Canada. Parliament. Senate.
Standing Comm.on Banking and
Commerce, 1959.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

SENATE BANKING AND COMMERCE COMMITTEE

1959

2nd. Sess. ~~29~~ 24th Parliament

Proceedings... T.E.M.

Excise Tax Act

Export Credits Insurance Act

Income Tax Act

National Defence Act

National Housing Act

Northwest Territories Act 3 nos.

Public Lands Grants Act 3 nos.

Public Servants Inventions Act

St. Lawrence Seaway Authority Act

Trans Canada Highway Act

Unemployment Insurance Act

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-47, intituled: "An Act to amend the Excise Tax Act."

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JUNE 3, 1959

THURSDAY, JUNE 4, 1959

WITNESSES:

Messrs. F. R. Irwin, Director, Taxation Division, Department of Finance; M. J. Gorman, Director, Excise Tax Administration, Department of National Revenue; R. C. Labarge, Assistant Deputy Minister, Customs and Excise Division, Department of National Revenue; E. F. Power, Assistant Director, Electricity and Gas, Standards Division, Department of Trade and Commerce; A. Bruce Robertson, Q.C., Vice-President and General Counsel, British Columbia Electric Company Limited; W. C. Mainwaring, President, Peace River Power Development Company Limited; C. H. B. Frere, General Solicitor, The Consolidated Mining and Smelting Company of Canada Limited; R. C. Anderson, President and General Manager, West Kootenay Power and Light Company Limited; Lorne McDonald, Q.C., General Counsel, Ontario Hydro Commission; and Mr. Edmond Lemieux, Comptroller, Quebec Hydro.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

21404-9—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine
Baird
Beaubien
Bois
Bouffard
Brunt
Burchill
Campbell
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Emerson
Euler
Farquhar
Farris
Gershaw
Golding
Gouin
Haig
Hardy
Hayden
Horner
Howard
Hugessen
Isnor
Kinley
Lambert
Leonard
*Macdonald
McDonald
McKeen
McLean
Monette
Paterson
Pouliot
Power
Pratt
Quinn
Reid
Robertson
Roebuck
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Wall
White
Wilson
Woodrow—50.

(Quorum 9)

**ex officio member.*

ORDER OF REFERENCE

TUESDAY, June 2, 1959.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Brunt, seconded by the Honourable Senator Haig, P.C., for second reading of the Bill C-47, intituled: An Act to amend the Excise Tax Act.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21404-9—1½

REPORT OF THE COMMITTEE

THURSDAY, June 4, 1959.

The Standing Committee of Banking and Commerce to whom was referred the Bill (C-47), intituled: "An Act to amend the Excise Tax Act", have in obedience to the order of reference of June 2, 1959, examined the said Bill and report the same with the following amendments:—

1. *Page 2, lines 12 to 32 both inclusive:*—

Strike out clause 2.

2. *Page 6:*—Strike out line 1 and substitute therefor:—"13. Sections 1, 2, 3, 4, 10 and 11 of this Act shall be".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 3, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Beaubien, Brunt, Burchill, Campbell, Crerar, Croll, Davies, Dessureault, Euler, Farquhar, Gershaw, Golding, Gouin, Haig, Horner, Hugessen, Isnor, Kinley, Lambert, Leonard, Macdonald, McDonald, McKeen, Pouliot, Pratt, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wall, White and Wilson.—35.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel of the Senate, and the Official Reporters of the Senate.

Bill C-47, an Act to amend the Excise Tax Act, was read and considered.

On motion of the Honourable Senator Reid it was Resolved to Report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of their proceedings on the said Bill.

The following witnesses were heard:—Messrs. F. R. Irwin, Director, Taxation Division, Department of Finance; M. J. Gorman, Director, Excise Tax Administration, Department of National Revenue; R. C. Labarge, Assistant Deputy Minister, Customs and Excise Division, Department of National Revenue; E. F. Power, Assistant Director, Electricity and Gas, Standards Division, Department of Trade and Commerce; A. Bruce Robertson, Q.C., Vice-President and General Counsel, British Columbia Electric Company Limited; and W. C. Mainwaring, President, Peace River Power Development Company Limited.

At 12.45 P.M. the Committee adjourned.

At 2.00 P.M. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Beaubien, Brunt, Burchill, Campbell, Crerar, Croll, Davies, Dessureault, Gershaw, Golding, Haig, Hugessen, Kinley, Leonard, Macdonald, McDonald, McKeen, Monette, Thorvaldson, Turgeon, Wall and White.—24.

The following witnesses were heard:—Messrs. C. H. B. Frere, General Solicitor, The Consolidated Mining and Smelting Company of Canada Limited; R. C. Anderson, President and General Manager, West Kootenay Power and Light Company, Limited; and Lorne McDonald, Q.C., General Counsel, Ontario Hydro Commission.

At 3.00 P.M. the Committee adjourned.

At 4.30 P.M. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Brunt, Crerar, Croll, Davies, Euler, Golding, Haig, Kinley, Lambert, Leonard Macdonald, McDonald, McKeen, Monette, Reid, Thorvaldson and Wall.—19.

Mr. Edmond Lemieux, Comptroller, Quebec, Hydro, was heard.

Mr. F. R. Irwin was further heard in explanation of the Bill.

At 5.00 P.M. the Committee adjoured until tomorrow, Thursday, June 4, 1959, at 10.30 A.M.

THURSDAY, June 4, 1959.

Consideration of Bill C-47, an Act to amend the Excise Tax Act, was resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Beaubien, Bouffard, Brunt, Crerar, Croll, Davies, Dessureault, Gershaw, Golding, Haig, Horner, Hugessen, Isnor, Kinley, Lambert, Leonard, Macdonald, McDonald, McKeen, Pratt, Reid, Taylor (*Norfolk*), Turgeon, Vaillancourt, Wall and White.—28.

Messrs. Irwin, Labarge and Power were heard in further explanation of the Bill.

The Bill was considered clause by clause.

Clause 1, was carried.

The question being put as to whether clause 2 of the Bill should carry, the Committee divided as follows:—

YEAS:—12.—NAYS:—13.

So it was resolved in the negative.

Clauses 3 to 12, both inclusive, were carried.

Clause 13, was amended as follows:—

Page 6: Strike out line 1 and substitute therefor "13. Sections 1, 2, 3, 4, 10 and 11 of this Act shall be".

On Division it was Resolved to report the Bill as follows:—

Page 2, lines 12 to 32 both inclusive:—Strike out clause 2.

Page 6:—Strike out line 1 and substitute therefor:—"13. Sections 1, 2, 3, 4, 10 and 11 of this Act shall be".

At 1.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 3, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill C-47, to amend the Excise Tax Act, met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: It is now 10.30 and I call the meeting to order. We have a number of bills this morning and the proposal is that we should deal with the Excise Tax Act amendments first. It was desired that we should have a *Hansard* report of the proceedings, and I take it the committee agrees with that. We should have a motion to print 600 copies in English and 200 in French.

Senator REID: I so move.

Senator BRUNT: I second the motion.

Motion agreed to.

The CHAIRMAN: There are a considerable number of people here to assist us in dealing with these bills. The departmental officials will discuss the amendments generally and then, in connection with certain amendments dealing with export duty on power, we will hear representations from various interested parties.

I think we should proceed in the usual way by hearing the departmental officials first and then when we reach the question of the export tax on power we can hear the representations from the various people affected. Is that plan agreeable?

Senator ASELTINE: Agreed.

The CHAIRMAN: Among our witnesses are F. R. Irwin, Director, Taxation Division, Department of Finance, and R. C. Labarge, Assistant Deputy Minister, Excise Division, Department of National Revenue. They have with them several of their officials, including Mr. E. H. Smith of the Taxation Division, Finance Department. Mr. M. J. Gorman, Director, Excise Tax Branch is here too. Dealing with the question of export tax on power we have Mr. Power, Assistant Director, Standards Branch, Electricity and Gas. I will ask Mr. Irwin and Mr. Labarge to come forward and if they feel they need any more of the powerful forces which they have with them they can have them join them at the head table.

Since there is no principle that can be said to run the whole way through the bill except the desire to raise more money, I think we should get down to a consideration of the various sections of the bill. Mr. Irwin and those who are with him can give an explanation of each section as we go along.

Mr. Irwin, dealing with section 1 of the bill, subsection (1) defines cosmetics, and subsection (2) deals with an enlargement of the definition of a manufacturer. What have you to say in relation to those?

Mr. IRWIN: Mr. Chairman, subsection (1) of section 1 is, of course, only a definition that is necessary for a clause that is further on in the bill. The definition of cosmetics is in the same terms as that used in the schedule for the special excise tax on cosmetics.

The CHAIRMAN: I notice you say a definition, and I made use of that expression myself, but is the manner in which you have cosmetics described so much a definition as it is an enumeration of things that are cosmetics for the purposes of this statute? I notice it says "articles, materials or preparations, et cetera".

