: If they go into a military base, that is the jurisdiction and responsibility of the Minister of National Defence; that is up to him. We really have no responsibility for military aircraft, foreign or Canadian.

Senator Molgat: Let us say they are not military aircraft. Let us say they are from the department of transport of another country. They land at a military base here. What security is there?

Mr. Grant: This legislation would take care of civil aircraft that was operating as it left that other country. It would require that civil aircraft must meet a certain level of security. As it is departing from a military airport, it is a matter for the Minister of National Defence to require a level of security, because that does not come under the jurisdiction of the Minister of Transport. Military airports are under the jurisdiction and responsibility of the Minister of National Defence.

Senator Molgat: Let me ask another question, then. Specifically re the Olympics, supposing a foreign country requests that its aircraft, regardless of whether it is a civilian airline or a military airline, land in Montreal, where will the checks be made? Will there be a check at the far end—remember, we are speaking now of a civilian airline or possibly a military airline—or will there be a check at our end?

Mr. Grant: There will be a check at the far end as requested by this legislation.

Senator Molgat: And if it is military?

Mr. Grant: This legislation has absolutely no bearing or no responsibility for military aircraft. It does not apply.

Senator Bourget: It is not in the bill; it is not covered by this bill.

Senator Molgat: That is what I want to identify; there is a gap.

Mr. Shields: We would not expect that if Queen Elizabeth were coming over on a military aircraft she would be scrutinized or put through a security check either over there or here.

Senator Riley: Only in respect to toilets and whatnot.

Mr. Shields: When you get to that status, you would not anticipate that a search of the aircraft or of the people would be required.

Senator Molgat: If someone were interested in security activity, would that not be an obvious gap?

Mr. Grant: The RCMP have a responsibility for the security of dignitaries coming to Canada. They get aboard the aircraft, in most cases, at the far end. The Government of Canada relies upon the RCMP, therefore, to provide certain security for that aircraft as it is coming, whether it is military or civilian.

Senator Molgat: Are you satisfied that that security is adequate in light of the particular situation we are looking into with the Olympics?

Mr. Grant: I think we have to be satisfied with that. The RCMP are providing the guidance co-ordination of all security at the Olympics. They have accepted the responsibility for the protection and the security of foreign dignitaries. We tend to feel they can do their job properly.

Senator Denis: Do you not think, after consultation with the Department of National Defence, that the bill should cover both civilian and military aircraft? This would refer to what my colleague Senator Molgat was asking.

Mr. Grant: Unfortunately the Aeronautics Act only applies to civil aircraft.

Mr. Shields: What you say is correct, however, the regulations that have been made under the act have been made applicable only to commercial air carriers. We have left it to the Department of National Defence to make their own security regulations. I assume they have done this.

Senator Bourget: Has the Department of National Defence done something about it?

Mr. Shields: I cannot answer that question. I assume they have their own security regulations. I would not anticipate that, if the Department of National Defence were loading up an aircraft with their own men, they would search them all. It would only be in cases where they were loading someone they did not know.

Senator Denis: As far as the penalties are concerned, do they have power to seize the aircraft?

Mr. Grant: There is no power under the act to do that.

Senator Denis: There is a provision for a fine not exceeding \$5,000. If they do not pay the \$5,000, have you power to seize the aircraft?

Mr. Shields: Under the act, as presently constituted, there is no power to seize the aircraft. We have amendments under way in another act, which has been delayed, which does give power in the event they do not pay.

Senator Bourget: That will be another act, or another regulation? Is that something that will come before us?

Mr. Shields: We anticipate it later on in the year but we do not know exactly when. It would not have any relation to this. We have taken it that the enactment of the provisions embodied in this bill will give us sufficient authority to assure the necessary security regulations and procedures are being adopted at the other end. Most countries are willing to do it. What they say is, "You have no real

requirement for us to do it. You have no law requiring us to do it. We will do it if we have to do it." Therefore, we say to them, "Here it is; you are now required to do it."

