First Session—Twenty-seventh Parliament

1966

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

Immigration and Labour

The Honourable John Hnatyshyn, *Chairman*

No. 1

Complete Proceedings on Bill C-2,

intituled: "An Act to amend the Fair Wages and Hours of Labour Act"

THURSDAY, JUNE 16th, 1966

WITNESSES:

Department of Labour: The Honourable John R. Nicholson, Minister; George V. Haythorne, Deputy Minister; Harris S. Johnstone, Director, Labour Standards Branch; *The Canadian Construction Association:* Mr. C. Stafford, Chairman, Labour Relations Committee; Peter Stevens, Director, Labour Relations.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

24525—1

THE STANDING COMMITTEE
ON
IMMIGRATION AND LABOUR

The Honourable John Hnatyshyn, *Chairman*

The Honourable Senators:

Argue,
Beaubien (*Provencher*),
Bélisle,
Boucher,
Burchill,
Cameron,
Cook,
Croll,
Davey,
Dupuis,
Fergusson,
Flynn,
Fournier (*De Lanaudière*),
Fournier (*Madawaska-Restigouche*),
Gershaw,
Gladstone,
Grosart,
Hnatyshyn,
Hugessen,
Lefrançois,
Macdonald (*Cape Breton*),
McElman,
Monette,
Paterson,
Pearson,
Prowse,
Rattenbury,
Reid,
Roebuck,
Urquhart,
Vaillancourt,
White,
Willis,
Yuzyk—(34).

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, June 9, 1966:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Smith (*Queens-Shelburne*), seconded by the Honourable Senator Molson, for the second reading of the Bill C-2, intituled: "An Act to amend the Fair Wages and Hours of Labour Act".

And 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 Smith (*Queens-Shelburne*), moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Committee on Immigration and Labour.

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

J. F. MacNEILL,
Clerk of the Senate.

24525—1½

MINUTES OF PROCEEDINGS

THURSDAY, June 16th, 1966.

Pursuant to adjournment and notice the Standing Committee on Immigration and Labour met this day at 11.30 a.m.

Present: The Honourable Senators Hnatyshyn (*Chairman*), Beaubien (*Provencher*), Belisle, Cook, Croll, Fergusson, Flyn, Fournier (*De Lanaudière*), Fournier (*Madawaska-Restigouche*), Gershaw, Gladstone, Grosart, Hugessen, Lefrançois, Macdonald (*Cape Breton*), McElman, Paterson, Pearson, Prowse, Rattenbury, Roebuck, and Vaillancourt. (22)

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

Bill C-2, "An Act to amend the Fair Wages and Hours of Labour Act", was read and examined, clause by clause.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-2.

The following witnesses were heard: *Department of Labour:* The Honourable John R. Nicholson, Minister. George V. Haythorne, Deputy Minister. Harris S. Johnstone, Director, Labour Standards Branch. *The Canadian Construction Association*: M.C. Stafford, Chairman, Labour Relations Committee. Peter Stevens, Director, Labour Relations.

It was Agreed that 1 brief and 2 letters from the Canadian Construction Association, in association with the Association of International Representatives of the Building and Construction Trades, be filed with the Clerk of the Committee.

On Motion of the Honourable Senator Belisle it was Resolved to report the said Bill without amendment.

Attest.

FRANK A. JACKSON,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, June 16th, 1966.

The Standing Committee on Immigration and Labour to which was referred the Bill C-2, intituled: "An Act to amend the Fair Wages and Hours of Labour Act", has in obedience to the order of reference of June 9th, 1966, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

JOHN HNATYSHYN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON IMMIGRATION AND LABOUR

EVIDENCE

OTTAWA, Thursday, June 16, 1966.

The Standing Committee on Immigration and Labour, to which was referred Bill C-2, to amend the Fair Wages and Hours of Labour Act, met this day at 11.30 a.m. to give consideration to the bill.

Senator John Hnatyshyn in the Chair.

The CHAIRMAN: Gentlemen, I call the meeting to order. We are met this morning to consider Bill C-2, to amend the Fair Wages and Hours of Labour Act. In view of the importance of this bill, I suggest that our proceedings on it be reported and printed.

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

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

The CHAIRMAN: We have with us today the Honourable John Robert Nicholson, Minister of Labour. As you know, he is a very busy man. Could I have your permission to allow him to make his statement first and then he may be able to answer some questions.

Hon. SENATORS: Agreed.

Honourable John Robert Nicholson, Minister of Labour: Mr. Chairman and honourable senators, thank you for this opportunity. I may say at the beginning that I may be likely to have a little more time today than I had yesterday or any day in the past three or four weeks.

The purpose of this very short bill is to amend the Fair Wages and Hours of Labour Act to bring it in line with the amendments to the Canadian Labour (Standards) Code.

The Fair Wages and Hours of Labour Act was originally passed in 1935 and there have been no changes in it since that date. This amendment will bring wages and hour standards of the new Labour (Standards) Code into line.

The Fair Wages and Hours of Labour Act applies to wages and hours of work on federal Government construction contracts only. It does not apply to road making. It is limited to construction contracts.

It has been the policy of the federal Government for several decades to establish wages and hours and conditions of work on Government construction contracts. The present act provides that wage rates paid on federal Government construction contracts will be no less than those prevailing in the area in which the job is being done. It also provides for a 44-hour week. Therefore, you have had an hours standard, a 44-hour week standard on a national basis but the wages on an area basis.

The Labour (Standards) Code which was considered by this committee last year provides that the Government still must pay the prevailing wage in each area, but the minimum wage provided in the Labour (Standards) Code of $1.25 an hour is the floor. The 44-hour week has been dropped to a 40-hour week, consistent with the act. Those are the two basic changes.

In other words, it will be a condition of every federal Government construction contract that there be a minimum of $1.25 an hour paid on all such contracts; and also that there will be a maximum of 40 hours a week until you get into the overtime of 44 hours.

There are two other proposed amendments in the bill. In the present act, you have to have a permit from the Department of Labour to operate for more than a 44-hour week. That has caused a lot of inconvenience in certain areas and at certain times of the year. It is proposed now that you can work without such a permit up to a maximum of 48 hours a week provided you pay the overtime for the extra period. It simplifies things both for the employers and for the department.

The next provision in the bill which might call for a word of explanation is the penalty clause. When I first looked at this matter as minister, some six months ago, I was surprised to find that there is no penalty clause in the Wages and Hours of Labour Act. In other words, an employer could violate the code or the regulations and there are no effective teeth to punish him for the breach. Here we try to correct that by a special section.

Honourable senators, those are basically the changes. When the bill came up for second reading in the House of Commons, representations had been made by the Canadian Construction Association and by three trade unions. They asked for some further amendments. They were not objecting so much to the amendments that had been made but they were asking for additional amendments.

In the course of second reading, in order that members of the House of Commons would have an opportunity to consider these recommendations and also to permit the detailed clause by clause discussion, where questions could be put to the officials of the department, I asked that the bill be referred to the Labour and Employment Committee of the Commons. This was done.

There were four sittings. The Canadian Construction Association made certain representations. There was detailed examination and cross-examination of the representatives called and the one or two spokesmen who came in on the labour side, and also explanations and cross-examination of the officials of my department. Following that, after four sittings, there was a unanimous report on the bill, reporting it without amendment. As a result of that very careful examination, it went through the Commons in a matter of a few minutes.

In the course of the hearings I have mentioned, the officials of my department were questioned at some length. I was there for all of one of the hearings and part of another. They were questioned at considerable length in the clause-by-clause discussion, on the representations that had been made by the Canadian Construction Association, and with some support from one segment of labour but not from other of the labour organizations, the large labour organizations.

Mr. Chairman, we would be glad to answer any questions of a general nature or on any detailed points in the bill.

The CHAIRMAN: Honourable senators, besides the minister, we also have Mr. Harris S. Johnstone, Director of the Labour Standards Branch; and Mr. George Haythorne, the Deputy Minister.

Senator PEARSON: The Labour (Standards) Code—does that affect all the provinces and the territories?

Hon. Mr. NICHOLSON: Yes. Before this bill was put in final form, my deputy minister met with me or with my predecessor, Mr. MacEachen, at discussions with the provinces. In January of this year, the deputy minister himself saw all of the ministers or representatives. I will not say all the representatives were in Ottawa. Certainly, I think seven or eight out of ten were here. In other cases, there were their deputies. This was carefully discussed.

In addition to that, I went with my deputy minister to Quebec. I was going there on other business. We spent a couple of hours with the Minister of Labour and the Deputy Minister of Labour in Quebec, discussing this bill. We did the same thing in Toronto with the Minister of Labour there and the Deputy Minister of Labour, and also in Winnipeg, on the occasion of the annual meeting of the Congress of Labour.

Senator FLYNN: When were you in Quebec? On what date?

Hon. Mr. NICHOLSON: I would say it was late March or early April.

Senator BELISLE: I notice that this is only for construction. Does it supersede the provincial legislation?

Hon. Mr. NICHOLSON: It supersedes the provincial legislation in regard to construction of federal buildings, such as the post office, but it only applies to construction of that nature.

Senator CROLL: When you say it "supersedes"—

Hon. Mr. NICHOLSON: It applies to federal construction. It is not a case of superseding. It is original legislation. As I have said earlier, it has been there since 1935. There is no change in principle in the bill. It is just to make sure that the minimum of $1.25 is met and that the new provision of the 40-hour week instead of 44 is respected.

Senator FOURNIER (*De Lanaudière*): Do you think you will have to go back to Quebec again?

Hon. Mr. NICHOLSON: I would think not. If the deputy minister had not participated in the discussions and agreed that there was no question of principle involved—

Senator PEARSON: How many provinces have a $1.25 minimum in their code?

Hon. Mr. NICHOLSON: I do not?

Mr. George V. Haythorne, Deputy Minister, Department of Labour: Ontario has $1.25 as a minimum wage for construction. That does not apply to all of the province, but applies over a major section of the southern part of the Province of Ontario.

Hon. Mr. NICHOLSON: The Government would be in a very novel position if we should order industries coming directly under federal jurisdiction, for example banks and transportation systems, etc., that they must pay $1.25 if we did not apply it to construction. We have imposed it on them as well. How can we avoid it?

Senator CROLL: I would like to quote from the speech of Senator Macdonald (Cape Breton) of June 14—and he tells me it is well worth quoting—when he said we were paying $1 to $1.25 to trainees under the training act.

Senator MACDONALD (*Cape Breton*): If I might interrupt here, the Minister of Manpower mentioned that under the amendment to the technical training act by paying $35 a week, they would be paying roughly $1 an hour, and my suggestion was to bring it up to $1.25 an hour to bring it under this bill.