Mr. LABARGE: It is an enumeration really to avoid some of the difficulties that people have in interpreting a broad word like cosmetics. I don't know that this is a disadvantage. It seems to me that in a statute, the clearer you can make a definition for the purpose it is intended, the better it is. That is why it is spelled out rather lengthily.

The CHAIRMAN: Any person who wants to take part in this discussion may, but I notice that in carrying on with the definition you say it means articles, et cetera, "in whatever form, commonly or commercially known as toilet articles, preparations or cosmetics." So that in defining cosmetics, in one sense you are saying it is something that is commonly known as a cosmetic.

Mr. LABARGE: It is a help.

Senator POULIOT: I have just come back from the Library where I have looked up the definition of cosmetics. It is not a definition but an enumeration, and an enumeration is far from being a definition. Here is the definition of "cosmetic" in the 1958 edition of Webster:

> Any preparation (except soap) to be applied on the surface of the human body for beautifying or lending attractiveness to the person, for altering the appearance, as of theatricals or for cleansing, conditioning, or protecting the skin, hair, nails, lips, eyes, or teeth.

The enumeration in paragraph (a) includes shaving soaps and shaving creams, which is a soap. I wonder if we could not amend the paragraph so as to delete the words "shaving soaps and shaving creams"? Otherwise people will be induced to let their whiskers grow according to the fashion, and people of Montreal or other places will be supporters of Castro. I know that the words "shaving soaps" and "shaving creams" should be deleted.

The CHAIRMAN: Before dealing with the motion, is there anything you wish to add, Mr. Irwin?

Mr. LABARGE: Yes, I would like to add that this stems obviously from a levy, an excise tax, on these specific items, and since they are in Schedule 1 they are specifically made taxable, despite the fact some people might like to see them fall out of the definition of cosmetics; and so having them spelled out for the purpose of the specific tax, the excise tax, it is not illogical, I would say, for them to be equally spelled out for the purpose of sales tax and the definition of "manufacturer" of those products.

Senator POULIOT: You should tax cleaners.

Mr. IRWIN: Well, this is a matter of policy.

Senator KINLEY: It is a pretty comprehensive definition. It includes a lot of things as, for instance, Lysol.

The CHAIRMAN: Hygeol.

Senator KINLEY: I had in mind Listerine more than anything; it includes that. Why you take shaving soaps as against all other soaps, I do not know. It is used by everybody. There are highly scented soaps that would not be included, would they?

Mr. LABARGE: Ordinary soaps are not; but may I say the crucial thing here is that these are items which are specifically taxed in the schedule, and the removal of any one of them implies a loss of revenue, and this the Minister of Finance—

Senator KINLEY: This is a definition. What is the significance throughout the act, to put a special tax on?

Mr. LABARGE: No. I am quite sure that the people who manufacture these goods know in relation to the definitions, the enactments, which follow regarding the packages of these sales, these goods, in this instance, that if they package they are the manufacturers of them, and that is to bring it in line also with the specifications in Schedule 1 which are for the purpose of levying the excise tax. Now, the sales tax and the excise tax, will harmonize in their application to these particular commodities.

Senator CROLL: Mr. Labarge, referring to the paragraph you were just looking at, can you give me an example of similar preparations, that is, the last words in the section—the catch-all? What do you means by that?

Mr. GORMAN: During the administration of this statute we simply run across articles which are not known by these names but serve a similar purpose. It is a common occurrence of departmental officers that you will run across goods serving the same purpose, but not ordinarily known here. Listerine was mentioned by one senator as an example. There are other products serving the same purpose but not called Listerine. Now, I find it hard at the moment to name some of them, but they could be ascertained if desired.

Senator WHITE: Mr. Chairman, I want to ask Mr. Labarge a question. I understood you to say a moment ago that ordinary toilet soap would be excluded. If that is correct, how would you get away from what you say in the definition, ". . . known as toilet articles for use or application for toilet purposes"?

Surely that would include ordinary toilet soap. Is soap included?

Mr. GORMAN: It is.

Senator WHITE: I understood Mr. Labarge to say it is not included.

Mr. GORMAN: Some years ago during the war there was an excise tax of 5 per cent on ordinary soaps while cosmetics bore an excise tax of 25 per cent. The Government removed the excise tax from soaps of 5 per cent but it was not felt they could remove the excise tax of 25 per cent on cosmetics.

Senator WHITE: Then ordinary toilet soap is included?

Mr. GORMAN: Ordinary toilet soap is not included.

Senator WHITE: My interpretation of your definition, to me, would include it. Surely if you take a bath that is for toilet purposes, and you use soap in doing so. Would you not think so from your definition?

Mr. GORMAN: It could, but administratively it has not been done.

Senator BRUNT: Yes, but you may change the administration of the act.

The CHAIRMAN: You certainly could argue, Senator White, if you wanted to, that ordinary toilet soap is included in this definition of cosmetics.

Senator WHITE: Then if toilet soap could be included, is shaving soap not also included?

The CHAIRMAN: But they do bring that in specifically by saying, "Including shaving soap."

Mr. LABARGE: Sales tax does cover shaving soap.

Senator WALL: May I come back to a question of smaller proportions and point, out, with respect, that I could argue that that part is co-ordinated only with the word "scents" and is not applicable to the rest of the paragraph. I am going to suggest, Mr. Chairman, that there might be a comma after the words "scents".

The CHAIRMAN: Well, it would be a small point.

Any other questions on this point?

Senator GERSHAW: Does the classification "antiseptics" include such things as iodine, mercurochrome, rubbing alcohol and all other hospital supplies?

Mr. LABARGE: Yes.

Senator REID: In my opinion they are leaving too much, Mr. Chairman, to the interpretation of the officials as to what will be taxed and what will not be taxed.

Mr. LABARGE: I think, Senator Reid, that one of the points was that we were being rather fulsome in this definition, and I would say you would have to be very fulsome and very detailed in order to remove this job we have of interpreting the act. Of course, any interpretation that we give is subject to appeal as to whether or not a particular product does or does not fall within the category say of a mouth wash or any of these taxable items. I might say that some appeals have been lost and some have been won. The main products on which rulings have been appealed fall in the class of germicides, disinfectants, and ordinary mouth washes.

The main one is the field of germicides, disinfectants and ordinary mouthwash. It is pretty difficult for anybody to decide what is a germicide or what is a disinfectant, as compared with what is an ordinary mouthwash. You have to have all kinds of discussion as to what they call it themselves, and what common use is made of it. Then you get scientists who will come in and talk about bacillus streptococci and various other kinds of germs that are killed off at a certain rate, and then you end up with comparing it with the human saliva which in some cases is stronger than the germicide or disinfectant. It is rightfully subject to appeal for anybody who maintains that his product does not fall into this category.

Senator KINLEY: The section does not include soaps.

Mr. LABARGE: Let us put it this way: I think one could probably include soaps in this category, but as Mr. Gorman has indicated, we get the sales tax on ordinary soap, because soap is not exempt under the sales tax schedule, Schedule III, but we do not get the excise. We do not collect excise tax on soap under the definition in Schedule I, which corresponds to this one.

Senator KINLEY: You want it on those things that are used to cleanse the body?

Mr. LABARGE: Of a cosmetic type.

Senator THORVALDSON: I am quite convinced that this section includes ordinary toilet soap; consequently, if you do not tax it, it is simply a departmental exemption.

Senator HUGESSEN: The witness said at one point they had an excise tax on soap. When they had that they must have had a definition of ordinary toilet soap. If I may suggest in order to make this clear and to cover the point raised by the senator, we might add a phrase at the end of the section to the effect that it excluded toilet soaps, and then go on with a definition of what are toilet soaps.

Mr. GORMAN: There was an excise tax of 5 per cent on soaps some years ago, particularly during the war, but there was no definition of soaps in the statute at that time. The departmental officers had to use their administrative judgment when deciding whether it was soap or not.

Senator HUGESSEN: That is what we want to get away from, leaving it to the department to use its discretion.

The CHAIRMAN: Senator Hugessen, I think where the problem has developed is that in the present statute the definition of "cosmetics" appears in Schedule I, which deals with the excise levy; and now, the definition is being lifted out of that schedule and put into the statute.

Mr. IRWIN: It is being left in the schedule as well.

The CHAIRMAN: The purpose of putting it into the statute as a definition, as I see it, is to provide a base where you may look when you want to determine whether or not a person is selling soap or any other of these products, to see whether he is a manufacturer within the definitions in subclause 2.

Senator HUGESSEN: That is right.

The CHAIRMAN: Therefore, it seems to me it becomes more important to know just what is included, and in what respects a person who does not actually make the product can by statute be said to be taxed as a manufacturer of the product.

Senator KINLEY: It seems to me it is unfair to the trade. You have a list of similar articles here, used for this purpose and that purpose, but the matter is left to somebody's opinion. It is not definite. This statute should tell the trade what they can and cannot sell under certain conditions. It deos not do that. It leaves it in the field of mystery.