We do not anticipate people objecting to it at all. They know what the situation is. There has been, perhaps, some confusion in connection with the conventions on aircraft offences. All the countries could have signed all the conventions, and these regulations and these provisions would still be ineffective. These are entirely separate, something in addition to that.

The conventions relate to what happens if an aircraft is seized. Now, these provisions are designed to prevent the seizure of the aircraft in the first instance. This will enable us to make regulations so that they will adopt these procedures and seizure will not take place at all. That is the distinction between the conventions and these.

Senator Riley: What about private aircraft, either operated by owners or smaller aircraft charters; what happens in a case like that?

Mr. Shields: Regarding private aircraft, the owner has the responsibility himself. This was developed in respect of carrying passengers. We do not anticipate that a private owner would have very many passengers on board he would not know were a security risk or otherwise.

Senator Riley: What if he chartered the aircraft, a small aircraft capable of international travel?

Mr. Grant: If it is over 12,500 pounds, then the charterer is required to abide by these regulations.

I might just mention one other point which has come up and which might tend to clarify this. We have a certain air carrier operating a number of flights every year into Toronto airport.

Senator Riley: As a charter?

Mr. Grant: As a charter, yes, and a very prominent air carrier. We have asked from time to time, "Would you please undertake and do security checks at the Toronto airport the same as other air carriers?" They say, "Mr. Grant, you show us the legislation that requires us to do it and we will do it. Until that time, our business is to make money and this is an additional expense which we do not think should be incurred until you can show us that you have a requirement." This is our requirement, and we are hoping to get it.

That same air carrier came to us and said, "We need to provide security for our flights that are flying from Toronto to Belfast. This security is being required by the British Government for all flights leaving foreign points, flying to Belfast. How can we do this?" We have said, "There is really no problem. You can do it the same way as everyone else," but they did not want to do it for flights going to points apart from Belfast because of the expense. We did not have the legislation to require them to do it.

Senator Riley: Could they not make arrangements with Air Canada to use their facilities, or Canadian Pacific Air?

Mr. Grant: Yes, but Air Canada would charge them and they did not want to pay the cost unless there was specific legislation which required them to do it.

Senator Riley: This legislation will require them to do it?

Mr. Grant: That is right.

Senator Riley: As far as the point of ownership is concerned, say, if they were leaving Belfast or some other point of origin, then there is no requirement on them?

Mr. Grant: This legislation will require them to do it at Belfast also.

Senator Riley: How can you establish that they did it? Let us leave Belfast alone, and go to another country, say, . . .

Mr. Grant: Paris?

Senator Riley: I do not not say Paris but one of the Eastern countries or the Middle East or some place like that?

Mr. Grant: We have very few flights coming from these other countries which do not have a Canadian air carrier already operating there. Let us take Tel Aviv. CPA operates into Tel Aviv. We would establish from CP Air security people, from our air carrier inspection people, from our Department of External Affairs in Tel Aviv, or through the RCMP who have a detachment, a single person or perhaps two, in Tel Aviv, what are the measures being taken for flights departing from Tel Aviv to points in the United States or Canada, or other points for that matter.

Senator Riley: Apart from the Canadian common carriers who may be operating there, if someone charters a flight, say, from Tel Aviv to Canada, and they say there has been a complete security check in Tel Aviv, do you have people there associated with the department who will check every flight coming out to see if the security measures have been enforced?

Mr. Grant: No; but we tend to rely upon the activity that has taken place at that airport. For instance, Tel Aviv has the best security of any place in the world. We know that. For anyone who has gone to Tel Aviv, there is even very secure inspection as you land, which we are not permitted to do in Canada because of our legislation. But in other places let us say

Senator Riley: Greece?