Senator RATTENBURY: Mr. Chairman, I am a member of the construction industry as an employer. I think I can speak for the industry when I say that

nobody objects to $1.25 an hour minimum wage. I have yet to hear a constructive objection. I sometimes wonder about the wisdom of the federal Government stepping into a situation like this where collective agreements themselves will allow individual firms to work more than 48 hours a week. Now I have two collective agreements in operation in which this clause is operative, and it places the employer to a greater extent than the employee in a very peculiar position where you have a collective agreement which allows you to work on out-of-town jobs in many cases 56 hours a week without payment of overtime. I would add that this is an international agreement. Now if I am correct, federal work in the construction industry would account for 10 per cent of the volume of the total. So you come on a job like this and all of a sudden you are faced with a 40- or 48-hour week.

Hon. Mr. NICHOLSON: You are faced with a 44-hour week under a similar statute up till today.

Senator RATTENBURY: This is a case where labour and management agree.

Hon. Mr. NICHOLSON: The same arguments were advanced by the banks in connection with other legislation.

Senator CROLL: In relation to that may I ask one question? What about those employees who don't have collective agreements, are they not more in number?

Mr. HAYTHORNE: A substantial number of those who come under collective agreements tend to be with the larger contractors, and in the larger centres. There is quite an amount of construction, particularly on smaller buildings under federal contract, where you wouldn't have all the people employed organized.

The CHAIRMAN: May I interrupt for a moment? I just wanted to say that when I introduced the officials from their department I omitted to mention that sitting in the second row near Senator Rattenbury is the Departmental Solicitor, Mr. W. B. Davis, and next to him the charming lady is Miss E. Woolner, Research Section of the Legislation Branch.

Senator GROSART: Before I ask my question, may I suggest that a possible answer to Senator Rattenbury's question, or perhaps it was a suggestion, that a collective agreement should operate rather than the provisions of the federal law, is that two people are not allowed to engage in a suicide pact.

My question is with regard to trainees and the $1 to $1.25 an hour rate. My understanding is that under present regulations $1 an hour is permitted to be paid to apprentices and trainees. I am speaking of the regulations under this act.

Mr. HAYTHORNE: May I make a statement on this pooint, and then Mr. Johnstone will be able to elaborate. The main provisions here apply to $1.25 for general labourers in the same way as they are applied under the Code. When it comes to the payment of appropriate rates for tradesmen, this is done as a part of the determination we make of what fair wages should be at a particular time. At this point Mr. Johnstone might explain what the procedure is when we establish what our fair wages for the different categories of labour are and what we do for people entering this for the first time.

Mr. Harris S. Johnstone, Director, Labour Standards Branch, Department of Labour: The fair wages standard comes under the Fair Wages and Hours of Labour Act which applies only to construction under federal contracts and has to do with the wages prevailing in areas for competent workmen in various classes. We make a survey and we find out what they are, and for each construction contract the department letting the contract asks for a schedule and we set forth the rates for the various classes of labour likely to be

employed on the contract, and the contractor cannot pay less than those. They cannot work more than 44 hours under existing legislation without a permit. If they get a permit to work overtime then the overtime rate is time-and-a-half. Under that act also we can accept as rates the recognized rates for apprentices who are apprenticed under provincial legislation. There is not much of that on federal Government construction contracts, but we can recognize the rates and we do.

As for the impact of the rate of $1.25 on federal construction contracts, our surveys of the rate structures we are using indicate that no rate is less than $1.25 in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. In fact all the rates we are using are considerably higher than $1.25. In the Province of Quebec the rate structures we are using there are all well above $1.25, except the rates for watchmen at five or six locations. In the Maritimes most of the rates we use are well above $1.25 except for approximately 15 or 20 per cent of the rates, and with the general trend of rising wages in a year or more these rates will be up above $1.25. That is if the legislation is not passed. If the legislation is passed, any rate below $1.25 will be put up immediately.

Hon. Mr. NICHOLSON: On that point I might say that in the discussions we had with the former Minister of Labour in Quebec, and in particular with his deputy, they conceded right away that in the construction industry this rate of $1.25 would apply.

Senator MACDONALD (*Cape Breton*): Might I interject here? We are all mentioning the construction industry. Does section 6 of the act apply where the federal Government gives a subsidy or grant? I am speaking now of the act itself which in effect says that where the federal Government gives a subsidy or grant—

Mr. JOHNSTONE: Section 5 of the act is applicable to contracts subsidized by the Government of Canada.

Senator MACDONALD (*Cape Breton*): I wonder if there was any case where that applies, for example on Trans-Canada Highway work or on work on cold storage sheds or matters of that kind.

Mr. JOHNSTONE: The construction of the Trans-Canada Highway is given considerable subsidy by the federal Government and it was excepted from this legislation because the provinces wanted that and had accepted the responsibility for fair wages and hours of labour on the Trans-Canada Highway.

Senator GROSART: Mr. Johnstone, I have not finished my question. Your reply in general, I think, was that there is a minimum, under the act, of $1.25 an hour, an absolute minimum across the board. My question was, are there not under the regulations exceptions made to this in the case of trainees and apprentices. As I understand it, the act says nothing about a $1 an hour rate. Also under the regulations permits are issued to pay $1 an hour.

Mr. JOHNSTONE: The amending act permits the $1.25 to be varied on the same basis as the $1.25 may be varied under the labour code. Under the labour code, rates lower than $1.25 may be set for persons under 17, or persons in training, or who are physically handicapped.

Senator GROSART: I am not being critical, but this leads to a larger question, the extent to which the principle of this bill is being watered down, because I understand that it is being watered down in the regulations; that is, under the authority being given to the Governor in Council to deal with certain matters. Is there no averaging?

Mr. JOHNSTONE: There is no averaging in the regulations under the code.

Hon. Mr. NICHOLSON: But it is not in this act.

Senator GROSART: Will averaging be allowed?

Mr. JOHNSTONE: We have never used averaging on federal contracts, and I cannot see that we are using it under the amending act.

Senator GROSART: Has it ever been used by regulation?

Mr. JOHNSTONE: No.

Senator GROSART: Have there ever been any other exceptions under the regulations, under special permits, under the extension of hours in the north, and so on? Are there any other areas of extension laid down in the provisions of this act?

Hon. Mr. NICHOLSON: You mean for wages?

Senator GROSART: Wages or hours, or anything else.

Hon. Mr. NICHOLSON: We never had a federal minimum until Parliament passed the Labour (Standards) Act last year. This is complementary legislation to that act, which brought in the minimum wage last year.

Senator GROSART: But this act has been in force since 1965.

Hon. Mr. NICHOLSON: The minimum wage only came in last year.

The CHAIRMAN: Senator Flynn.

Senator FLYNN: Mr. Chairman, I was wondering if the minister would agree with my perspective of the bill which deals with fair wages and hours of labour. It is only to establish some of the conditions of the construction contracts awarded by the federal Government. May I suggest that if this act did not exist the Government could, by order in council, establish the conditions under which any federal construction contract could be awarded. In other words, the Government tells any contractor that if he wants to bid or to be awarded by the Government he will have to pay certain wages and observe certain hours of work, and other conditions which are standard in forms of contract but not embodied in any legislation, but which bind the contractors just the same. By these amendments the Government is saying only that you will observe the wages and hours of work established by the Labour Code adopted last year.

Hon. Mr. NICHOLSON: Yes, the Government would have to be bound by the legislation that has been in existence since 1935. If you will look at clause 1 of the bill you will see that it reads:

> "fair wages" means such wages as are generally accepted as current for competent workmen in the district in which the work is being performed for the character or class of work in which such workmen are respectively engaged;

Subject to that, you are quite right, the Government could do it, but the Government would be in this very anomalous position that we have directed that railways, airlines, banks, or any other body that comes within the federal Government regulations must comply with this, and it would be rather inconsistent if we did not have it in our own legislation.

Senator FLYNN: But this act applies only to contracts awarded by the Government.

Hon. Mr. NICHOLSON: You are quite correct. Mr. Chairman, I started out by asking one of the officials to assist in a question put by Senator Rattenbury. I would like to support what the deputy minister said. As the senator pointed out, the collective agreement hours, if you want to put it that way, in the construction industry vary I believe from 37½ to 60 hours, and in a few institutions as much as 60 hours at straight line rates of pay. I think it would be turning the clock back, and I say this advisedly, with respect, if we were to substitute proposals such as the senator suggested, instead of a national standard of hours. If we want to have a national standard of hours—and we have had it for 31 years—I think it is public policy to continue to follow that policy.

Senator RATTENBURY: I cannot agree with the minister. That was not my point. My point is that here you have unanimity of opinion between the two agencies, employers and employees, and they agree that when men are away from home, rather than to sit around a boarding house or in a tavern they would prefer to be employed productively.

Hon. Mr. NICHOLSON: That may be so, but does that not apply to every industry?

Senator RATTENBURY: The agreements of which I am speaking apply only to those who are away from the home base.

Hon. Mr. NICHOLSON: There was provision in this act put in on representations made from the north country, where you have the long days in summer and short days in winter. In order to induce people to go up there you have to make special concessions for these unusual situations.

Senator GROSART: Would not a permit be available in exceptional circumstances to extend the hours regardless of the collective agreement contract, and then would not the only difference be that the employer, again regardless of the collective agreement contract, would be required to pay overtime after the statutory hours?

Hon. Mr. NICHOLSON: That is correct. There is provision in the act for that, senator.

Senator GROSART: All it removes is in a situation where a permit was available which would be at the discretion of management and labour to provide for themselves lower rates of pay over the overtime period.

Mr. HAYTHORNE: If I understand you correctlly, senator there would be no lower rates of pay, but overtime at the rate of time and a half.

Senator GROSART: Have they not a right, even if the collective agreement calls for 61 hours—

Mr. HAYTHORNE: His pay of time and a half is after 44 hours.

Hon. Mr. NICHOLSON: It has presented no difficulties in the past.

Senator GROSART: In other words, the act says that in these areas of federal contracts issued there is going to be a national standard of time and a half pay overtime after 44 hours?

Mr. HAYTHORNE: Forty hours.

Senator GROSART: I am sorry, 40 hours.

The CHAIRMAN: I was going to suggest that since we have representatives from the Canadian Construction Association it would be helpful if we could hear them before proceeding with further questions.

Mr. M. C. Stafford, Chairman of the Labour Relations Committee of the Canadian Construction Association is here, and with him is Mr. Peter Stevens, Director of Labour Relations, Canadian Construction Association. Would it be agreeable if Mr. Stafford came forward to make a statement?