Mr. LABARGE: If I may say so, we are sometimes injected into a field of mystery because, as you know, "a rose by any other name" probably applies more in the field of cosmetics than elsewhere. Some of the fantastic descriptions mislead one as to whether the product is or is not a cosmetic. What we try to determine is what it is used for.

The CHAIRMAN: It is all right to define things by their use, but we are at the moment talking about soaps. It seems to me that tax-wise the situation would not suffer, certainly not so far as excise tax is concerned, if the definition in the opening paragraph of the statute itself excepted toilet soaps from the definition of cosmetics. You still get your excise tax.

Senator DAVIES: Mr. Chairman, may I ask one question. One of the officials said some of these things could be appealed, but who would the appeal be to?

The CHAIRMAN: The Tariff Board.

Senator CAMPBELL: What change, in effect, will take place in the rules of the department so far as the levy of excise and sales tax is concerned if this section goes into effect?

Mr. LABARGE: There is no change excise tax-wise because it is not provided for in that section of the statute. This change affects sales tax on cosmetics.

Senator CAMPBELL: Then, the next question I have is: Will you be taxed on sales taxed articles which are not now taxed, as a matter of practice in the department.

Mr. LABARGE: No, it will not change the incidence of tax. The definition itself will not change that, but it will make it clearer. When you come to section 4, you see, where we have there said that any person who wraps, packages, *et cetera* becomes a manufacturer. He wants to know what he is, and he goes to the definition. It will not change it, and so far as the trade is concerned I cannot say we are having too much difficulty over this. This definition has been in for a long time, and the number of appeals has been small.

The CHAIRMAN: Yes, but, Mr. Labarge, when you get this section into the law you will then be drawing that person into the category of a manufacturer, and taxing him at a higher level than he is presently taxed. For instance, if I am in the making of some kind of soap and I place an order with a person who makes soap and I have him put my trade name and the name of my company on it, then if this section becomes law I am the manufacturer whereas heretofore the manufacturer was the actual manufacturer,

and, therefore, the sales tax that you will get will be on my sale price and not on my purchase price, and I will pay more sales tax. That is correct, is it not?

Mr. LABARGE: Yes.

Senator Crerar: Would the principal factor in determining this be a matter of revenue?

The CHAIRMAN: I would like to think that it is. I have an idea it may be intended to regulate trade as well.

Senator CRERAR: What would be the effect of it—to restrict trade? No, it cannot be that.

The CHAIRMAN: No, to level out as between one group of sellers and another group of sellers.

Senator CRERAR: Perhaps we could have an explanation of why there is a need for that?

Mr. LABARGE: Well, this stems first from problems brought to the Government, and to the Sales Tax Committee in particular, over the course of many years where the outstanding instance of grievance was the inequality in the tax as applied where a person imported from, say, the United States the bulk materials which he ultimately broke up and packaged. On importing it in bulk form he got it at absolutely the lowest import value, and since he was an importer the tax applied at that time. That is on a pretty low value. The Canadian manufacturer who manufactured the basic articles including the packaging operations had all the costs of a fully-integrated manufacturer, including overhead, selling, advertising, and distribution, and obviously the price level of the Canadian manufacture who did the whole job was much above the price on what was brought in in bulk raw form and merely repackaged.

Senator CRERAR: Is the purpose to give further protection to the Canadian producer?

Mr. LABARGE: In effect it removes that tax inequality which arose from a low tax at this level and the higher tax at another level.

The CHAIRMAN: Just there, Senator Crerar, exactly the same situation exists in relation to domestic production. The price range may be a little different but I can buy in bulk in Canada the same as I can buy in bulk in the United States. I may pay a little more for it but both categories are being hit by this change, even the domestic bulk producer who sells to some person who package in Canada, so that you have the whole operation in Canada, is being drawn into this. His level for calculation of tax will be higher. The tax will be more. The cost will be more, and when you get your markups the consumer will pay more.

Senator KINLEY: Does'nt that follow through in all manufacturing in Canada, that a manufacturer imports parts and he gets people to integrate it into an article that he is making and he is getting a lower rate of duty? It has always been considered salutary that a man who makes an article by assembling the raw material gets a break on the raw material he uses.

Mr. LABARGE: The manufacturer in that case actually carries on many manufacturing operations to come out with the complete article. He does not pay the tax at the time it is brought in. He gets it under his licence and the tax applies on the ultimate product. There is a greater inequity in cosmetics and pharmaceuticals. The margin has been quite extensive, and this has been the field where the greatest grievance was stressed.

Senator KINLEY: I have been in the drug business. I was behind the counter for 30 years. When I first started we made our own pills, emulsions, elixirs, and so on. Now we are in the machine age and so we go to Parke Davis or some other drug company and say, "We want 300 bottles of this product. We will buy it from you in the completed form and you will put our name on it." That is the difference. Now we become the manufacturer and you are going to put this under a special tax.

The CHAIRMAN: No, you would not be the manufacturer even under the new amendment.

Senator KINLEY: I think so.

The CHAIRMAN: Not if you are selling it retail in a store.

Mr. LABARGE: Are you manufacturing it in the store and selling it from the store?

Senator KINLEY: No. We don't do that any more. We buy these things from a manufacturer in Toronto and he puts our brand name on it.

Senator CRERAR: That is a rather complex matter and a little bit beyond my benighted understanding, but let us take an illustration. That is perhaps the best way to deal with it. Take a company like Eaton's. Let us say they buy vinegar in bulk form from some producer who makes vinegar.

Mr. LABARGE: This would not affect them.

The CHAIRMAN: This only deals with cosmetics and pharmaceuticals.

Senator CRERAR: All right. Take, then, for an illustration—

Senator KINLEY: Take molasses.

Senator CRERAR: No, take toothpaste. Let us say Eaton's buy toothpaste in bulk and put it in a tube and put their name on it. They do not distribute it outside their retail stores. It is sold only within their own stores. Now, do they under this definition become manufacturers?

Mr. LABARGE: Yes.

Mr. GORMAN: May I speak to that? If Eaton's do that processing on their retail counters they are not subject to the tax. If they do it in a workshop and then distribute it to the retail counters they are deemed to be a manufacturer.

Senator CRERAR: Let us follow that further. Let us say they buy this in bulk form and in a room in the back of their store they have three or four people who put it in tubes and the tubes are then labelled with Eaton's label and they go to the retail counter. Are they a manufacturer?

Mr. LABARGE: If that is in the same store, just the one store, they are not manufacturers. Say that they have several retail outlets. If they manufacture centrally and then transfer the goods to these several retail stores, they become manufacturers and pay the tax.

Senator CRERAR: Take Safeway stores, which is a chain store system. They probably have a dozen stores in Winnipeg alone. Let us say they are selling toothpaste in Winnipeg. They buy it in bulk and they have a place where they put it in tubes and they put "Safeway's Famous Toothpaste" or something like that on it. Then let us say they distribute it from the place where they assemble it to their various stores. Then they are manufacturers, are they?

Mr. LABARGE: That is right.

Senator CRERAR: That does not make much sense to me.

Senator MACDONALD: Are they manufacturers within the store where it is put into tubes and sold?

The CHAIRMAN: No.

Mr. LABARGE: You mean one individual store?

Senator MACDONALD: No, supposing Safeways put it in tubes in store "A" and they sell quite a quantity of it in store "A". Now, they are not manufacturers in store "A"?

The CHAIRMAN: No.

Senator MACDONALD: But if they then distribute it and sell it in stores "B", "C", "D", "E" and "F", would they be manufacturers in those stores and not in store "A"?

The CHAIRMAN: That is right.

Senator CAMPBELL: I wonder if someone from the department could give us one or two examples of the inequities which they say has brought about this proposed change?

Mr. LABARGE: While Mr. Gorman is getting certain figures may I say the same thing was done in connection with candy in terms of the Excise Act several years ago and for the same reasons, and it has worked out very satisfactorily.

The CHAIRMAN: You are talking now about the packaging?

Mr. LABARGE: Yes.

Mr. GORMAN: I am going to quote some figures, and for the sake of being confidential I will use the terms "X" and "Y". Here is a product called "X" purchased by a firm normally a manufacturer. That firm has the physical operations done by another firm. The cost to the normal manufacturer is 89 cents per item of "X". That firm sells to wholesalers at $3 per item of "X". The price to the user is six dollars per item of "X". Up until this change in the law the Government received tax on 89 cents; now it will receive tax on the approximate sales price to the wholesaler by the integrated manufacturer of three dollars.

Senator CAMPBELL: Do you consider that procedure as an attempt to decrease tax payable?

Mr. GORMAN: To increase the tax payable.

Senator CAMPBELL: But the practice that was followed in this case that you referred to, was it done for the purpose of reducing the tax?

Mr. GORMAN: Oh, no, sir.

Senator CAMPBELL: You referred to one manufacturer who appoints another manufacturer to package his goods. Now, what was the purpose of that?

Mr. GORMAN: I do not know, senator; I cannot tell the intention of the second manufacturer.