Mr. Grant: Greece—Athens. We do know the type of inspection that is being done in Greece. Unfortunately it is spasmodic. It tends to go up and down with the nature of the current threat. If a terrorist act has taken place in Athens, as has happened in the past, the security goes up for a period and tends to be of a severe security posture. It then begins to drift off again.

Senator Thompson: Does Greece not carry out the Annex 17 security measures?

Mr. Grant: We can only assume they do, because they have an obligation to do so.

Mr. Shields: The problem is no more different than it is in Canada. All air carriers are required in Canada to tell us what are their security arrangements. We do not check every airport to ensure that they do this on every flight, but we depend upon them to do so. Perhaps on occasion they may be a little lax, but there is no way of checking every flight at every airport to ensure that they do comply with the regulations which they said they would comply with, with their own procedures. We assume they do so, and occasionally we hear that they do not, and so the matter is taken up with them and the thing is rectified. It

is no different within Canada as it would be in any other country.

Senator Molgat: I have first a general question. Are our regulations the same, roughly, as those of the United States, as those of the free countries of Western Europe? Are we roughly on a par, or are we asking for more?

Mr. Grant: We are on a par with the United States with this legislation. That which we do at our airports, the level of security, is on a par, I would say, with a number of very responsible governments, such as West Germany, France and Italy. But there are others that do not do it at the same level that we would seek and which is laid in Annex 17.

Senator Lawson: I have a couple of concerns. Following, first, on what Senator Riley raised on the question of private aircraft or so-called executive aircraft, with the Habitat Conference coming to Vancouver, I have suggested that we will have a dozen or two dozen executive aircraft which will bring in six, eight or 10 passengers. Presumably they will be excluded from the regulations and will not be covered. We could have 100 or 200 people, delegates or others, at that conference who bear no security check whatever, coming in on these private aircraft that are excluded from the 12,500 pound rule. They will be coming to the International Airport at Vancouver, where there is no military provision or regulations. Presumably they will be uninspected. My other concern is that I have heard it suggested—I do not know how accurate it is—that, as you may know, they have that pavilion which will be right in front of the court house steps in downtown Vancouver, where a lot of the activities will take place. I have heard it suggested, by the police force of that city and the RCMP, to the judges that they should close down the court house because they cannot guarantee security for the time of Habitat.

All this leads me to the conclusion that there are some serious gaps which they recognize exist and they advise taking some precautionary measures against. We have obvious visible weaknesses, such as those which have been raised by Senator Molgat and Senator Riley, and all the other security would seem to serve no useful purpose if we are going to leave all these visible gaps that we can readily see and are not going to take any steps to deal with them.

Finally, there is the penalty which I raised earlier. The fact that the penalty has never been assessed in its full amount is probably the best case for not increasing it. But I am concerned about the other two points raised by my conferees.

Mr. Shields: There is a slight distinction here, which we have to realize. As you say, all these people will arrive at Vancouver. If they have arrived, there has been no problem, so far as we are concerned. They have arrived safely.

Mr. Grant: There is another point . . .

Mr. Shields: Once they arrive, what they do in the country depends upon the other laws of the country. The immigration authorities, if they wish to turn them back, can do so; and there is the RCMP, and also our other laws. But once they arrive, we have done what we wanted to do, which is to ensure the safe transportation of passengers into Canada, that nothing has happened to the passengers on the way in. Our purpose is the transportation of passengers.

Senator Lawson: What they do after they arrive . . .

Mr. Shields: That is in someone else's court.

Mr. Grant: I might mention that private aircraft, in large airports such as Vancouver, Montreal and Toronto, do not use the same terminal which other passengers use; they go to another part of the airport.

Senator Lawson: There is the old airport in Vancouver. I have come in there myself on the same basis. You stand around. There is not a sould around, and then someone gets on to the telephone—the pilot or whoever—and perhaps someone will casually drive over from Customs or Immigration. Some of the oil countries buy executive jets in bunches, like grapes. There is no security whatever. Even the presence of an RCMP officer standing 100 yards away might make you cautious, but you could land your plane and unload eight or 10 machine guns and sundry boxes of grenades, and no one will even question you.