M. C. Stafford, Chairman, Labour Relations committee, Canadian Construction Association: Mr. Chairman and honourable senators, at the outset I would like to say that the only reason I am here today is that our association is greatly concerned about this Bill C-2. We feel that the representations which we made to the committee of the House of Commons have not received the consideration that we think is due, and therefore we welcome this opportunity of appearing before you today.

First, I would like it acknowledged as a matter of record that the Canadian Construction Association, in conjunction with the Association of International Officers of the Building and Construction Trades, had been working since the late fall of 1964 on a joint labour management submission to the then Minister

of Labour, regarding desirable amendments to the Fair Wages and Hours of Labour Act.

I might interject here to say it was our understanding that far back some changes to this act were contemplated, and we wanted to make sure our views would be heard and would be duly considered.

A joint brief was presented to the then Minister of Labour in May 1965 after five months of very careful study. These joint proposals gave full recognition to the fact that this act is not one prescribing minimum standards but one establishing "fair" standards.

The very title of the act is "Fair Wages and Hours of Labour"—not "Minimum Wages." As a "package" it cannot be denied that these joint proposals were quite superior to the present provisions of the bill. In other words, we are not downgrading the bill; we want to upgrade it. They were of such a nature that both labour and management of the construction industry, the only one affected by the act, could live with them in the years ahead.

I should like to remind you gentlemen that it is now some 30-odd years since this act was amended. It may be another thirty years before it is amended again, and is it not reasonable that the amendments made today should be carefully thought out amendments and amendments that, as far as we can tell, will last and be effective in the years ahead?

When we first learned of the provisions of Bill C-2, we immediately jointly requested a meeting with the present Minister of Labour. After two such meetings we still failed to receive what to us was a really logical explanation of why the Government could not accept our joint proposals. We upheld, above all, the merits of free collective bargaining. Under unique Quebec fair labour standards legislation—that is 'degrees' under the collective agreement act—the merits of free collective bargaining have been successfully recognized, subject to ministerial confirmation particularly regarding their prevalence, for construction for over thirty years. Both construction labour and management know that what we propose works. The provisions of this bill, however, will, in our considered opinion, tend to cause undesirable disruption of conditions established by free collective bargaining between two strong parties, the construction unions and construction management.

For the record of this committee, Mr. Chairman, I would like to file a copy of the joint brief of May 1965 of which I have spoken, as well as a joint letter to the Minister of Labour of March 6, 1966, and a joint letter to all honourable senators and members of the House of Commons of April 29, 1966. Further, I believe that the joint statement made before the Standing Committee on Labour and Employment of the House of Commons on May 19, 1966, as recorded in No. 2 of the proceedings at page 41, and that by Mr. W. Ladyman, General Vice-President of the Canadian Labour Congress and Vice-President for Canada of the International Brotherhood of Electrical Workers, made before that same committee on May 24, 1966, as recorded in No. 3 of the proceedings at page 85, should be officially brought before this committee of the Senate. If necessary, I am prepared to read these into the record. Both elaborate on the industry's joint position.

In appearing before you today, there are only two major points of policy to which I wish to draw the committee's cooperation, particularly in the construction industry. I would ask of what value is genuine labour-management cooperation—as is strongly being urged by governments—when a government is not prepared to accept the results of such cooperation and rejects them without offering a satisfactory explanation on where such a joint proposal is in serious conflict with key aspects of major policies? This, we believe, has not been done. Construction labour and management will each be forced to re-appraise their

approach to such—to governments desirable—joint cooperation. This, construction employers do not wish to come about. We want to maintain the relatively harmonious arrangements we have developed over a period now of several years.

Working with the union leaders, the CCA has in recent years made considerable progress towards the establishment of a better labour relations climate in the construction industry. Other joint briefs were presented to the federal and to other governments. Surely this is highly desirable in these days when the front pages of the press headline labour strife? As a result of our joint efforts, construction labour strife has been considerably reduced in recent years—and this has not happened on the basis of inferior wage settlements either, as many members of this committee will know. Our settlements, made without stories, were fair. That is why they were acceptable to both parties. One major question therefore before this committee, it seems to me, is whether or not the Government's reasons for turning down the joint proposals were really justified in the light of what, to us, appeared to be a superior total "package" because it established a much sounder basis for "fair" conditions—that is, that these be those established by free collective bargaining.

The other major problem which I believe honourable senators are facing regarding bill C-2 is that at the very time when the Government and Parliament are agreed that the Public Service of Canada is to be granted the benefits of free collective bargaining, the same Government here rejects this process as being the correct one for the establishment of "fair" working conditions on federal construction projects. During all the recent and current labour strife, the Government, the minister, yes even the Prime Minister earlier this week acknowledged and upheld the superior merits of free collective bargaining. It was stated that the voluntary settlement of disputes is preferable to legislation. We in the construction industry agree with this view because it is easier for both labour and management to live with voluntary settlements than with ones dictated by legislation. The question therefore to me is one, here again, of major principle of policy. The fact that in road building regular hours of work in our climate need to be condensed into 8 or 9 months is of every little consequence in this situation since the federal government has only been spending about three per cent of its own construction budget on such projects —that is, National Park Roads and Federal Airport Runways. The longer working hours negotiated by unions for such longer work days and work weeks will only very rarely apply under this act because such work is governed by provincial and municipal governments. Moreover, the special conditions applying to grain elevators or Great Lakes shipping are just as valid for road building. On the other hand, some agreements now, in balance so to speak, provide for a 37 1-2 hour work week which the bill fails to recognize. And finally, and very important too, the bill does not recognize that employer-paid fringe benefits should in this day and age be recognized in "fair" wage determination. They are all part of real wages.

Mr. Chairman and honourable senators, if this committee supports labour-management cooperation, if it supports also those superior merits of free collective bargaining and, finally, if it agrees that "fair" working conditions are generally established by free collective bargaining, then I would hope the committee will see that the joint proposals of the construction industry concerning desirable amendments to this act are adopted by it.

The CHAIRMAN: Is it agreed that the brief and other documents mentioned shall form part of the proceedings of this committee?

Hon. SENATORS: Agreed.

Senator CROLL: Mr. Chairman, I thought that rather than make it part of the record, it might be filed with the clerk. It is part of the record of the House

of Commons and is available to us. We are going into a very large printing bill for no reason because it is all available to us. The documents could be filed with the clerk. The information is already on record, and I do not think you ought to put it on the record again.

The CHAIRMAN: Is it the wish of this committee that the brief and other documents be filed with the clerk?

Senator GROSART: Mr. Chairman, I do not want to be inimical at all in this, but it does seem to me that it is improper procedure for us to reprint the proceedings of a committee of the House of Commons. We can make reference to them. This material is available in print, and it would be an unnecessary expense in having the Senate reprint what has already been published by the Queen's Printer.

The CHAIRMAN: Is it satisfactory that the material be filed—

Senator MACDONALD (*Cape Breton*): I do not agree, Mr. Chairman. If these people want to put that brief in as part of the record of this committee then they should be able to. The expense will not be much.

Senator GROSART: It is already part of the material before the committee. It deals with the same bill and the same brief. What is the purpose of it?

The CHAIRMAN: There are two alternatives; it can be either printed as an appendix or filed with the clerk. Do we have to have a vote on it, or is there agreement?

Senator GROSART: I would say that it would be quite proper to file it with the committee, but if this other principle were established then surely every delegation that comes before us, and which has made a presentation in the other place, would ask the same privilege. It is unnecessary, in my opinion, but if the witness feels there is some particular purpose to be served—

The CHAIRMAN: I think the committee generally is familiar with the brief. They have read it, and are familiar with the correspondence. Is it satisfactory that it be filed with the clerk?

Senator MACDONALD (*Cape Breton*): I move that it be printed as an appendix.

Senator CROLL: The statement he made today is part of the record.

Senator MACDONALD (*Cape Breton*): There might be people reading these proceedings who have no—

The CHAIRMAN: Are you moving that, Senator Macdonald?

Senator MACDONALD (*Cape Breton*): Yes.

Senator PEARSON: I will second the motion.

Senator GROSART: May we know what the motion is?

The CHAIRMAN: The motion is that it be printed as an appendix to the proceedings of this committee.

Senator GROSART: May I ask what will be printed?

The CHAIRMAN: The brief and the letters mentioned by Mr. Stafford.

Senator GROSART: Perhaps the witness could read what he asked to have printed. What was it precisely that you asked to have made part of our record?

Mr. STAFFORD: I said as follows:

> —I would like to file a copy of the joint brief of May 1965 of which I have spoken, as well as a joint letter to the Minister of Labour of March 6, 1966 and a joint letter to all honourable senators and members of the House of Commons of April 29, 1966. Further, I believe that the joint statement made before the Standing Committee on Labour and Employment of the House of Commons on May 19, 1966—

and so on. That, Mr. Chairman, I think is on the record.

Senator GROSART: I would like to speak to the motion. I understood the witness to say he asked to have it filed.

Mr. STAFFORD: That is correct.

Senator GROSART: In other words, he does not ask to have it printed. He asked to have it filed.

Mr. STAFFORD: I said:

For the record of this committee, Mr. Chairman, I would like to file—

Senator GROSART: There is no disagreement about it.

The CHAIRMAN: There is a motion before the committee.

Senator MACDONALD (*Cape Breton*): Let us get this straight. Does the witness mean he would like to have that printed as part of these proceedings, or just filed with the clerk?

Mr. STAFFORD: Mr. Chairman, in answer to that I will say that all I had in mind was that copies of this correspondence should be in the possession of the secretary.

Senator CROLL: That means filed.

The CHAIRMAN: Yes, just file it with the clerk. The motion is withdrawn.

Senator CROLL: May I, as the witness—

The CHAIRMAN: Pardon me, Senator Croll. I would ask the committee if it is agreed that this be filed with the clerk?

Hon. SENATORS: Agreed.

Senator Croll: You appeared before the committee of the House of Commons—

Mr. STAFFORD: Pardon me, Senator Croll, but I did not appear before the committee. I was supposed to be there, but Air Canada was not flying on that day. Mr. Peter Stevens, who is the Director of Labour Relations, appeared.

Senator CROLL: He presented the brief, and was heard?

Mr. STAFFORD: Yes.

Senator CROLL: And we were told here earlier today by the department that the committee made a unanimous recommendation in favour of the bill?

Mr. STAFFORD: That is correct—the committee of the House of Commons.

Senator CROLL: Do you not think, in view of the fact that you were heard there, and there was a unanimous recommendation, that it was quite fair—I think you said that you had less than a fair hearing, or something to that effect. Did you say that?

Mr. STAFFORD: No, sir, I did not mean to imply that.

Senator CROLL: What did you say?