Senator CAMPBELL: Is this a common procedure among manufacturers?

Mr. GORMAN: Frequently.

The CHAIRMAN: It is pretty common.

Senator CAMPBELL: But there must be some business reason for it, otherwise the original manufacturer would undoubtedly have done his manufacturing himself.

The CHAIRMAN: Well, he avoids capital investment.

Senator CAMPBELL: So there are principles involved?

Mr. GORMAN: Perhaps I can clarify this a little further. There is a case known to the department where an integrated manufacturer, his lease having expired, was forced with the problem of building a new factory in Canada. I understand land was acquired, and I further understand that the parent company, the foreign company, instructed the subsidiary not to construct a factory but to send the foreign goods to Canada and save very substantially on the tax. It would appear from the verbal information which the department had that the saving on tax was sufficient to instruct the Canadian company not

to proceed with the building of a new plant where the old one happened to be located. I understand now that orders have gone forward to the Canadian subsidiary to proceed with the building of a new plant.

The CHAIRMAN: There would still be a customs duty on the product that he would bring in.

Mr. GORMAN: That is right.

Senator CRERAR: Coming back to the illustration given a few moments ago. Next door to where I live is a very large retail store, with one store in a city or town; they buy a hogshead, or whatever other measurement there is, say, of shaving soap, and they have a little place in their store and put this in tubes, and take the tubes to the counters. Now, I understand they would not be classed as a manufacturer.

Mr. LABARGE: That is so.

Senator CRERAR: Very good. Safeway in the same city has half a dozen stores; they buy a hogshead of the same material. Now, at the rear of one of their stores, or maybe outside of their stores alogether, they have a place where they put the shaving soap in tubes, and which they label "shaving soap"; they then distribute these to half a dozen stores where they are sold, and they are manufacturers. Now, the questions is, on what principle do you determine that differentiation?

Mr. LABARGE: Well, I think one of the important principles is volume.

Senator CRERAR: But suppose the volume was the same?

Mr. LABARGE: It is not likely to be. The other thing is that is does not seem practical or desirable to take in all the other people, the small corner drug stores, and all the others, why buy in bulk, and then into package form, and what not; it is not practical for all these people to be licensed manufacturers. We had the same problem in the candy business.

Senator CRERAR: What is the difference in the ultimate cost?

Mr. LABARGE: Well, Eatons I am afraid would be in the same class. I cannot conceive that any large outlet with retail stores, such as Eatons—

Senator CRERAR: No, I am speaking of one store in the city.

Mr. LABARGE: Well, if they limit it to one store—

Senator CRERAR: Well, they are in a good position, but I am speaking of the other fellow who has six stores.

Mr. LABARGE: Well, anybody with six, three or two stores is doing a central manufacturing operation.

Senator CRERAR: He becomes a manufacturer?

Mr. LABARGE: Yes.

Senator CRERAR: And as a result of his becoming a manufacturer is his cost higher than Eatons when the stuff goes off the counter?

The CHAIRMAN: I think there might be some compensations. First of all, his cost of packaging would be less, since he does it in a central agency for distribution to a whole series of stores, than if you did it in each store.

Senator CRERAR: Does the tax fall on them alike?

Mr. LABARGE: It falls on them at a different point. Probably the tax element in the Safeway case will be on the selling price of Safeway. Now, they sell directly to retailers, so you would have to give them some deduction off the retail list to establish a fictional wholesale price.

Senator REID: I think the principle is entirely wrong. The one only sells a small quantity in his own store. Is it not a fact that they are both manufacturers in the strict sense of the word? Both of them make the product.

The CHAIRMAN: Well, the statute recognizes that, because it provides an exception in the case where you do it in a retail store, where you are actually making the sale to the customer.

Senator McKEEN: I will take a third case. Eatons have been doing it for one store, and Safeway for another. I have another group of stores, and I ask a manufacturer to put my trade name and label on it and put it in my store, and I am a manufacturer.

The CHAIRMAN: You certainly are.

Senator BRUNT: I should like to ask Mr. Labarge if he has any objection to adding a few words to this clause so that toilet soap will be excluded.

The CHAIRMAN: After the word "commercially"?

Senator BRUNT: Yes.

The CHAIRMAN: Yes, Mr. Labarge, to put in the words, "other than toilet soap".

Senator CROLL: You will have to have a definition of toilet soap, then. Is toilet soap defined?

Mr. LABARGE: No.

Senator CROLL: I think it has been our practice in the past, and I can be corrected, that when departmental officials have come here for the purposes of record and have said that "X" article is not taxable, we have always taken their word for it and allowed it to remain in that sense; and this attempt to correct this situation at the moment will merely put hem in a strait-jacket, because then you move on from there to a definition of what you are exempting and you are in further trouble. They have said here it is now exempt and we have not collected tax on it for a number of years. It goes back to what year?

Mr. LABARGE: Back to 1947.

Senator CROLL: To backtrack, it seems to me, is not to make very much progress.

The CHAIRMAN: You are right, that if we put these words in subparagraph 1 of clause 1 we would be exempting toilet soaps from sales tax. Soaps are now subject to sales tax and we do not want to change that, much as we might like to, because we must not interfere with ways and means. So I do not think the proper place to put it, if you were contemplating a change, would be in clause 1.

Senator CROLL: Of course not.

The CHAIRMAN: You would have to amend the provision as to excise in section 1 if you do it.

Senator KINLEY: Mr. Chairman, do you think it is fair to put that blanket term, "Similar preparations" in this definition? Why cannot they be dealt with when they come up? Everybody will be in trouble and there will be arguments as to what is a similar preparation. I think that people should not be left in that position.

The CHAIRMAN: I have always found that if you leave a little flexibility in a definition or in a section that you get pretty reasonable consideration administratively whereas, if you try to box the thing in by putting in exact words in an enumeration of this kind then you shut out the possibility of getting that flexibility in administration. I am all for flexibility in this kind of a statute.

Senator KINLEY: Are you for flexibility when the other fellow has the say and you have none?

The CHAIRMAN: That always happens where somebody has authority to tax, and my only duty is to pay it.

Mr. LABARGE: Mr. Chairman, the people we are talking about here are all in the business now and all know what taxes apply to what under this statute. The only difference is there is one fellow who is manufacturing it in bulk for another fellow who is packaging it, and this man who is manufacturing it in bulk now is paying the tax, but he is paying it on a certain price. Now, the burden will shift. He will drop out of that picture in so far as the man who is packaging it is concerned, he knows what he has been buying and what taxes have been paid on, and in that way their position is changed as far as the commodities are concerned.

Senator DAVIES: I suppose the increased sales tax will be paid by the consumer, is that the idea?

The CHAIRMAN: There is only one place they get taxes from.

Senator THORVALDSON: Mr. Chairman, listening to this evidence, it seems to me that there is a discrimination between the man who does the complete manufacturing operation and the man who divides his operation in two, and it seems to me if I was doing it I would not think of doing the manufacturing of shaving soap and the packaging of it because I can save money by doing the packaging alone and buying the raw material from another manufacturer. So it does seem there is a discrimination here that is involved as well, incidentally, as an increase in revenue.

The CHAIRMAN: Of course, if you subscribe to the principle that it is part of the Government policy in a statute of this kind to level out costs as among a group occupying the same field, and therefore if that is policy of course what you are doing is discouraging ingenuity and ability to do a job at the cheapest price consistent with quality, et cetera as against the other person who has not the same resourcefulness.

Senator CROLL: Mr. Chairman, there is one more thing that we are doing here that is rather important: We have pretty well lost the corner grocer. Is it not rather an equalizer for the corner drug store that is still in business as against the chain stores, which still gives him a chance to live whereas otherwise he is unable to do it.

Senator KINLEY: There is one factor, it protects the small-store man.

Senator CROLL: In these circumstances he gets a fairer shake than he would otherwise get, which I think is important.

Senator KINLEY: If the corner-store man gets a product manufactured by somebody else and packaged with his name on it is he classed as a manufacturer?

The CHAIRMAN: If he gets another manufacturer to make the product and put his name on it and he sells it in a retail store he is not a manufacturer.

There is one question I want to ask, and it is more for information. Can you tell us, Mr. Irwin, or Mr. Labarge, why the application of subsection 2 in clause 1 extending the definition of a manufacturer is being confined to the manufacture of cosmetics or pharmaceuticals?

Senator CRERAR: That is really a good question.

Mr. LABARGE: That is a honey of a question.

Well, it is felt that this field of cosmetics and pharmaceuticals was by far the most striking, and there was a specific recommendation of the sales tax committee that we do something about this.

Senator CROLL: What is the sales tax committee?

Mr. LABARGE: The sales tax committee was appointed in 1955 by the Minister of Finance at that time. It was an independent committee. It was

appointed following representations of the Canadian Tax Foundation and on it were men of very high calibre, Mr. Raymond Dupuis, of Montreal, Mr. Ken Carter, of McDonald, Currie and Company, and Mr. A. E. McGillvray.