Mr. Shields: These are not to prevent people from coming in. It is to ensure safe transportation. Whether they are convicts, or whatever they are, the purpose is safe transportation.

Senator Thompson: Might there not be a bomb in a suitcase?

Mr. Shields: A bomb in a suitcase would indicate that perhaps it was not safe transportation and that is what we are looking for.

Senator Molgat: You are only concerned that the bomb does not go off in the aircraft?

Mr. Shields: Right.

Senator Molgat: But if it goes off after they land, it is somebody else's worry?

Mr. Shields: Yes, someone else can look after that.

Senator Smith (Colchester): I wonder if I have understood the situation correctly. I understand that you rely on information received from these various sources you mentioned, such as the RCMP, our own carriers, External Affairs representatives, and so on, as to the general level of security at a given airport in a given country. But I have not heard anything about how you ascertain, in respect to a given flight, whether that security has been properly applied or whether it has been lax, or whether there is any real security that applies to the passengers who are on it.

Mr. Grant: The manner in which we intend to do that is, we will ask the air carrier to provide us with a description of the security measures that he will take at each airport, and that he flies direct from that airport to a Canadian airport. That will be recorded, and we would assume that would apply for every flight. From time to time there will be checks made by these other people to be certain that he is in fact carrying out the measures that he said he would abide by.

Senator Smith (Colchester): It must be correct, with reference to any given flight, that you do not really know what measures of security have actually been taken in regard to the passengers on it. You assume that the degree of security has been carried out which the carrier has promised to carry out, and that is all.

Mr. Grant: That is right, and the same applies in respect of any airport in Canada.

Senator Denis: You do not assume that foreign carriers will tell you that no security measures have been taken.

Mr. Grant: In our experience, an airline that states it will be conducting a certain level of security, will do so. These air carriers belong to the International Air Transport Association, which is a very powerful and responsible organization, and when they state they will carry out a certain level of security, we can assume that they will do so. They are not irresponsible people. They are flying passengers for hire over long distances, so they need to be very responsible and abide by very strict regulations.

Senator Smith (Colchester): I thought I heard one of you say a few moments ago, in relation to Athens, that at certain times very strict security measures were applied, but that as the risk seemed to diminish the degree of security diminished. How do you ascertain when you are in one of these diminishing periods?

Mr. Grant: Through our people with External Affairs in Athens, through the CP Air flight that flies to Athens every other day, and through our air carrier inspectors who fly into Athens. If from one of these sources we find that the level of security is under what we think it should be, we then indicate to the appropriate authority at the Athens airport that we are not happy with the level of security for aircraft flying to Canada, at which point they can say, "Thank you very much. Good day!" That would be the end of it. We have absolutely no legislation or regulations by which we can require them to do anything in respect of their flights coming into Canada.

The Chairman: You cannot prevent them from landing in Canada?

Mr. Grant: We cannot even fine them for not having abided by the required security measures.

Mr. Shields: At the present time, we have no reason to prevent them from flying in. If the amendments are adopted, then we would have reason to prevent them from flying in.

Senator Riley: Are aircraft landing at Gander, or aircraft rerouted to Halifax, say, on their way to Montreal, checked at that point?

Mr. Grant: An aircraft landing at Gander and then going on to another point in Canada would be subject to certain security measures.

Senator Riley: When you say "certain security measures," do you mean that the passengers would be required to disembark and go through a security check?

Mr. Grant: If an aircraft lands at an international airport, as it is the first point of landing, the passengers would have to go through customs and immigration.

Senator Riley: But not a security check?

Mr. Grant: In order to get back on to the aircraft, the passengers would be required to go through a security check. Having gone through customs and immigration, in order to get back on the aircraft to proceed to further points within Canada, they would be required to go through a security screening process.