Mr. STAFFORD: What I meant to say was that I did not think our submission received the attention that we felt it should have received. In other words, we felt that some action should have been taken on it.

Senator CROLL: What you are saying is that you felt that if they recommended something less than what you recommended, you were disappointed?

Mr. STAFFORD: That is right.

Senator CROLL: Well, that has happened before, has it not?

Mr. STAFFORD: Yes, we are often disappointed.

Senator CROLL: And then, of course, you suggested in your presentation to the minister that you got less than what you considered a logical explanation. You were here this morning, were you not?

Mr. STAFFORD: Yes.

Senator CROLL: You heard the minister this morning?

Mr. STAFFORD: Yes.

Senator CROLL: Do you not think he was pretty logical this morning?

Mr. STAFFORD: I think that what he had to say this morning was a fair appraisal of the situation from his point of view.

Senator CROLL: Well, when you say "from his point of view" I would ask you: His point of view is one that is representative of the people of Canada, is it not?

Mr. STAFFORD: I presume so. He represents the people.

Senator CROLL: Well, it must be so, otherwise he would not be there.

Mr. STAFFORD: Yes, but I would like to qualify it by making this statement, which I think was made clear in the statement I made this morning, that where there is an existing agreement for certain working conditions in a certain area made between bona fide labour representatives on the one hand, and bona fide employers on the other, that that should be used rather than have the Government legislate as to how we should operate.

Senator CROLL: Do you not think that the Government has a responsibility to lay down guidelines where there is no existing agreement?

Mr. STAFFORD: Oh, yes, I agree with that, but I am talking about existing agreements.

Senator CROLL: Is not that what they are doing in this bill?

Mr. STAFFORD: I do not think so.

Senator FLYNN: Not necessarily.

Mr. STAFFORD: I do not think so.

Senator CROLL: You say that it is not your view that they are laying down guidelines in this bill.

Mr. STAFFORD: They are laying down guidelines, yes, but—

Senator CROLL: And you say that no matter what is contained in the bill a collective agreement, if you have one, should supersede?

Mr. STAFFORD: Yes, exactly.

Senator PROWSE: What agreement do you have that provides less than the minimum prescribed in the—

Mr. STAFFORD: If you are talking about wages, for instance, then that is one item. I doubt if we have any agreements that call for less than $1.25 an hour.

Senator PROWSE: This will not prevent your continuing to pay more.

Mr. STAFFORD: Yes, and we have no quarrel whatever with the minimum of $1.25 an hour.

Senator PROWSE: What is your quarrel with?

Mr. STAFFORD: Our quarrel is with the stipulation that we are limited to the amount of time we can work under certain conditions.

Senator PROWSE: Unless you get an extension.

Mr. STAFFORD: Yes, that is ight.

Senator PROWSE: And presumably you have negotiated these agreements before, and presumably you have encountered situations in which you have asked for extensions?

Mr. STAFFORD: There have been instances where our employers have asked for extensions.

Senator PROWSE: And where management and labour have agreed that they want to work longer hours for a special reason have you had any instance of where the Government has refused or failed to allow you to do that?

Mr. STAFFORD: Not to my knowledge.

Senator PROWSE: Then, what you are complaining about is something that has never happened?

Mr. STAFFORD: But, you see, what is happening now is that in this bill the Government is stating definitely what can and what cannot be done.

Senator PROWSE: But that is the minimum.

Mr. STAFFORD: That is the minimum.

Senator GROSART: It does that to all of us every day of our lives.

Mr. STAFFORD: We maintain that in certain circumstances we should be permitted to work longer hours than the bill stipulates.

Senator PROWSE: But, surely, the bill makes provision for any situation in which you are able to substantiate your requirement for longer hours, and in which case you will be allowed to work longer hours.

Mr. STAFFORD: We have gotten permission by permit in the past.

Senator PROWSE: And you can tell me of no instance of where such permission has been refused?

Mr. STAFFORD: I do not know personally of any such instance.

Senator PROWSE: If there had been any instance of where the Government had been unreasonable, and had not given you a special permit to do the things required, you would have been armed with those facts when you came here because your industry members would have seen that you had them.

Mr. STAFFORD: Well, I would like to repeat that there are situations in which we find it important that we be able to work additional hours. For instance, let me illustrate—

Senator PROWSE: We agree that that is quite probably so, but I am asking you if you know of any instance where that being the case you have been unable to do so?

Mr. STAFFORD: No, not to my knowledge.

Senator PROWSE: Then, what you are complaining about is something that has never happened in your experience?

Mr. STAFFORD: But that is not saying it is not likely to happen in the future.

Senator PROWSE: These minimums that are set out here are well below the ordinary rate of wages that you pay?

Mr. STAFFORD: We are not concerned about the rate of wages at all.

Senator PROWSE: It is the hours of work?

Mr. STAFFORD: Yes, the hours of work and the fact, if I remember rightly, as Mr. Johnstone earlier explained, that for the various craft trades the department publishes a schedule of what rates shall be paid. But those rates do not include the fringe benefits which we as contractors have to pay and which are quite substantial, running as high as some 50 cents per hour.

Senator FLYNN: What is the precise advantage that you have in mind to meet that problem?

Mr. STAFFORD: We have asked in our brief that the necessity for a permit be done away with, that is, to work overtime. Secondly, we have asked that there be added to the basic wage rate the fringe benefits for the particular trade in the particular locality in which the work is to be done. These are fringe benefits that were worked out between labour on the one hand and management on the other.

Senator GROSART: Have you also asked that you should not be required to pay overtime on your negotiated rates, after 40 hours?

Mr. STAFFORD: No, we have not.

Senator GROSART: So you do not object to the overtime clauses?

Mr. STAFFORD: We have always paid overtime. We feel that going to 44 hours from 40 hours is unfair to the employees, under certain circumstances. But that is not what we are concerned about, so much as being able to work the number of hours that we think are necessary, under circumstances applying at the time, in order to get the work done.

Senator GROSART: I am just as perplexed as the senator who spoke a moment ago about what you are concerned about. After 31 years of operation of the act, you appear to tell the committee that you have never had a case where you have been frustrated by the act, when it was 44 hours. This perplexes me. It has not happened for 31 years and you have reason to believe that it may happen in the next five years or so?

Mr. STAFFORD: Mr. Senator, it seems to me that the important point is that there are collective agreements in existence which call for hours greater than laid down in the bill. All we are saying is that, under certain circumstances, we should be permitted to work those hours, without getting a special permit.

Senator GROSART: What you are objecting to is the Government, presumably representing the public interest, having the right to decide whether this request for extension of hours is a reasonable request on the part of the employer, under the collective agreement? You just do not like Government interference?

Mr. STAFFORD: I do not think any of us like undue interference. We realize the Government has to interfere at times.

Senator GROSART: Do you find that this request for permits means that you are tied up with red tape and so on, that you may want, at 5 o'clock today, say, to extend the hours, and then you find that you have to write to Ottawa for a permit. Is that the objection?

Mr. STAFFORD: That basically is the problem. It takes time to process these things.

My attitude is that since the department does a certain amount of policing of these contracts, that are done for the Government, if they run across a case where someone is not playing the game, under this bill they can have recourse to punitive measures to correct the situation. I think that if a few examples were made of people who do circumvent the law, that would pretty well eliminate such instances.

Senator MACDONALD (*Cape Breton*): Would this be a fair statement, that what you are looking for, so far as hours of labour are concerned, is that this would not apply in cases where there is a collective agreement between the parties?

Mr. STAFFORD: That is right.

Senator MACDONALD (*Cape Breton*): Secondly, where wages have been determined, that fringe benefits which the employer must pay would be considered as part of the agreement.

Mr. STAFFORD: That is perfectly right. Those are the two points I have put forward.

Senator PROWSE: Would not the definition of fair wages in the bill make it possible for the officials to take them into consideration when setting standards in an industry?

Mr. STAFFORD: If I heard the Minister of Labour correctly this morning, I think he made the statement in regard to this inclusion of fringe benefits, that it was too difficult to do, that it involved too much both for the Government and for the employers. And with that view I cannot agree.

Senator CROLL: You are only interested where the minimum wages are applicable, where they take into account fringe benefits under provincial work regulations that you have had to live with for many years.

Mr. STAFFORD: Were you addressing that question to me?

Senator CROLL: Yes. The question was: as you lived under provincial government minimum wages for a great number of years, do you know any provision for taking this into account in order to fix the minimum of fringe benefits?

Mr. STAFFORD: Possibly Mr. Peter Stevens, Director of Labour Relations for the C.C.A., could answer that.

Senator CROLL: I think the answer is no.

Mr. Peter Stevens, Director of Labour Relations, Canadian Construction Association: Mr. Chairman and honourable senators, what is involved here is that the fringe benefits in the construction industry are just coming in in this country. They are well established in the United States now and they have been absorbed into this type of parallel legislation in the United States, under the Davis-Bacon act of 1963. They amount to a differential in paying benefits, and this is the problem faced by the industry.

Senator CROLL: There are minimum wage laws in every province of Canada and there are also fringe benefits attached to every one of the people who work under those laws. That is true?

Mr. STEVENS: I think so, sir.

Senator CROLL: Yes, you think so. Do you know of any province that fixes its minimum wage or allows its minimum wage to be affected by fringe benefits?

Mr. STEVENS: I am thinking of two.

Senator CROLL: Can you give one? Do you know Ontario?

Mr. STEVENS: Yes. For instance, tips for waiters cannot be taken into consideration. That is a fringe benefit. You get cases where accommodation, free accommodation, is provided. In minimum standards legislation, this cannot be taken as wages. You get these provisions. I think they are pretty well enshrined in minimum standards legislation in most provincial jurisdictions.

Senator CROLL: When you talk about tips, you are getting into outside matters. You are talking about something else. As I understand the Ontario law, which I think I know, there is some provision for workers going from home and staying away, where they are entitled to some benefit. But you tell me now that that is part of the wage and considered to be part of the wage, the minimum wage.

Mr. STEVENS: No. What I am saying, senator, is that the minimums have to be under consideration in these benefits. Therefore, the minimum wage, say, in Ontario for construction, is $1.25, as mentioned by the departmental officials. If free board and accommodation were to be provided, which can happen, in the case of outlying job sites, then this cost of free board and rooms cannot be taken into consideration. This is a uniform $1.25.

Senator CROLL: That is exactly what I have been trying to say here for ten minutes. Now we agree that the minimum stays there.

Mr. STEVENS: The fringes are separate.

Senator CROLL: They are not taken into consideration. Exactly. But that is not what Mr. Stafford has been saying.

Mr. STEVENS: We want that.