As I said, it is an independent body. They held many hearings and on this specific point they did bring out pharmaceuticals and cosmetics as being the most important ones. From our point of view we think there are two things occurring here: (1) There will be an adjustment in what was the greatest case of irritation, shall we say, and there will also be a period of experience given to the department, and if there are other outstanding similar cases they will be dealt with later. I can think of one now, ink.

The CHAIRMAN: I can think of one too, tires.

Senator BRUNT: That must be a client of yours.

Senator BURCHILL: Does this change in the act come as a recommendation from that committee that you mentioned?

Mr. LABARGE: Yes.

Senator CROLL: In other words, what you are saying is that there will be more of this coming in other days?

Mr. LABARGE: I would hesitate to make that statement, Senator Croll.

The CHAIRMAN: You did say whether, "for good or bad".

Before we pass to the next section we had an amendment proposed by Senator Pouliot.

Senator CAMPBELL: Before putting the question on that amendment, Mr. Chairman, may I ask whether there is anyone from the manufacturers or other people who have asked to be heard on this occasion.

The CHAIRMAN: Not before this committee.

Senator MCDONALD (*Kings*): Mr. Chairman, can we be assured that the common toilet soap, shaving soap and shaving creams will not be additionally taxed?

The CHAIRMAN: There is no assurance of that. Shaving soap is taxed and remains taxed under this definition.

The amendment proposed by Senator Pouliot is that toilet soaps be excluded from the definition in subclause 1.

Those in favour? Those against?

I declare the amendment lost.

Shall the section carry in the form in which it is?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsections 1 and 2 of section 1 have carried?

Some SENATORS: Carried.

The CHAIRMAN: Subsection 3 of section 1 deals with the definition of pharmaceuticals. Are there any questions on that subsection?

Some SENATORS: Carried.

The CHAIRMAN: Now we come to Part II, which deals with export duty on electricity. May I suggest that the departmental representatives give us a brief explanation as to what is the purpose of these several sections, and then we will hear the representations from industry. We have a number of briefs, and the people who submitted them are represented here. I would ask Mr. Irwin to state the purpose.

Senator MACDONALD: I hope the explanation will not only be brief, but that it will be clear, Mr. Chairman, because this is too complex for a lot of us.

Mr. IRWIN: Mr. Chairman, first, the purpose of this amendment is, I think, clear, in that it is simply to place under this act a tax which has for a number of years been imposed under the authority of the Exportation of Power and

Fluids and Importation of Gas Act. That act, with its long title, gives authority under order in council to impose a tax on the export of electricity. This amendment merely transfers that power to the Excise Act, and removes the provision with respect to the imposition of rates by order in council, and fixes the rate by statute. The rate provided by this amendment is the same rate as that which has been imposed under the Exportation of Power and Fluids and Importation of Gas Act.

Senator CROLL: It has not been changed since 1955?

Mr. IRWIN: The rate has not been changed for a number of years.

Senator MACDONALD: Could we have the reason for the change?

The CHAIRMAN: The reason for transferring it from one statute to another?

Senator MACDONALD: Yes.

Mr. IRWIN: I understand the reason is that it is proposed to repeal the Exportation of Power and Fluids and Importation of Gas Act, since it will pass out of the picture with the new Energy Board.

Mr. LABARGE: There is another point of principle. I think the export and control of electricity is not normally thought of as a taxing statute. It was imposed in a statute which has purposes other than tax. I believe the Minister of Finance feels that the tax should be in a taxing statute, particularly where it can have a bearing on the revenue; and since there is revenue, why should it not go to the Revenue Department?

Senator CROLL: There is even more to it than that. It is the opposition to Government by order in council rather than by statute. If a change is proposed, it must be done by Parliament, which is a good practice and one that has been advocated for many years, and I hope you people will support it.

Senator MCKEEN: Mr. Chairman, I think this matter was put under the other act originally as a matter of control, in an effort to discourage the export of power from this country. The new Energy Board will have direct control, not by taxation but by permit. I think with the coming into being of the Energy Board, it will solidify something that may be desirable to do otherwise, and the Government will not be able to make any change unless it is done when Parliament is in session, by way of amendment to the statute.

Mr. LABARGE: I am not sure, senator—perhaps the people from industry will know—but it seems to me the permit system did operate as a control.

The CHAIRMAN: The question of control is provided for in the present statute—

Senator MCKEEN: I know that.

The CHAIRMAN:—by the licensing, and by requirements that have to be met in order to get a license. So, the tax feature is separate and distinct from the license.

Mr. IRWIN: May I point out that the Minister of Finance regards this as a revenue-producing tax, and, as Mr. Labarge has said, it was felt that it should be put in a taxing statute.

Senator BRUNT: Mr. Irwin, no matter what situation arises, if this bill passes in its present form you will not be able to make any change in the rate of duty unless Parliament is sitting and an amendment is passed? That is the situation, no matter what emergency arises? Is that correct.

Mr. IRWIN: That is correct.

Senator MACDONALD: Is there any tax arrangement than can be changed when Parliament is not sitting?

The CHAIRMAN: Yes: There is a wide range given under the Customs Tariff.

Senator MACDONALD: Can the tax be increased?

The CHAIRMAN: It can go down, and that is what industry is mainly concerned with.

Senator MACDONALD: The rate can go down.

Senator CROLL: As a matter of fact, if an emergency arises and it becomes necessary to change the rate under the statute, if the Government wants to meet that situation it can do it by saying as of a certain date we will change the rate and have Parliament ratify it. But that ratification is by Parliament.

Senator MACDONALD: The change can be downwards but not upwards.

Senator CROLL: I would presume it would be downward.

The CHAIRMAN: This is not a customs duty. If it comes into the Excise Tax Act it must be imposed at a rate set out here, without authority in anybody to change it except Parliament.

Senator MACDONALD: Is there any excise tariff than can be increased, except by Parliament?

The CHAIRMAN: No.

Senator MACDONALD: Then do I understand that under this present act, Exportation of Power and Fluids and Importation of Gas Act, the rates can be increased by order in council?

Senator BRUNT: But this is not an excise tax.

Mr. LABARGE: Under the law as it exists in the act from which we have taken this, there is a maximum set out in the statute, within which the Governor in Council can set whatever rate he wants to, upwards or downwards.

The CHAIRMAN: A section in the present statute gives the Governor in Council authority to impose a tax not exceeding $10 per horsepower per annum. In fact, the rate of duty is the rate which has been provided in this bill.

Senator HUGESSEN: May I ask a question? You say, Mr. Chairman, that the rate now proposed to be imposed by section 8 is the rate that is now charged under the order in council?

The CHAIRMAN: That is right.

Senator HUGESSEN: Can the officials tell us whether there have been many occasions on which there have been exceptions to that general rate under special circumstances?

The CHAIRMAN: Mr. Power says "No".

Senator HUGESSEN: How long since it has been imposed?

The CHAIRMAN: 1925.

Senator HUGESSEN: So far as you know, there have been no occasions on which the Governor in Council, by special order in council, has modified the existing rate?

Mr. POWER: The rate has been the same since 1925.

Senator HUGESSEN: Without exception?

Mr. POWER: There was an exception, yes, on a long-term contract. There was one in the 1907 contract.

Senator CROLL: Was that taken care of when the 1925 act was passed? Was it recognized then?

Mr. POWER: I don't know if it was recognized in the act or not, but the tax was not imposed on one license until 1950.

Senator CROLL: Because of the 1907 agreement?

Mr. POWER: Yes.

Senator CROLL: Which that recognized?

Mr. POWER: Yes.

Senator CROLL: So, there wasn't an exception?

Senator ISNOR: Mr. Chairman, may I ask whether this one licence you speak of is in effect at the present time?

Mr. POWER: Yes, and they are paying tax at the present time.

Senator ISNOR: In what province is that?

Mr. POWER: In Ontario.

Senator ISNOR: I want to ask Mr. Power and Mr. Laberge, Mr. Chairman, or any one of the witnesses, a question in respect to provincial power commissions like the Nova Scotia Power Commission and the New Brunswick Power Commission. I understand there is likely to be an interchange of power and energy between the province of New Brunswick and the State of Maine. Would the province be treated in a similar manner as an individual.

Mr. POWER: Yes, they are now.

Senator ISNOR: They have made application in connection with the exportation of—

Mr. POWER: They have a licence now to export—that is, the New Brunswick Power Commission.

Senator ISNOR: And they are are exporting at the present time?

Mr. POWER: Yes.

Senator HUGESSEN: At the existing rate.

Mr. POWER: That is right.

Senator ISNOR: And they have been advised as to the change?

Mr. POWER: There is no change in the tax, senator.

Senator ISNOR: Which is right? One says there is, and one says there is not.

Mr. POWER: There is no change.

Senator BRUNT: There is a change in how it is done. It is done here by statute, and it was done previously by Order in Council.

Senator MCKEEN: Are we going to hear from the power people themselves?