Senator Riley: A security screening similar to the one used by Air Canada for domestic flights?

Mr. Grant: That is right, because they are then at a point in Canada.

Senator Burchill: Do I understand that the regulations under this act have already been formulated?

Mr. Grant: Not in respect of the amendments contained in the bill before the committee today, senator. The regulations have been formulated in respect of previous amendments. If the amendments contained in Bill S-34 are adopted, it would only require a very small change to the present regulations in order to comply with the amended act.

Senator Burchill: Do you consider the present security screening conducted by Air Canada at the various airports in Canada adequate?

Mr. Grant: Yes, we do, senator.

The Chairman: Supplementary to Senator Burchill's question, what happens to the baggage that is checked on to the aircraft? What check is made of it before it is placed in the aircraft?

Mr. Grant: There is no formal check made of it, Mr. Chairman. However, we do have what we call a passenger profile, and if a person arrives fitting that profile, he or she can be asked to open his or her baggage for inspection before it enters the system which takes it on to the aircraft.

Senator Riley: Can you give the committee any indication as to how many weapons were confiscated from passengers in 1975?

Mr. Grant: I do not have the exact numbers with me. If you are speaking of guns, it would be something in the order of 275.

Senator Thompson: Still dealing with security measures, what security check, if any, is required of personnel at an airport, such as the cleaning staff, and so forth? Is there some security check in respect of those individuals?

Mr. Shields: Yes, senator.

Senator Thompson: Are you sure of that? My impression is that there is no such check at Malton.

Mr. Grant: As I understand it, the employer has a certain responsibility to ensure that the people hired are security cleared. The employer having received that assurance then provides the employee with an identification card which includes a picture of the individual, and you will see these people at major airports with their cards showing. In order to be in a restricted area at an airport, that identification card must always be visible.

Senator Thompson: If I could cite a personal example, I fly from Malton to Ottawa. At one time I had a parking space to the right of Administration Building 2, and I found a shortcut to my parking space was to go out the back door, across a landing ramp where I passed baggage carts, and so forth. I particularly enjoyed going that way in the winter months, and did so for about six months without being stopped. I mentioned this to a nephew of mine who is a member of the RCMP and he informed me that I should not be using that route. I stopped of my own volition.

Senator Molgat: You are an obvious security risk!

Mr. Grant: Pierre Burton, to our embarrassment, also found that route and brought it up on his radio program. It was closed very quickly, I can assure you. You would not be able to use that route now.

Senator Bourget: Is it your view that these regulations will be permanent and not only in place for the Olympics and Habitat?

Mr. Shields: They will be ongoing regulations, senator.

Senator Bourget: Can you give us some indication of the reaction of the foreign carriers in respect of these regulations? Are they willing to abide by them? Have you discussed the question to that extent?

Mr. Shields: We are not aware of any foreign carrier who will be practically opposed to the imposition of our regulations.

Senator Thompson: The United States has passed legislation ahead of time. Have they had to refuse any foreign air carrier from landing for not following the regulations?

Mr. Shields: If they have it has not been made known. They have not published the fact. We are not aware that they have.

Senator Thompson: I have one question that has been raised by Senator Buckwold. It concerns the fear of a reciprocity approach. Is there existing reciprocity taking place?

Mr. Shields: We do not think there is any fear in that respect. Under Annex 17 this is a recommendation of ICAO, and most countries have said they agree with the recommendations and will get them implemented. However, some of them are a little lax in getting them implemented.

Senator Thompson: By reciprocity I mean, for example, that in Paris they will say to Air Canada, "You are charging us to land. We are going to charge you for our security measures." Similarly for Air Canada and CP. Is that taking place in some countries?

Mr. Shields: No, we are not aware of that.

Senator Thompson: I understand that CP was paying in Mexico and several other countries.