Senator CROLL: You want the fringes to be taken into consideration?

Mr. STEVENS: Right, because they give a higher level of constructive bargaining.

The CHAIRMAN: The fair wage.

Senator BELISLE: Unless the minister has something to add, I move that the bill be reported.

The CHAIRMAN: Honourable senators, if the minister is busy, I think we will be glad to excuse him.

Senator CROLL: I think the minister should stay until we finish the bill.

Hon. Mr. NICHOLSON: Honourable senators, I have an important appointment with Senator MacKenzie, in connection with the Seaway dispute.

The CHAIRMAN: All right. We will be glad to excuse you.

Hon. Mr. NICHOLSON: Before I go might I make one very short statement. I don't want to leave unchallenged the suggestion that the Government has rejected the principle of collective bargaining. The Government has not rejected the principle; it is incorporated in this act. We encourage it. All we suggest is that there certainly should be certain minimum standards. I mention this for the consideration of Mr. Stafford and other members of the construction industry. Would it not be a very strange situation if employers such as the railroads, the air lines, the docks and the banks were bound by these regulations while the construction industry, with only 3 per cent of its operations coming under federal jurisdiction, were not so bound? Would it not be strange if they were not asked to comply with them?

Thank you very much, gentlemen, for your consideration. And now if I may be excused—my officials will be here to answer any questions.

Senator MACDONALD (*Cape Breton*): Could I ask Mr. Johnstone one question. When you mentioned previously about going into a place to ascertain the prevailing rates, you said you make a survey. In such cases do you take into consideration the cost of any of these fringe benefits?

Mr. JOHNSTONE: No, we ascertain what is the prevailing rate paid, the basic wage rate paid and in many respects what we are using as minimum rates on Government contracts are the rates negotiated under collective agreements.

Senator GROSART: May I ask if in setting this $1.25 minimum, you have not already taken into consideration the fact that on the average there would be certain fringe benefits?

Mr. JOHNSTONE: Well, the $1.25 was arrived at when the Labour Code came up. The rates we fix on Government contracts through the terms of contracts prepared under this legislation are in almost all cases higher than the $1.25. For instance in Vancouver our labour rate there is well over $2 and the highest trade rate is around $3 or $4. Similarly in Toronto. In Ottawa our labour rate on general contracts is $2.

Senator GROSART: That is exactly the point of my question. I assumed the department considered what the figure should be and that the $1.25 rate would take into consideration many things, such as the cost of living, the required level of take-home pay after all deductions and so on. What I am asking specifically is would the average fringe benefits have been taken into consideration in arriving at this $1.25 rate?

Mr. HAYTHORNE: Perhaps I can speak to that. It might not be correct that the fringe benefits would not be taken into consideration when fixing this, but it is a fact that many fringe benefits are provided by statutory provisions under either federal or provincial jurisdiction, and I had in mind the workmen's compensation plan, which is a fringe benefit, and also Medicare which is on its way, and I had in mind hospitalization and other features such as vacation pay and pay for statutory holiday. We would regard these items as being

facts of the industry to be generally taken into consideration, but in establishing the rate itself we were thinking more of the cash wages.

Senator GROSART: That answers my question.

Senator RATTENBURY: May I make just one short statement—

The CHAIRMAN: Order, please. The Reporter is having great difficulty in hearing what is being said.

Senator RATTENBURY: The impression was given to the committee, I think that board and lodging is a fringe benefit. It is not a fringe benefit. If my employees are sent out of town at a rate of $3 an hour, then I pay their board not as a fringe benefit but as a necessity.

Mr. STEVENS: If I might say a word in answer to Senator Croll. In the Province of Quebec under collective agreements, so far as Government contracts are concerned fringe benefits are now included in such decreed areas as Montreal, Sherbrooke and Quebec. It is a precedent which on the spur of the moment I neglected to cite.

Senator CROLL: I am not impressed by the precedent. If there are no more questions I move that the bill be reported.

Senator MACDONALD (*Cape Breton*): I have a question to ask on the penalty clause. How would that be carried out? What would be the actual machinery used? What would happen if you found somebody in default?

Mr. HAYTHORNE: Mr. Chairman and Senator Macdonald, this is going to be in our estimation largely self-policing in the sense that by mutual consent with the employer the liquidated damages will be paid from the holdback we would have in any event on these contracts. If there is any failure to obtain mutual consent and the employer wishes to contest the charge which we wish to make under the legislation he could, of course, take it to the Exchequer Court, but in the first instance this is a fairly simple device that we put into the legislation which, as I said, is essentially self-policing. When an employer is found repeating an action which has occurred in the past we take action to recover the liquidated damages from the holdback. There has been no objection raised to this.

Senator MACDONALD (*Cape Breton*): I don't like the idea of the department saying "Here you are in default and you are going to pay." I would prefer to see it going through the processes of law.

Senator GROSART: You could run into a great deal of difficulty in this period. Ninety-nine per cent of these would be settled without problems, but I suggest that if a large sum is involved then it could be taken to the court.

Senator MACDONALD (*Cape Breton*): If there is a penalty it should be imposed by the court.

Mr. HAYTHORNE: I did not want the members of the committee to have the impression that we as a department are not ready and have not been ready to put into effect some of the suggestions made. We have not turned down all the suggestions as Mr. Stafford knows. We have introduced a great deal of flexibility into the bill, and we have also said both to unions and management that we are ready to talk over with them the regulations that will be amended before they are in final form. We don't feel—and I won't go into the reasons that were given for this before the committee of the other place—we don't feel satisfied at this time with respect to two main proposals, namely, fringe benefits and departure from the national standard. We are told that in the United States the application of these provisions has not been fully implemented, that they have raised difficulties there, and, secondly, in the United States the federal Government covers 60 per cent of the labour legislation. They have this extent of the labour force under federal jurisdiction in this industry and in others,

whereas here there is a very small part under federal jurisdiction, I think that 3 per cent might be a reasonably accurate figure.

Senator CROLL: Six per cent—$660,000 out of 7,200,000.

Mr. HAYTHORNE: We have advanced further in Canada under provincial and federal law in providing provisions in the fringe benefit area through statutory provisions that they have in the United States.

The CHAIRMAN: Shall clause 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. Senators: Carried.

The committee adjourned.

First Session—Twenty-seventh Parliament
1966-67

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

Immigration and Labour

The Honourable John Hnatyshyn, *Chairman*

No. 2

Complete Proceedings on Bill C-220,

intituled: "'An Act to make provision for appeals to an Immigration Appeal Board in respect of certain matters relating to immigration"

THURSDAY, MARCH 16th, 1967

WITNESSES:

Department of Manpower and Immigration: The Honourable Jean Marchand, Minister; E. P. Beasley, Director, Planning Branch, Immigration.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

24527—1

THE STANDING COMMITTEE

ON

IMMIGRATION AND LABOUR

The Honourable John Hnatyshyn, *Chairman*

The Honourable Senators:

Argue,
Beaubien (*Provencher*),
Bélisle,
Boucher,
Burchill,
Cameron,
Cook,
Croll,
Davey,
Dupuis,
Fergusson,
Flynn,
Fournier (*De Lanaudière*),
Fournier (*Madawaska-Restigouche*),
Gershaw,
Gladstone,
Grosart,
Hastings,
Hnatyshyn,
Lefrançois,
Macdonald (*Cape Breton*),
McElman,
Monette,
Paterson,
Pearson,
Prowse,
Rattenbury,
Reid,
Roebuck,
Urquhart,
Vaillancourt,
White,
Willis,
Yuzyk—(34).

Ex Officio members: Brooks and Connolly (*Ottawa West*).

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, March 9, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hastings, seconded by the Honourable Senator McDonald, for second reading of the Bill C-220, intituled: "An Act to make provision for appeals to an Immigration Appeal Board in respect of certain matters relating to immigration".

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 Hastings moved, seconded by the Honourable Senator Rattenbury, that the Bill be referred to the Standing Committee on Immigration and Labour.

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

J. F. MACNEILL,
Clerk of the Senate.

24527—1½

MINUTES OF PROCEEDINGS

THURSDAY, March 16th, 1967.

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

Present: The Honourable Senators Hnatyshyn (*Chairman*), Beaubien (*Provencher*), Belisle, Burchill, Cook, Croll, Fergusson, Flynn, Fournier (*Madawaska-Restigouche*), Gershaw, Hastings, Macdonald, (*Cape Breton*), McElman, Pearson, Roebuck, Willis and Yuzyk. (17)

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

On Motion of the Honourable Senator Fergusson it was *Resolved* to report, recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-220.

Bill C-220, "Immigration Appeal Board Act", was read and considered.

The following witnesses were heard:

Department of Manpower and Immigration:

The Honourable Jean Marchand, Minister.

E. P. Beasley, Director, Planning Branch, Immigration.

On motion of the Honourable Senator Macdonald (*Cape Breton*), it was *Resolved* to report the said Bill without amendment.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 16th, 1967.

The Standing Committee on Immigration and Labour to which was referred the Bill C-220, intituled: "An Act to make provision for appeals to an Immigration Appeal Board in respect of certain matters relating to immigration", has in obedience to the order of reference of March 9th, 1967, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

JOHN HNATYSHYN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON IMMIGRATION AND LABOUR

EVIDENCE

OTTAWA, Thursday, March 16, 1967.

The Standing Committee on Immigration and Labour, to which was referred Bill C-220, to make provision for appeals to an Immigration Appeal Board in respect of certain matters relating to immigration, met this day at 9.30 a.m. to give consideration to the bill.

Senator John Hnatyshyn in the Chair.

The CHAIRMAN: Honourable senators, we are here to consider Bill C-220, to make provision for appeals to an Immigration Appeal Board.

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

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

The CHAIRMAN: We are fortunate to have with us this morning the Honourable Jean Marchand, Minister of Manpower and Immigration. He has with him from his department Mr. E. P. Beasley, Director, Planning Branch. I know without the Minister telling me that he is very busy this morning, but he is very gracious and says he will be obliging and answer any questions we may want to ask. Would it not be best to start by asking the minister to make a statement and then give committee members the opportunity to ask any questions?

Hon. SENATORS: Agreed.

The Honourable J. Marchand, Minister, Department of Manpower and Immigration: Mr. Chairman, honourable senators, the main purpose of this bill is first to create an independent board of seven or nine members to replace the present board, which to a certain extent is integrated into the departmental machinery. The new board will be entirely independent.

The second aspect of it is to modify the discretionary powers of the Minister. Under the law as it now exists there can be an appeal from the board to the minister, who can of course overrule the board. Under this bill, if it is adopted, that will no longer be possible. Under this bill we can grant new rights to immigrants; their sponsors can appeal against the administrative decision of the department not to admit sponsored immigrants in certain classes, and this is a new feature. The only classes covered will be those approved by the Governor in Council.