The CHAIRMAN: Yes, we are going to hear from them now.

Senator CRERAR: I would like to make an observation. I support this change. I think that Parliament should levy the tax. I agree wholly with the arguments put forward in that respect—they are based on a sound principle—but I would like to know just how that jibes with the principle that we give the Government, or the National Revenue Department, power to fix valuations for duty purposes, which is a complete variation from this—

The CHAIRMAN: Well, that is an observation.

Senator CRERAR: Perhaps Senator Brunt can explain that.

The CHAIRMAN: Let us not get into that. Let us stay with the bill. We have representatives of industry here. We have Mr. A. Bruce Robertson, Q.C., who is the Vice-President of British Columbia Electric Company Limited, Mr. W. C. Mainwaring, President of the Peace River Power Development Company Limited, Mr. C. H. B. Frere, General Solicitor of Consolidated Mining and Smelting Company of Canada, and Mr. R. C. Anderson, President and General Manager, West Kootenay Power and Light Company Limited.

Will whoever of those gentlemen who is going to be the spokesman come forward? We have had a brief submitted by Consolidated Mining and Smelting Company of Canada, and by British Columbia Electric Company Limited and Peace River Power Development Company Limited. Those briefs have not yet been distributed, but they will be in a moment.

We now have before us Mr. Robertson, who is the Vice-President of British Columbia Electric Company Limited, and Mr. Mainwaring, who is the President of Peace River Power Development Company Limited. Mr. Robertson, are you going to make the representations first?

Mr. A. BRUCE ROBERTSON (*Vice-President and General Counsel, British Columbia Electric Limited*): If I may, Mr. Chairman, and I will be followed by Mr. Mainwaring.

Mr. Chairman, the section in which we are particularly interested in Bill C-47 is section 8 which, as you have already stated, will substitute for the present tax under the Exportation of Power and Fluids and Importation of Gas Act now imposed by Order in Council a statutory tax at the same rate that we have been paying for a number of years. It has always been thought in the trade that the power to tax was originally given as a means of discouraging the export of electricity at a time when that was very unpopular in the country. The need for any power to discourage exportation by taxation will completely disappear if the new National Energy Board bill is passed by Parliament. That act will provide for the establishment of a national energy board, and it will prohibit the construction of any international power line—meaning a line that carries electricity for export—without a certificate granted by the board, and it will prohibit the operation of an international power line without a certificate, and it will prohibit the exportation of any electric power without a certificate. The bill lays down the various things which are to be considered when applications are made for certificates, and the interest of the public and the country, generally, is one of those considerations. As I said, the need for taxation to prohibit export disappears entirely.

It is quite true that the tax has been in force for a number of years, and all efforts we have made to get the Government to remove it have failed. There are, however, some new and economic considerations which I want to bring to the attention of the committee at this time as a reason why the tax should not be solidified or crystallized in statutory form in place of the form which has been in effect in the past. Before I get to those reasons I would like to outline briefly what the interest of the presently operating utilities in regard to the tax has been.

My own company, the British Columbia Electric Company, generates and distributes energy in British Columbia, and in the greater Vancouver and greater Victoria areas particularly, as well as distributing gas and operating a transit system. We are a member of the Northwest Power Pool of the United States, which has a grid in Washington, Oregon, and three other of the states of the union.

Senator ISNOR: That is a privately-owned company, is it?

Mr. ROBERTSON: The B. C. Electric is a privately-owned company, but the Northwest Power Pool is an informal group of publicly and privately-owned utilities. Our physical connection with that pool—

Senator MCKEEN: Is the British Columbia Power Commission in that pool, or integrated—

Mr. ROBERTSON: Yes, the British Columbia Power Commission is, I believe, a member of the pool. It is interconnected through our system with it.

Senator MACDONALD: What is that commission?

Mr. ROBERTSON: It is a public power commission, like the Ontario-Hydro. Our physical interconnection is with that of the Bonneville Power Administration, which is one of the members of the pool, and the reasons which lie behind that interconnection, and which the physical interconnection supports, are principally, first of all, to guard against emergencies. If there is a breakdown on one system the energy can immediately be supplied from another

system. It makes possible the sales and purchases of dump energy between different members of the pool. We, as I mentioned a moment ago, can wheel power for the British Columbia Power Commission on Vancouver Island to and from the United States; and also the interconnection can be used for something that is called in the trade "storing water". What "storing water" means is this, that when one utility has plenty of water and it is spilling over the dam, and another utility has its reservoirs down low, the first utility will deliver its excess energy beyond its own needs to the second utility. The second utility then generates less energy and allows the water in its reservoirs to rise, and when the second utility's reservoirs are full or nearly full and the first utility's reservoirs are down, the second utility generates excess energy and returns it to the first utility.

Senator THORVALDSON: Mr. Robertson, is that caused by seasonal changes, weather conditions, and so on?

Mr. ROBERTSON: Two things: weather conditions and different characteristics. For instance characteristics of the weather generally and the run-off periods in the part of our system to the west of the Coast Range are different from the characteristics east of the Coast Range.

Senator EULER: Is it international in its nature?

Mr. ROBERTSON: Yes.

Senator BRUNT: Mr. Robertson, is there any exchange of money in a transaction such as that?

Mr. ROBERTSON: Ordinarily in the case of storing water of that kind there is no exchange of money. Also, the operation ordinarily is something that occurs only in one season, that is a twelve-month power period running from mid-summer to mid-summer.

Senator MACDONALD: I suppose each utility puts in an account to the other and over the year they approximately balance, is that correct?

Mr. ROBERTSON: That is right. Within the season the utility which has borrowed, as it were, returns the power to the other utility and the thing usually balances out. There is a provision for payment if one utility is unable to return within the year what it has borrowed, but normally that is not invoked.

Senator MACDONALD: It is a straight business transaction?

Mr. ROBERTSON: Yes. It is a loan without any money being exchanged.

Senator WALL: Mr. Robertson, if there is this interchange of power from Canada to the United States and vice versa, does the United States impose any tax on the power coming to Canada?

Mr. ROBERTSON: No.

Senator WALL: None at all?

Mr. ROBERTSON: No.

Senator WALL: We are the only ones guilty of that now?

Mr. ROBERTSON: Yes. I would like to know if anybody else in the industry would contradict me on this. I think I am right.

Senator CROLL: What you are saying is that in the storing of the water you have an annual account rather than a monthly one?

Mr. ROBERTSON: Yes.

The CHAIRMAN: And they do it by physical borrowing and repayment.

Senator CROLL: They trust each other for 12 months.

Senator REID: You have just stated that no money passes. Are you taxed when the electricity passes?

Mr. ROBERTSON: Yes. That is one of the things that makes the tax so distasteful, that although no money of any kind passes we have to pay a tax of three-tenths of a mill for each kilowatt hour that goes out of Canada.

Senator CROLL: You have now said no money passes. No money is passing because of a private arrangement that you have, but in the ordinary sense certain credits and debits are passing.

Mr. ROBERTSON: Credits and debits are passing in kilowatt hours.

Senator CROLL: Yes, but when you use the term money you mean you are not paying on the nail at that particular time but you do charge them for it and get paid at a later time.

Mr. ROBERTSON: No, no.

Senator CROLL: Then let us get that straight.

Mr. ROBERTSON: If I lend this book here to Mr. Mainwaring and he returns it to me later on, no money passes between us. I give him a book and he gives me back a book.

Senator CROLL: Yes, but if four pages are gone out of the book, then he pays you for the four pages that he did not return.

Mr. ROBERTSON: Yes, if he did not return them.

The CHAIRMAN: It is like borrowing a bowl of sugar from your neighbour. You take a bowl of sugar back.

Senator KINLEY: What do you do with what you get? You make a profit from it.

Mr. ROBERTSON: No, we just balance out.

Senator KINLEY: You borrow from him and you use it.

Mr. ROBERTSON: Then we return a corresponding amount of power to him and the net result is we have nothing.

Senator MCKEEN: What is the main purpose of making this exchange?

Mr. ROBERTSON: The main purpose is to help out an area at a time when it is less fortunate in its rainfall or run-off than another area which has an excess of water.

Senator MCKEEN: You cannot store the electricity and if you let this water go then it is gone. What you do is to try and save that electricity by using it, by lending it?

Mr. ROBERTSON: That is right.

Senator MCKEEN: So it is an economic gain.

Senator HAIG: I understand you are asking us to strike out a taxing provision in the statute.

Senator BRUNT: He has not done so yet.

Senator HAIG: That is what you are coming to. You are asking us to strike out one of the taxing provision. Don't you think that you should have asked the Government first to strike it out? Don't you think the House of Commons should have been asked to strike it out?

Mr. ROBERTSON: Yes, I think that would have been the better thing, but—

Senator HAIG: That is the usual procedure.

The CHAIRMAN: Let him make his answer.