Mr. Grant: In some countries they do have to pay for the security measures at airports. In other countries the security is provided by the government.

Senator Thompson: So there could be an increasing number of costs that will be charged to CP and Air Canada by countries that will follow your procedure?

Mr. Shields: Our procedure is to request the carrier to do it.

Senator Thompson: But also to pay for it.

Mr. Shields: Then it is up to him to do it himself. Our carriers will be doing it in those countries themselves. We are not really assessing a charge against the carriers themselves. Only if they do it in this country might that happen. We are requesting other countries to do it themselves.

Mr. Grant: I see your concern, senator, about Canadian air carriers perhaps having a charge imposed on them in other countries in the same manner that perhaps foreign

air carriers would be required to pay here. Under the existing legislation and regulations, we require that our Canadian air carriers do it in other countries; we require that now. They therefore have that imposition, in the same way that they do it in Canada.

Senator Thompson: But it would not be an unhappy situation if other countries were also passing the same legislation as you have.

Mr. Grant: Indeed not.

Senator Thompson: That is my point.

Mr. Grant: It would strengthen the whole system of security in civil aviation internationally.

Senator Thompson: Canada and the United States are forerunners in this. We are not behind; we are actually ahead.

Mr. Grant: Indeed, yes. At those other conventions we were also forerunners.

Senator Molgat: We have been through a period during which hijackings and that kind of activity were prevalent. In our society we have had other similar periods. At one stage it was very popular to raise hell at universities; the university president probably had the worst job one could think of. That has stabilized. If in a couple of years the situation stabilizes, will you come back to us and say that we should remove these restrictions? Will you be monitoring this? Are we likely to be faced with a forever situation?

Mr. Grant: It is our responsibility to be receptive to any changing trends, so that we do not impose on air carriers more restrictions than are absolutely necessary. We are trying our best to automate the system, so that intrusion on the privacy of the passenger is not imposed any more than is necessary. The X-ray does this. This costs quite a bit of money, but it does help the whole system. I can give you the assurance that we will be watching this closely and be sensitive to the system, to be sure that, if there is reason to limit to some extent the level that is required, we will do it.

Mr. Shields: We do not anticipate that we will be back for a change in the bill.

Mr. Grant: No.

Mr. Shields: The bill enables the making of regulations. Our regulations would be modified in that respect. We would not necessarily be back with other legislation. The regulations might be modified as circumstances make this necessary. It will be taken care of in that way.

Senator Molgat: My concern is this. We are really adding a fair element of cost to the whole system. At some stage I would like to get the real cost of what we are doing to achieve security. Because of present circumstances we may be forced to do that, but I would not accept that we have to do this for ever. I believe the department should be very conscious of this and be looking at the situation. Is the cost justified? The circumstances will, I think, change.

Mr. Grant: If they do, you can be assured that the Air Transport Association of Canada, which is the association of major air carriers, will bring pressure upon us to do what you suggest. We are now committed by Treasury Board to enter into an in-depth study of security at international airports immediately after the Olympics. As I am sure you can appreciate, we have been reluctant before the

Olympics to remove any measures now in place. However, we are committed to undertake this after the Olympics, and I have been instructed by my deputy minister to get at it now, and therefore hopefully have in place by the end of September any reductions we can see fit to make.

Senator Molgat: The security measures now being taken at Canadian airports, whether it is the scanner or staff, are paid for by you?

Mr. Grant: The air carriers pay for the screening of passengers, for those people who put passengers through the walk-through, the magnetometer, or the X-ray.

Senator Molgat: The air carriers pay it?

Mr. Grant: Yes. The equipment is provided by the Ministry of Transport.

Senator Molgat: Can someone give us the total cost?

Mr. Grant: Of that?

Senator Molgat: Of the total security system. I think this is something we ought to know.

Mr. Grant: It is costing the air carriers approximately \$4 million to screen passengers.

Senator Molgat: That is jointly?