That is the general purpose of the bill. It is quite a simple bill but an important one, and I am sure you appreciate the sensitive points. There are the problems of security and sponsorship rights as far as appeals are concerned. I think I need say no more about the bill and I am prepared to answer any questions.

Senator PEARSON: Will the present members of the appeal board be absorbed into the new board and become members of it?

Hon. Mr. MARCHAND: Not automatically and not necessarily.

Senator CROLL: How do you foresee your duties? Now that you have shed yourself of a considerable amount of your responsibility where does the minister now fit in? What can you do? Formerly you had a discretion which was entirely in your hands, but you have shed that to a great extent. What is left?

Hon. Mr. MARCHAND: I do not think much has been modified. I have exactly the same discretionary powers that I had before, except the power to overrule the board. That means that in an immigrant case which could not normally be admitted under the criteria set down by the department I can exercise my discretion, but the one discretion I will not be able to exercise is to overrule the board. Once a case is decided by the board it is final, but before that, before the procedures are gone through, I have exactly the same power.

Senator CROLL: When you say final, is it final or is there an appeal beyond that?

Hon. Mr. MARCHAND: There can be an appeal on matters of law to the Supreme Court of Canada.

Senator CROLL: The Supreme Court of Canada only?

Hon. Mr. MARCHAND: Yes.

Senator CROLL: Not the supreme courts of the provinces but the Supreme Court of Canada?

Hon. Mr. MARCHAND: Of Canada.

Senator CROLL: On a question of law?

Hon. Mr. MARCHAND: Of law.

Senator PEARSON: The minister can appeal as well, can he?

Hon. Mr. MARCHAND: The minister can appeal against the decision of the inquiry officer.

Senator MACDONALD (*Brantford*): If you exercise your discretion and give a ruling, is there an appeal from your ruling?

Hon. Mr. MARCHAND: An appeal from whom?

Senator MACDONALD (*Brantford*): From you, if you have exercised your discretion in a certain manner?

Hon. Mr. MARCHAND: If I exercise my discretion—and I have the right to exercise my discretion under the law—there can be no appeal against that, otherwise it is not a discretion.

Senator MACDONALD (*Brantford*): Then instead of going to the appeal board a person can go to you?

Hon. Mr. MARCHAND: There is no doubt they can come to me in any case. Of course, I may decide to refer them to the board.

Senator FOURNIER (*Madawaska-Restigouche*): Is it a full time board?

Hon. Mr. MARCHAND: Yes. We do not know exactly what the work load of the board will be because of the rights we intend to give immigrants concerning their dependants. We do not know how much work this will mean for the board. Some may think we have been too prudent. I think we are the first country to afford this opportunity for sponsors to appeal, and we do not know to the letter what it will mean under the terms laid down for the board.

The CHAIRMAN: Will the board sit in one place or at various places in Canada?

Hon. Mr. MARCHAND: It can sit anywhere in Canada. It would probably be wise to have at least a commissioner in large centres such as Toronto and Montreal to investigate cases so that all immigrants are not compelled to come here to Ottawa to have their cases heard.

Senator HASTINGS: How many members are there on the present board?

Hon. Mr. MARCHAND: I think six, but there can be seven.

Mr. E. P. Beasley, Director, Planning Branch, Department of Manpower and Immigration: Six is the established number now.

Senator HASTINGS: Are they part of your present department?

Hon. Mr. MARCHAND: They are in part. A few members are former civil servants of the department. From an administrative point of view it is integrated into the department. That means the board is administered by the department and is responsible to the Deputy Minister of Immigration. From now on it will be a completely separate board and the chairman of the board will have the administrative powers now exercised by the deputy minister.

Senator HASTINGS: Responsible to you?

Hon. Mr. MARCHAND: No, it is an independent board.

Senator HASTINGS: A completely autonomous board?

Hon. Mr. MARCHAND: Yes, it will be independent, except that in matters of law it will not be independent of the Supreme Court of Canada.

Senator CROLL: Take the case of an immigrant who has applied first in London and secondly in Warsaw for admission and been refused. How does he get before the board?

Hon. Mr. MARCHAND: A non-sponsored immigrant you mean?

Senator CROLL: Deal with both.

Hon. Mr. MARCHAND: If he is a sponsored immigrant and falls within a class which has been approved by the Governor in Council the sponsor here in Canada will have the right to appeal.

Senator CROLL: The sponsor here makes the appeal?

Hon. Mr. MARCHAND: Yes.

Senator CROLL: Does he do it in writing, say by means of affidavit?

Hon. Mr. MARCHAND: We have not gone into those details, because we think it is up to the board to decide what procedure it will follow.

Senator COOK: If a sponsor makes application and it is rejected, I suppose he will then be advised of his right of appeal?

Hon. Mr. MARCHAND: Yes.

Senator BURCHILL: The purpose of the board is to hear appeals from decisions of the administrative officers.

Hon. Mr. MARCHAND: Or of the inquiry officers.

Senator BURCHILL: At the present time are there many appeals in the course of a year?

Hon. Mr. MARCHAND: Yes, there are many appeals, but there are appeals now only in the case of deportation orders; it is restricted to that field. In future there could be appeals on the question of sponsorship.

Senator BURCHILL: There are no appeals today in matters of sponsorship?

Hon. Mr. MARCHAND: No.

Senator MACDONALD (*Brantford*): I would like to know about the procedure to get before the board. Is the procedure complicated? If I am a lawyer acting for an applicant, do I have to get permission to appeal? What is the procedure?

Hon. Mr. MARCHAND: This is not set out in detail. Perhaps Mr. Beasley can give some information on that.

Mr. BEASLEY: The board will of course establish its own rules of procedure. The procedure for coming before the board at the present time is very simple: at the conclusion of the inquiry, if the special inquiry officer orders the person to be deported he informs him of his right to appeal and the man can sign a simple Notice of Appeal, which is forwarded to the board. That is all there is to it.

Senator BURCHILL: He is notified?

Mr. BEASLEY: He is notified at the conclusion of the inquiry of the decision of the special inquiry officer and of his right to appeal, and he can immediately file a notice of appeal, which is transmitted to the board.

Senator MACDONALD (*Brantford*): Is the applicant then free or is he detained? Is there any bond? Does he have to put any bond pending the appeal.

Mr. BEASLEY: The special inquiry officer has a discretion to detain or to release under bond, or to release on the recognizance of the individual concerned. It is entirely a discretionary power of the special inquiry officer.

Senator MACDONALD (*Brantford*): Is it likely that that procedure will be continued under the new appeal board?

Mr. BEASLEY: Yes, that procedure is not affected. This is a provision of the present Immigration Act which will be continued, but there will be a right of appeal to the board if the person is detained.

Senator COOK: In cases where the sponsor appeals the applicant will not be in Canada, will he?

Mr. BEASLEY: The sponsor will be in Canada and it is the sponsor who has the right of appeal.

Hon. Mr. MARCHAND: It is the sponsor, not the applicant.

Senator MACDONALD (*Brantford*): This is someone who has come to Canada and is about to be deported.

Hon. Mr. MARCHAND: This is his right, he can appeal.

Senator MACDONALD (*Brantford*): Suppose he goes to the court of inquiry, the ruling is given that he must be deported, I understand he will then have a right of appeal. My question is whether in the meantime that immigrant will be free, whether he will be put in detention, or whether he will have to put a bond.

Hon. Mr. MARCHAND: Section 18 deals with that:

> (1) A person who is being detained pending the hearing and disposition of an appeal under this Act may apply to the Board for his release and the Board may, notwithstanding anything in the Immigration Act, order his release.
>
> (2) A person may be released under subsection (1) upon entering into
>
> (a) a recognizance,

and then follow the conditions under which he can be released.

Senator MACDONALD (*Brantford*): It is "may". He will have to apply.

Hon. Mr. MARCHAND: Yes. Of course, certain immigrants can be kept in gaol for obvious reasons; if they constitute a danger to the public, for example, the board will decide not to release them, but there is an appeal; such a person has a right of appeal before the court if he feels he is unjustly detained.

Senator MACDONALD (*Brantford*): He can appeal to the court apart from this appeal court.

Senator BELISLE: Will these appeals be heard by judges already established in all the provinces, will they be heard in their own district or have to appeal to Ottawa?

Hon. Mr. MARCHAND: As I mentioned a few minutes ago, the board can sit anywhere in Canada that it sees fit. The idea is to have a seven-member board, although we may be obliged to extend that to nine members, which we will be authorized to do. We may be obliged to have three panels of the board sitting at the same time, one in Toronto, one in Ottawa and one in Montreal or Vancouver. The permanent location of the board, of course, will be here in Ottawa.

Senator BELISLE: They will be tried not by the judges but only by this new board?

Hon. Mr. MARCHAND: A member of the board will have the right, on the decision of the chairman, to investigate a case alone and make a report to the board, who then make the decision. In the first version of the bill we granted the right to the commissioner to decide the case, but in the house this was modified and the only thing one member can do is make an investigation and report to the board.

Senator MACDONALD (*Brantford*): Will the notice of appeal have to be filed in Ottawa or can it be filed with your offices throughout Canada? If a case has been decided in British Columbia, can the appeal be filed with your office in British Columbia?

Hon. Mr. MARCHAND: The board will prescribe the rules. We wanted this board—and it is clear in the bill—entirely separate from the department. The board will set up its own rules and we do not want to intervene at all in the procedure of the board.

Senator MACDONALD (*Cape Breton*): I notice that under section 15 the board has the right to stay an order of deportation on compassionate grounds. Does that mean the minister will no longer have the right to stay such an order on compassionate grounds?

Hon. Mr. MARCHAND: No, the minister will not have. If it is before the board the board will have to decide. If the case is not before the board and is presented to the minister he may exercise his discretion under the present law, and as the act stands it has been understood that the minister can on compassionate grounds keep somebody in Canada. If there is an appeal before the board under this bill, I think the board will have to decide that and the minister cannot intervene. This is what is new in the law.

Senator CROLL: Will you not get into some difficulty there? If a man is ordered to be deported the usual practice is for the officer to say, "You have a right to appeal. Do you want to appeal?" If he wants to appeal, he signs the necessary document, it goes forward and the machine has started. He then realizes he would have preferred to appeal to the minister who is more compassionate than the board, or for some other reason, but he has missed that step of going to the minister once he has made the appeal.

Hon. Mr. MARCHAND: No, there are not two appeals. There is only one, an appeal to the board, not to the minister.

Senator CROLL: We are talking about compassionate grounds.