Mr. ROBERTSON: We have been making representations over the years to the department concerned without any success. We did not know of this proposal to crystalize the thing in a statutory form until after it passed the House of Commons. This bill did not reach us in Vancouver until it passed,

so we had no opportunity to make representations before the House of Commons at the stage you have mentioned. I quite agree that, had we known the intention, we certainly would have made such representations.

Senator HUGESSEN: I do not imagine this bill went to a standing committee in the House of Commons anyway.

The CHAIRMAN: No.

Senator HUGESSEN: So they could not have offered an amendment there.

Senator MACDONALD: There has been time to do something about it since the budget was brought down in April, and the bill passed the House of Commons a week ago.

Senator BRUNT: On May 19.

Senator MACDONALD: So there has been quite a considerable time in which representations could have been made to the Government if not to a committee.

Senator BRUNT: The bill was never referred to committee.

Senator MACDONALD: Representations could have been made to the Government.

The CHAIRMAN: The point is that this group asked for the privilege of coming before this committee and we are according it that privilege.

Senator HAIG: Perhaps I am the only one who is complaining but I think you are putting us in an awkward position. You say that some time ago you consulted the Government and they refused to do certain things and they brought in legislation but you did not appear. You say, "We didn't know about it," although you had two or three months to learn about it. I don't think you should come and ask us to interfere with a revenue matter. The House of Commons deals with that.

The CHAIRMAN: It is not interfering with revenue.

Senator REID: Let the witness make his case.

The CHAIRMAN: Yes. Go ahead, Mr. Robertson.

Senator CAMPBELL: Could we let the witness proceed and make his presentation? He has a very good brief here and we have only heard part of it.

The CHAIRMAN: Yes. It is not a long presentation and I think the committee would rather hear him and then ask questions after.

Some hon. SENATORS: Yes.

Mr. ROBERTSON: Mr. Chairman, our objection to the utilization of the legislation in this form, or the tax in this form, is on two grounds. One, is a general matter of principle; and, secondly, on a question of detail. I am going to speak first on the question of detail.

The tax on utilities, such as the B.C. Electric, which has long been in operation, amounts to a very substantial sum. In the past ten years it has amounted to seven per cent of the gross revenue that we have derived through export sales. In addition to that, as I have already indicated, the tax is payable on stored water, either when the electricity is first sent out or, if we are the storers, when we return it to the other people, even though no money passes. Third, the tax has a very peculiar incidence in this respect. When two systems are physically interconnected, at times when there is no intentional or scheduled transmission of energy in either direction and the system is doing what is called "floating", then there are surges of electricity back and forward across the interconnecting point, which in this case is the international boundary, all the time as load comes on one system and the pressure drops there, and a bit comes through, and it goes back again.

Just as a matter of interest, there is a chart of nine hours on May 1st. There are fluctuations, 20, 30, 40, in each direction every hour. The ones above

the line are export, the ones below, import. Over the year the whole thing equals itself out, so that there is no net export or import. However, the meters are ratchetted so that they will record only the outgoing quantities, and the result to us is that we pay a tax on every kilowatt hour that goes out even though it may have come back ten minutes later and there is no net export at all.

Senator MACDONALD: From the same source?

Mr. ROBERTSON: Yes, on the same interconnection.

Senator MACDONALD: But the power comes back by a different source?

Mr. ROBERTSON: It goes back on the line on which it went out.

Now, that does not bulk very large. It costs us on an average about $300 a month for something for which we have no power exported or imported at all. I am told that the cost to one of the public utilities in Canada is $4,000 a month, merely by the fact that the two systems are interconnected. That is one of the details we don't like in having this put in statutory form.

Now I come to the larger question which relates to the Peace River Power Development Company. That is a compartively new company, which at the cost of several millions of dollars is busy investigating the power potentials of the Peace River. Under an agreement with the province of British Columbia the company must file by the end of this year with the provincial Government a report showing whether or not the development of the Peace River for hydro-electric purposes is economically feasible. In its calculations the company will of course have to include any tax which it will have to pay on the export of energy. Now, the development will be a very large one. The two initial dam sites which are being considered will ultimately produce about 3 million kilowatts; and there are other dam sites downstream in British Columbia alone which can produce an additional one million kilowatts. The first production, if the scheme goes ahead, will be in about 1966. In order to make it economical it will be necessary that the initial generating units to be installed be of a capacity of 500,000 kilowatts or more. You could not justify the cost of the dam and the cost of the transmission line without putting in at least 500,000 kilowatts of capacity at the very start and selling that amount of energy. The principal Canadian customers for the Peace River Power energy will be the B.C. Electric and the British Columbia Power Commission. But by 1966 they will not be in a position to absorb or digest the whole of that 500,000 kilowatts from the start; their annual increase, the aggregate of the two, will be considerably less than that. Therefore, Peace River Power has to look elsewhere for a customer to buy that energy. Now, forecasts made in the United States show that in about the same year, 1966, there is going to be a shortage of hydro-generated energy in the Pacific Northwest, and that will afford a natural market for the excess power from Peace River which will not be required for domestic purposes, and it will of course be sold, that excess power, only subject to recapture for Canadian purposes when it is required for domestic uses. That is a matter that will be taken care of under the National Energy Board Act. It is quite possible that at that time, 1966, and in the years immediately following, the States will require more than our surplus out of the 500,000 kilowatts. If they should agree to buy a greater quantity it will mean that Peace River Power's initial development or installation will be bigger, and that will spread the cost of the dam and transmission line over a greater number of kilowatt hours and bring down this cost of production generally, and that of course will redound to the benefit of Canadian consumers, because as the price is lowered in that way Canadians will get just as much advantage out of it as the Americans. The same considerations are true of subsequent installations. As it becomes necessary to increase from the 500,000 kilowatts to the ultimate 3 million kilowatts this energy will have to be added in big chunks, and cannot be absorbed in one or two, perhaps three years by the local utilities.

Now, that means that the sale of energy for export is a very important part of this project. The tax, if it is in force in respect of the energy which is exported, will represent a very substantial part of the revenue the company will get. I cannot tell you what the price of the energy will be because the investigations have not reached the point where that can be stated, but I can give you some examples of prices at which electricity is sold in Canada now, partly for export and partly locally, and you can get an idea of the selling price. In 1957 the Ontario Hydro Electric Commission, on sales to companies under direct contract —and some of that energy was hydro and some thermal generated—the price averaged 4.6 mills per kilowatt hour. In the same year, Hydro Quebec's sales for export to the United States averaged a price of 1.61 mills. The B.C. Electric is selling now to some industrial customers at an average of 3.6 mills. The Bonneville Power administration in the United States is selling to distributors very large blocks of energy at 2.5 mills. So that one can safely assume that the price at which Peace River Power will be able to sell for export or domestically will be somewhere in the range of 5 mills, and will not be able to go much over that.

Now, a tax of three one-hundredths of one cent per kilowatt hour, does not sound very much but when you turn that into three-tenths of a mill it is the equivalent of a tax of 6 per cent on 5 mills, so that you can readily see that this tax can represent 6 per cent of the gross revenue that the company can hope to get out of its exports.

Now, 6 per cent of your gross revenue going in an expense of that kind can be something that can make the entire project unfeasible. If you put it in other terms, it represents an earning capacity of many millions of dollars. I won't try to determine it because we are dealing with an unknown quantity in this tax.

Now, while this can have an effect on the sales for export it can have another effect, and a very important effect on the question of storage. I told you that the usual practice is that storage transactions are completed within one season, that is to say the energy that is lent is returned in the same year. The Peace River power project plans a development of a tremendous reservoir in the Rocky Mountain trench, a reservoir that is going to take anywhere from six to twenty years to fill up, and its storage position will be entirely different from that of any other utility we know of. It has been estimated that the storage will be about 15 million acre-feet if a storage dam is built at Mica Creek on the Columbia River. The storage potential of the Peace River power reservoir will be about 100 million acre-feet, nearly seven times as large. That means Peace River Power will be able to give to the Americans something that I have seen referred to as "cold storage", that is to say, Peace River power will be able to take energy from the United States when they have a surplus and—instead of returning it within the year—will be able to hold it for a number of years, say five years or even as much as seven years, and then return it at the later period.

Now, that is going to involve something that we do not have in the ordinary transaction and that is a money payment, and the calculations which are presently being made both in the United States and in Canada are using a figure not yet officially settled upon of one mill per kilowatt hour as a charge for storage. Now, if the tax is 3/10 of a mill per kilowatt hour, that means that 30 per cent of the gross revenue derivable from this storage transaction would go in tax; and that, too, could have a most serious effect upon the feasibility of the entire project.

So far I have been talking in terms of Peace River alone, but almost everything that I have said can apply equally to the Columbia River.

If the Columbia River is developed—and it is hoped it will be—it is altogether probable that, in order to make it economically feasible, the developers will have to sell some of their energy in the initial stages to the United States: and there again the imposition of this export tax may be what makes all the difference between a project that can be financed reasonably and one that connot be financed reasonably. And incidentally, I have not mentioned finance, but of course one of the most important things in putting a project like the Peace River together is the raising of the tremendous sums of money that will be required, and an item like this tax, which must appear in the forecast, is something that could be very frightening to the people who have to find the money.