Mr. Grant: They pay this jointly. The cost would be approximately \$200,000 for foreign air carriers in providing security.

Senator Molgat: What does the Canadian Government provide through DOT?

Mr. Grant: The Canadian Government is providing the RCMP at airports; it has been putting up fencing. This program is just about in place now. We were aiming to be there for the Olympics. There is also the equipment I mentioned; the research and development going on into automated systems, and maybe sniffing bags to be sure that there are no explosives in them, which might be something for the future, so that the bags could simply be sniffed to ensure they are satisfactory.

Senator Thompson: When you refer to equipment, is that the X-ray? I call it X-ray, but there must be another name for it.

Mr. Grant: It is the X-ray and the magnetometer. The RCMP have a policing function too, as you probably recognize, for the parking and so on. The security part may be \$8 million in a year.

Senator Molgat: That is the Canadian Government?

Mr. Shields: The Department of Transport.

Senator Molgat: Transport only?

Mr. Shields: Yes.

Senator Molgat: Exclusive of the RCMP?

Mr. Grant: That includes the RCMP. That is for the RCMP to take care of that part of security.

Senator Bourget: What percentage would that represent? Would it be about two-thirds of the total expense for security measures?

Mr. Grant: Security accounts for approximately two-thirds of the total cost for the RCMP at this point in time.

There may be a change in that as a result of this in-depth study that we will be conducting.

Senator Thompson: When we are building an airport, is there a large input with respect to security, in the design of the airport?

Mr. Grant: Indeed, yes. We tend to design our terminals with security in mind, and how we can limit costs as a result.

Senator Thompson: Did you do this with Mirabel?

Mr. Grant: Yes, we were talking security with Mirabel as it was being developed, so we were able to get certain security designs into the terminal. Now, Terminal 1 at Toronto is a difficult matter because there are so many modules around that particular terminal and we cannot really make a sterile area out of Terminal 1 at Toronto.

The Chairman: To stop Senator Thompson from going in the back door?

Mr. Grant: That is right.

Senator Thompson: We have approximately 150 airports?

Mr. Grant: That is right.

Senator Thompson: There must be some that you would consider to be like seives, and others which probably meet your requirements.

Mr. Grant: We have security people in our regional offices whose job it is to go out and look at each airport and assess that specific design, to see how effective it is.

Senator Thompson: Are you satisfied that all your airports built now are secure?

Mr. Grant: Yes. We have measures which must be met, such as requiring that gates be closed adjacent to the terminal, and the RCMP are there for the loading and unloading of passengers. These are measures which enhance the security.

Senator Riley: You would have better security at Pickering if you could build that.

Mr. Grant: We might have needed it as it was being built!

Senator Molgat: Are you involved in these security negotiations in the original design, back at the architectural level?

Mr. Grant: Yes, in terminals being designed now.

Senator Molgat: You mentioned Terminal 1, but I would hope you were involved in Terminal 2 because the reason for that was security.

Mr. Grant: That was before my time.

Senator Bourget: This program does not interfere in any way with provincial rights?

Mr. Grant: Absolutely not; nothing whatever to do with that.

Senator Thompson: There is an urgency, in your eyes, about this legislation?

Mr. Shields: We anticipate provincial co-operation in relation to anything that happens which comes under the Criminal Code. We expect that, and it has always been forthcoming.

Mr. Grant: We would like to see this go through as soon as possible because of the impending international events taking place in Canada.

Senator Bourget: This is the reason why se sent for you to be here this morning.

Senator Burchill: I move that the bill be passed without amendment.

Senator Bourget: I second the motion.

The Chairman: Senator Burchill moves, seconded by Senator Bourget, that the bill be reported without amendment. Any questions?

All in favour? Opposed?

Hon. Senators: Carried.

The committee adjourned.



FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

STANDING SENATE COMMITTEE
ON

TRANSPORT AND
COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

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