Hon. Mr. MARCHAND: When the decision of the special inquiry officer has been made the only appeal is to the board, otherwise we have not changed anything. Before there is any decision by the special inquiry officer the minister can consider a case and make a decision, but is not an appeal. The immigrant will not have a choice of two appeals, one to the board and one to the minister. That is not the object. This is what we wanted to have corrected, otherwise I would be in exactly the same position.

Senator CROLL: Then where is your discretion? When will the immigrant know he can go to the minister instead of the board? At what stage will he know that?

Hon. Mr. MARCHAND: This is a special law which institutes a board of appeal, and the only procedure established is procedure which will allow an immigrant to appeal from the decision of a special inquiry officer to the board. Before a decision is given by the special inquiry officer the immigrant is in Canada and likely to be ordered to be deported. If he decides to go to the minister before engaging in any procedure the minister may decide to accept him, or tell him to go to the inquiry officer or to the appeal board. There are not two appeals; there is only one appeal and it is to the appeal board.

Senator CROLL: The immigrant will never know that. I will know it as a lawyer, but the immigrant will never know it. As a matter of fact, your department is very good in this respect and will often ask the man if he wants legal aid in order to try to help him, but without that he will never know.

Hon. Mr. MARCHAND: Probably you are right in the case of deportation, but not in the case of sponsorship.

Senator CROLL: That is right.

Mr. BEASLEY: Perhaps I might just add this. Normally before an inquiry is held the full details are investigated by the department, and if there are compassionate or humanitarian grounds the case can be referred to the minister at that stage for the exercise of his discretionary power.

Senator CROLL: But that is the department who do that. I have no complaint if they do that, but your idea of what is compassionate and the immigrant's idea of what is compassionate may be different.

Mr. BEASLEY: This is why the board will have to establish which one is right.

Senator CROLL: Belonging to the old school I hate the idea, and I shake at the thought, of the minister depriving himself of that discretion which I have lived with for 25 years or more. It was very useful, no matter who the minister was, whatever party he belonged to; he was a very useful man to have with that discretion, and he understood the problem.

Hon. Mr. MARCHAND: Once everybody understands the procedure—and I do not mean only here, but M.P.s and others interested in immigration—I think they will see that immigrants are not deprived of any privileges or rights. The problem will be to know at what stage to intervene and what to do at the right moment.

Senator CROLL: That is the point.

The CHAIRMAN: In the case of a deportation order, will the person concerned be told that he has a right to appeal against the decision?

Hon. Mr. MARCHAND: Yes.

The CHAIRMAN: The formalities are easy?

Hon. Mr. MARCHAND: Yes.

Senator MACDONALD (*Brantford*): This bill does not restrict the power you previously had?

Hon. Mr. MARCHAND: I do not think there is any restriction, except this discretionary power of the minister to overrule the board.

Senator PEARSON: On a matter of law.

Hon. Mr. MARCHAND: Not only on a matter of law but on matters of fact too.

Senator MACDONALD (*Brantford*): This board is to be established; it is not established at present. I suppose in practice most of the applications will come before you first and you then, as you have said, will have the right to consider them or to refer them to the board. Is that correct?

Hon. Mr. MARCHAND: If this bill is passed the situation of the department will be exactly the same. We will process the applications in exactly the same way and we can do exactly what we used to do. We will have exactly the same powers. The only thing is that if it goes to a special inquiry officer and to the board of appeal the minister cannot overrule the decision of the board. This is the only change. Other than that we have exactly the same powers. We can accept immigrants on compassionate grounds, we can do all the things we used to do, but once a case has been decided by the special inquiry officer and appealed to the board the minister will no longer intervene. This is the only difference.

The CHAIRMAN: At the time the inquiry officer makes his decision the immigrant has only one appeal, and that is to the appeal board?

Hon. Mr. MARCHAND: Yes.

The CHAIRMAN: He cannot go to the minister, the minister is finished then?

Hon. Mr. MARCHAND: The minister is finished, although I do not like the expression!

Senator ROEBUCK: What initiative brings it to the board or to the inquiry officer? How that does take place?

Hon. Mr. MARCHAND: For example, if somebody is in Canada illegally and we know about it, we find the man and he is subject to an inquiry by a special inquiry officer.

Senator ROEBUCK: So that before the man or his solicitor knows about it an officer in your department sends the case on to the inquiry officer?

Hon. Mr. MARCHAND: They may send him to the special inquiry officer or they may decide on another decision then, or the minister can.

Senator MACDONALD (*Cape Breton*): Would the normal routine be for it to go to the special inquiry officer?

Hon. Mr. MARCHAND: Probably normally. In cases of deportation of non-immigrants falling in prohibited classes probably the routine would be that they would be directed to the special inquiry officer.

Senator ROEBUCK: So when a citizen is trying to get his relatives in, he makes application along those lines, goes to his parliamentary representative, and by the time the parliamentary representative gets round to the department it is in the hands of the board and there is nothing more to it?

Hon. Mr. MARCHAND: Oh no. If somebody wants to sponsor a relative or dependant—probably in the beginning it would be a dependant—and decides to appeal to the minister, at the first stage he can do it and I do not think in the meantime the immigration officer will intervene. You cannot have both procedures operating at the same time. The appeal procedure would have to be stayed, I presume.

Senator MACDONALD (*Brantford*): If an immigrant has arrived in Canada and knows an inquiry is going on, he appeals to you through his solicitor and you in your discretion decide that in your opinion he should not stay here. I take it the applicant then can appeal against your decision?

Hon. Mr. MARCHAND: Yes. There will be an inquiry and the board of appeal can rule otherwise.

The CHAIRMAN: In practice he has two appeals; he can lay the facts before you, and if the decision is unfavourable he can still go to the appeal board.

Senator ROEBUCK: A fat chance he would have before the board if he was here illegally. He is a foreigner, he has no rights. His appeal would be worthless.

Senator CROLL: That is not the point I was making. The point I was making was that he does not know about the appeal; he just does not know.

Senator PEARSON: His solicitor would.

Senator CROLL: Once the inquiry has started and he is in the flow of the inquiry he is away from the minister. I cannot foresee what will come to the minister. Take the case of a ship jumper. He is picked up and immediately boarded; he is told he has a right of appeal and he of course takes his right to appeal. He has missed the minister. Again, if it is discovered that an immigrant in Canada has an undisclosed criminal record, he is automatically brought before the board, and he has missed the minister. I do not want him to miss the minister, but I am not sure under what circumstances one could conceivably object to it getting into the mill, tying your hands making it impossible for you to act even if you wanted to.

Hon. Mr. MARCHAND: I think we have to make the distinction we made at the beginning, that for the sponsors it will be quite easy.

Senator CROLL: Sponsors will be different. I think you should ensure that when the regulations are drafted with respect to a sponsored immigrant they make clear to him that he has an appeal to the minister before he has an appeal to the board, otherwise it will take a long time before it gets down to him.

Hon. Mr. MARCHAND: You use the word "appeal". There will be two institutions which are entirely independent of the department and the authority of the minister, and they are the special inquiry officer and the board of appeal. There is no appeal from the special inquiry officer to the minister. Before that their application in enquired into by the department and there we have a discretion. You say that the prospective deported immigrant will not know he can avoid this process of the special inquiry officer and the board of appeal, that he will not know he can go directly to the department or the minister. This may happen.

Senator FOURNIER (*Madawaska-Restigouche*): Following on Senator Croll's question, am I right in thinking an immigrant can appeal to the minister first and if he is not then satisfied he can appeal to the board, but if he appeals to the board first he cannot then appeal to the minister?

Hon. Mr. MARCHAND: That is right.

The CHAIRMAN: Is it actually an appeal to the minister? Is is a representation he is entitled to make to the minister. It is not an appeal, is it?

Hon. Mr. MARCHAND: It is not an appeal. When you use the word "appeal" it is a little misleading. The department, the minister included, has exactly the same authority and right it had before. It means we can process an application, accept somebody on compassionate grounds and decide not to deport an illegal immigrant in Canada. We shall have all those powers. But once the immigrant had decided to go to the special inquiry officer and to the appeal board, from that moment on the department is out, the minister included.

Senator ROEBUCK: The department can refer it to the special inquiry officer?

Hon. Mr. MARCHAND: Yes. The department can intervene and make an appeal against a decision of the special inquiry officer; if we feel it is not a proper decision and is dangerous for the whole policy of the department we can appeal to the board, take the initiative.

Senator ROEBUCK: Or if you think a case has been hanging on too long. You see, some of these ship jumpers, as Senator Croll called them, have been in the country a long time and it is only when they are finally caught up with that there is any ground for compassionate action, after they have been here a considerable time. Then a long argument takes place between the department and the man's solicitor or parliamentary representative. In the meantime the department can shut it off very nicely by referring it to the board and that is that, and that is what I am afraid they will do.

Hon. Mr. MARCHAND: Well, there will still be a Department of Immigration, unless we decide to get rid of it. This is unavoidable and we will have to make a certain number of decisions.

Senator YUZYK: Is the department dealing with a large number of deportation cases each year?

Hon. Mr. MARCHAND: I do not know the figures offhand.

Senator YUZYK: Are there many deportation cases when, for instance, the department or the minister decides that a person's presence is detrimental to Canada but when injustice has been done?

Hon. Mr. MARCHAND: Since I have been there I feel we have tried to avoid this.

Senator YUZYK: I am just wondering how many cases of that kind there are.

Hon. Mr. MARCHAND: As with all human institutions I presume there have been some mistakes.

Senator MACDONALD (*Brantford*): Injustice may not have been done but may seem to have been done.

Senator YUZYK: That is a lawyer's way of putting it.

Senator CROLL: Would it be fair to ask—and it is entirely up to you whether you answer—what your attitude or the departmental attitude will be with respect to security behind the "iron curtain"?

Hon. Mr. MARCHAND: I think you will be aware that we are trying to solve this problem. Prospective immigrants from countries behind the "iron curtain" are not in the same position compared with others. The reason is simply that we have no facilities there, we cannot process applications. The solution is to try to have officers in those countries; I think we shall be successful in a certain number of countries and from that moment on most of the injustices will be removed. I thing that is the way to solve it, not by the procedure of the law but by offering them the same opportunities that we offer others. There is the problem of security. We have been a little conservative in this respect, for one reason because of the inquiry into security which we want carried on and to have recommendations. After that we shall probably have to modify certain of our attitudes.

Senator CROLL: Is this a departmental or governmental inquiry on security?

Hon. Mr. MARCHAND: A government inquiry.

Senator CROLL: It has been going on for some time?

Hon. Mr. MARCHAND: I am speaking of the public inquiry on security in which Mr. Coldwell is involved. This is part of their terms of reference and we want to know how they will deal with the problem. I met one member yesterday who asked me if I was ready to appear before their board and I said, "Yes", because we are interested in that. This is why we have not moved very far in that field.

Mr. Beasley tells me that the number of appeals last year was a little over 1,000.

Senator MACDONALD (*Brantford*): Appeals to whom?

Hon. Mr. MARCHAND: To the board.

Senator MACDONALD (*Brantford*): Could you tell us what percentage was found favourable to the applicant?

Mr. BEASLEY: I am not sure I have that information here.

Senator COOK: What we are interested in is the number of rejections. Under this legislation everybody can appeal. There is no penalty involved so everybody will appeal.

Hon. Mr. MARCHAND: Yes, they can appeal.

Mr. BEASLEY: Something over 900 were dismissed.

Senator FOURNIER (*Madawaska-Restigouche*): When you say "dismissed" you mean rejected, deported?

Mr. BEASLEY: Not necessarily deported, but the appeals were dismissed.

Hon. Mr. MARCHAND: In many cases the appeal has been dismissed and the minister allowed the immigrant in. I do not know if you have those figures. We have allowed the man to stay in Canada notwithstanding the decision of the board.

The CHAIRMAN: I take it the hope is that this appeal board will be not part of the Department of Immigration but an independent body?

Hon. Mr. MARCHAND: Yes.

The CHAIRMAN: With all due respect, I think the old appeal board was pretty tough and it was difficult to be successful.

Senator FERGUSSON: Senator Roebuck said that if the minister refused and the case went to the appeal board they did not have must chance.

Senator ROEBUCK: I would think that is so.

Senator FERGUSSON: My understanding is that this is an entirely independent board, and under section 17, even if they do not come within the requirements of the act, as long as the application is made by a person entitled to take it there is no limit to the compassionate or humanitarian considerations the board could exercise. Is that right?

Hon. Mr. MARCHAND: It is specified that they can take that into account.

Senator FERGUSSON: And there is no limit, as long as they feel it is a compassionate and humanitarian reason?

Hon. Mr. MARCHAND: Of course, the board will have to make its own definitions and one cannot tell in advance how the board will interpret the law.

Senator FERGUSSON: Do you visualize that they will probably build up some case law on decided cases?

Hon. Mr. MARCHAND: Oh yes.

Senator FERGUSSON: And establish precedents for the future?

Hon. Mr. MARCHAND: Yes.

Senator FERGUSSON: At the beginning they start with no limitation.

Senator ROEBUCK: I suppose if the board sustains an order to deport a man and he is deported, then the board is *functus ex officio* and he can make another application to come in. Am I not right?

Hon. Mr. MARCHAND: I dit not exactly follow that.

Senator ROEBUCK: Say a man's appeal is dismissed and he is deported. Can we take it that he can make another application?

Hon. Mr. MARCHAND: There is nothing to prevent prospective immigrants making subsequent applications; but I presume that if there were good reasons for keeping him out they would still apply.

Senator ROEBUCK: But there may also be reasons for letting him in, and in that case it could be taken up with the minister.

Hon. Mr. MARCHAND: It can be done.

Senator MACDONALD (*Brantford*): Does it not often happen that a person comes to Canada as a visitor, stays for three months, gets an extension for three months and is then required to leave because he did not take the proper procedure to get in? There would be nothing to prevent that person taking the proper procedure on the other side and coming in.

Hon. Mr. MARCHAND: We have probably thousands of cases like that in Canada. Last year we dealt with about 25,000 cases of visitors who had no status here. We are still having trouble with this. We have to apply the law quite

strictly; it would be useless having officers all over the world if prospective immigrants could get round it by coming directly to Canada and being granted the status of landed immigrant. Nobody would want to be an officer abroad applying our law it if were circumvented here in Canada; our officers abroad would be in ridiculous position.

There are certain special cases involving a number of visitors of strictly good faith in relation to whom certain things happen while they are here. For instance, a visitor's rather may die so that there is no reason for him to go back home. That sort of thing has to be considered and we have rules for it.

However, most of the cases are of men coming as visitors and within two or three days applying for landed immigrant status, when it is clear the intention in coming was merely to avoid going through our procedure by coming to Canada direct. We have to insist that such men go back to their own country and follow the regular procedure, otherwise the doors would be burst open.

Senator MACDONALD (*Brantford*): I agree with the procedure generally speaking. My point is that someone having been sent back home can then make application to come in the regular way. Also, when a young woman comes as a visitor, stays six months and meets an eligible young Canadian who wants to marry her, why should not she be allowed to stay here and marry that man?

Hon. Mr. MARCHAND: That is the sort of consideration we would take into account in dealing with such a case.

Senator MACDONALD (*Brantford*): You take that into account?

Hon. Mr. MARCHAND: Oh yes.

Senator WILLIS: I support Senator Croll. When is a person informed he has an appeal to you direct before he gets to the appeal board?

Hon. Mr. MARCHAND: I repeat, when referring to an appeal in that way there is no appeal to the minister. It is an appeal from the inquiry officer's decision to the appeal board. Before that there are the administrative rules of the department. We have to administer the law and the law is what it is. We have the authority and a man can ask that his case be revised by the department and by the minister.

Senator WILLIS: Do I understand the department will advise him and he can go direct to the minister before going before a special officer and the appeal board? My concern is the same as Senator Croll's, that he may have no legal adviser.

Hon. Mr. MARCHAND: The only cases in which it can have a bearing on the interests of the man are those referred to by Senator Croll who are goaled on arrival and know nothing about the law here. In all other cases I think it is very easy for those concerned. We know how they proceed. Usually they have been in Canada for a few months, or even a few years, they find an M.P. or lawyer to represent them and there is no trouble.

As I say, the only difficult case is that of the man who is goaled and directed immediately to a special inquiry officer who makes a decision. I do not see how we can say to such a man, "You have two kinds of appeal", because there are not two kinds of appeal.

Mr. BEASLEY: Perhaps I might add that with a legal permanent resident of Canada, before the case ever gets to the stage of a special inquiry a report must be made to the Director of Immigration who reviews all the facts of the case, and if necessary presents it to the minister. An inquiry cannot be opened without the specific direction of the Director of Immigration, so that at that stage there is ample opportunity for representations, as opposed to the formal appeal procedure. This is what happens now and is what will continue to happen under the new bill if it comes into effect. The difference will be that if the minister, having

reviewed the case at that stage, still thinks we should proceed with the inquiry and the inquiry officer orders deportation, the appellant can then at that stage have further recourse to an independent body, namely the appeal board.

Senator BURCHILL: Section 12 contains the first reference to a special inquiry officer, that is all it says, "a special inquiry officer". Should there not be some description of who the special inquiry officer is, where he comes from and who appoints him?

Mr. BEASLEY: The special inquiry officer is appointed by the minister under the Immigration Act, where the powers of these officers are defined.

Senator BURCHILL: I was wondering whether that should not be made clear in the bill.

Mr. BEASLEY: It is clear in the Immigration Act.

Senator BURCHILL: But not in this bill.

Mr. BEASLEY: When we refer to a special inquiry officer here the definition of "special inquiry officer" is the same as in the Immigration Act.

Senator COOK: It is referred to in definition (d) of section 2.

Hon. Mr. MARCHAND: Yes:

> 'hearing' means a further examination or inquiry conducted by a special inquiry officer under the Immigration Act.

Senator MACDONALD (*Cape Breton*): Are young men from the United States who come to avoid the draft laws there processed in the regular way when they come in as immigrants, or do they ask to stay on compassionate grounds after they come here?

Hon. Mr. MARCHAND: Do you mean do they make application to be landed immigrants?

Senator MACDONALD (*Cape Breton*): Do they apply or do they just come in?

Hon. Mr. MARCHAND: Until now I think their applications have been processed in exactly the same way as all other immigrants.

Senator ROEBUCK: I suppose the fact he has dodged the draft does not make any difference?

Hon. Mr. MARCHAND: This is not a simple matter. I have not yet received any complaints from the American Government concerning these draft dodgers. How can we find out if they are really dodgers? Usually they have not been sentenced by any court, not even a military court, so it is not easy to define their status, whether they are criminals or law-abiding citizens in the United States unless we have a clear case where there has been a judgment. If a man were candid enough to admit "I am coming to Canada to evade the American Army draft" it might be different, but usually they do not do that. That is a problem with which we cannot deal separately. If it became a real problem it would have to be dealt with by the Department of External Affairs, because there would be the question of our relationship with the United States, but I do not think the situation has reached that stage.

Senator FERGUSSON: The bill says that members of the board shall hold office during good behaviour, but they can be removed by the Governor in Council for cause. Members of many such boards have terms of office for three, five or seven years, and I wondered whether it would not be a good idea to make changes to this appeal board like that. Also, under section 3 (4) no one over 65 can be appointed to the board. It seems to me that there are many people over 65 who have retired who might be very valuable members of the board with their experience.

Hon. Mr. MARCHAND: We want this board to be independent. If the term of office were two, three or five years each government could change the whole

board and it would become much more political than under the present bill. The fact that they will have to be removed by the Governor in Council and not by the minister affords greater security to the independence of the board. If there is a term of office there would be the danger that the board would be political to a certain extent and we wanted to avoid that.

You ask why we do not appoint persons older than 65. It is because they have to retire at 70 and we assume it will take perhaps four or five years before a man is experienced enough to act on the board, so it is useless to nominate somebody for only four or five years. This is the general idea behind it.

Senator CROLL: It has been your practice—I think a good one—to appoint an outsider, usually a qualified lawyer in, say, Toronto or Montreal to sit on the board as the inquiry officer in a case of deportation rather than your own officer. Is it anticipated that that will continue?

Hon. Mr. MARCHAND: Oh yes.

Senator CROLL: It will continue?

Hon. Mr. MARCHAND: Yes, and Mr. Beasley says it will probably be extended.

The CHAIRMAN: If there are no further questions, I am sure we ave very thankful to the minister for taking the time off to come here this morning. Perhaps Mr. Beasley could remain in case there are some further questions members would like to ask about the different sections.

Mr. BEASLEY: Certainly.

The CHAIRMAN: Thank you very much, minister, we appreciate your attendance very much.

Shall we go through section by section? Shall section 1 carry?

Hon. SENATORS: Carried.

Senator MACDONALD (*Cape Breton*): I think we have had sufficient discussion. I do not see any need to go through section by section.

Hon. SENATORS: Agreed.

The CHAIRMAN: Then shall sections 2 to 34 inclusive carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the bill be reported without any amendment?

Hon. SENATORS: Carried.

The committee adjourned.

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SENATE OF CANADA

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