Speaking of the Columbia, I would like to give you a little more information. It is hoped that the development of the two rivers, the Peace and the Columbia, can to a very considerable extent be co-ordinated, so that we can take advantage of the characteristics in both rivers which complement one another—seasonal flows in the Peace which do not correspond with the seasonal flows in the Columbia promoting the same types of interchange and storage that I have mentioned previously.

There are going to be three developments if these things proceed together. There is going to be the Canadian development on the upper Columbia, the American development on the lower Columbia, and the development of the Peace, and there presents itself a wonderful opportunity to develop all three so as to get the greatest benefits out of the water powers in the Pacific coast provinces and states; and it is my submission that everything should be done to encourage this development and nothing should be done to discourage it.

Now, I come back to my question of principle. Surplus hydro energy is an ideal subject for export. It does not deplete our resources in any way. Water that is not used to generate surplus energy goes down the river to the sea and is lost forever. Exported energy can produce large sums in United States dollars and those sums can be a very important factor in the balance of trade between the two countries.

Yet, for some strange reason, for a number of years electric power has been singled out as the one resource commodity, at least the only one I have been able to learn of, that has been chosen for tax purposes. Taxes are not put on the lumber we export or the oil we are sending out of the country, or our canned salmon, on zinc, or natural gas, or other things that we are anxious to export. We are an exporting nation, and electric power is an ideal subject to export because it depletes nothing, but it will be made more difficult to export by the imposition of an export tax, and I expect for the reason that I have mentioned that all the control of exports I have not been able to imagine.

Now, the answer to that may be, "Well, that is true enough, but we are getting this revenue now and we do not want to lose it." Well, I think there are two replies to make to that, and the first is, here is an unsound tax which is now up for consideration in Parliament, and now is a time when we have an opportunity to look at it, to correct an unsound situation. The second ground of reply is that there are entirely new circumstances now which have not esxisted before, and that is the proposed development of the Peace and Columbia Rivers.

And it is my submission that the economic circumstances arising out of those projects must outweigh or should outweigh any desire not to lose a bit of revenue which has been enjoyed in the past. Quite apart from the effect on the companies themselves, if this project goes ahead, or if the Peace River power project goes ahead, there will be tremendous expenditures on capital

goods of all kinds, on labour, for much labour will be used, and the income which will result will be taxable and should produce very much more than these export taxes will produce.

My submission to the committee therefore is that section 2 of the bill, which enacts Part II of the Excise Tax Act, should not be passed.

The effect of that will be to leave matters where they stand today; that is, that there is now a tax imposed under the Exportation of Power and Fluids and Importation of Gas Act, which has stood for many years, regulation; and that, if the tax is allowed to stand in that form, the Government will be in a position, after it has had an opportunity to consider these various things which I have brought forward, to give any relief which it thinks it should give because of these situations in the Columbia River and the Peace River.

That, Mr. Chairman, completes what I have to say. I will be glad to answer any questions.

Senator CROLL: What revenue do we receive under this legislation?

Mr. ROBERTSON: About $1 million a year, I am told.

Senator CROLL: Overall?

Mr. ROBERTSON: Yes.

Senator MACDONALD: What does that revenue represent?

Mr. ROBERTSON: The revenue from export tax on electricity.

Senator CRERAR: I would like to ask the witness a few questions.

This pooling arrangement that you speak of as between the Northwestern States and the coast of British Columbia, that is a voluntary arrangement?

Mr. ROBERTSON: Yes.

Senator CRERAR: Has that international sanction?

Mr. ROBERTSON: There is no treaty, but the Bonneville Power Administration, before they install factilities to make a connection, had under the American law, to get what is called a presidential permit, and that is attached to the contract we have for the maintenance of this interconnection. We on our part, before we could build that, had to apply under the Exportation of Power and Fluids and Importation of Gas Act for a license to cover the construction of these facilities, and we have to get an annual license.

Senator CRERAR: That is a local arrangement of mutual benefits on both sides of the boundary.

Mr. ROBERTSON: Yes.

Senator CRERAR: You spoke also of the development on the Peace River, and you use that as an argument to support your view on this legislation that there would be made available large quantities of power for export, which would bring great collateral benefit to the country.

I recall that this question came up some 40 years ago. If my memory serves me correctly, this present act was passed during the time of the Borden Government.

Mr. ROBERTSON: In 1907.

Senator CRERAR: Then it was in Sir Wilfrid's time. But there was a proposal to develop power on the Carrier Rapids on the Ottawa River between here and Montreal. That was made contingent on the consent to export power to the United States. It was turned down ultimately for the reason that if power was exported to the United States it was felt it could not be recapured; that is, industries would develop in the United States based on that power, and that if any effort were made to recapture it at some later date when it might be required in Canada, it would bring up international complications which no one would wish to face. I think there is a very valid point in that.

At the present time we have vast power resources in British Columbia. I haven't any doubt that this development could take place, and you could sell 500,000 or maybe a million kilowatt hours to the United States. But that envisages a different kind of arrangement from what you have in your present pooling arrangement on the Pacific coast. This envisages a continuous export of power, and that could never be recaptured for Canadian use, if it were needed 30, 40 or 50 years hence.

That, to my mind, is the strongest objection there is to the point that you are advocating.

Mr. ROBERTSON: May I deal with those points, sir?

Senator CRERAR: Yes, certainly.

Mr. ROBERTSON: Historically, a strong fear did grow up around 1907 and subsequent years that power exported to the United States could not be recaptured. The reason for that was that the power was exported from Ontario where they had a 25 cycle system, to some communities in the United States which set up a 25 cycle system for the domestic use of that power, although the surrounding areas were using a different cycle. Representations were made when Canada tried to recapture, that it was going to result in the ruination of these places which had grown up by reason of this particular cycle of exported electricity.

That is a condition which I think will not be repeated, because in the Pacific Northwest everybody is on 60 cycles.

Senator CRERAR: But Mr. Robertson, assuming you can go ahead with your development, that you get permission from the Energy Board, or the proper authority, to export 500,000 kilowatt hours to Washington, Idaho or some other part of the United States, do you think that that power can in the future ever be recaptured for Canadian needs if such a need were to arise?

Mr. ROBERTSON: Yes, sir.

Senator CRERAR: In what way? Would there not have to be an international treaty?

Mr. ROBERTSON: No sir. Under section 83: first of all, in our application for license, the board has to be satisfied that the quantity of power to be exported does not exceed the surplus remaining after due allowance has been made for the reasonable, foreseeable requirement for use in Canada. Under another section the license must state the term for which it may be granted, and it will not and can not exceed 25 years.

Before the Americans make any capital expenditures in reliance upon that energy, they will know that the term is limited to the number of years set out in the license, and they will not take it on the expectation that it will be for an unlimited period.

Senator CRERAR: Would that not require something in the nature of an international treaty?

Mr. ROBERTSON: I don't think so. Let us suppose the Puget Sound Power and Light Company were to buy from us—

The CHAIRMAN: Just a minute. This is all very interesting, whether in some future operation an international treaty would be required to do thus and so, but I do not think, even if the witness expressed an opinion, it would be of any value for our consideration of this bill.

Senator CRERAR: Well, it would have had a very great value 40 years ago, believe me.

The CHAIRMAN: Not in the consideration of this bill.

Senator CRERAR: Not in regard to this bill, but in regard to the principle on which the bill is based.

The CHAIRMAN: There is only one point we are considering today, and that is, as I see it, whether this section in the excise tax amendments shall or shall not pass. We are not discussing, except in a very broad way, the question of the value of the export of power, or any of those questions, or how it should be done. You have a provision for tax in the existing law, and it is now proposed to incorporate it into the Excise Tax Act and take it out of the existing law. As I see it, in any decision we make we cannot express an opinion on whether or not there should be a tax. The only question before us is: Are we going to pass this section which, under the Excise Tax Act, imposes a specific rate of duty on the export of power, and are we going to repeal the section in the existing law which provides another method of imposing the same tax?

Senator MACDONALD: Mr. Chairman, the witness gave his reason for not passing the law, and the reason was that they expect to export a great deal of power to the United States in the future. That is the premise on which he submitted his argument. Now Senator Crerar asks: Well, are you allowed to? We want to be satisfied that there is a possibility of the exportation of power to the United States. Senator Crerar said you would have to have a treaty.

The CHAIRMAN: What I am saying is this, that any thing this witness said directed to the question of whether or not there should be a tax was completely beside the question which is before us. But, he had come here to make his presentation and I thought he should present it, but it is not a part of our consideration. We are not to determine whether or not there should be a tax. Parliament has a tax in force at the present time. Our only function is to decide whether we are going to permit the transfer of it from one statute to another statute.

Senator CRERAR: With all due respect to you, Mr. Chairman, you are putting too narrow an interpretation on this.

The CHAIRMAN: Well, I am in the hands of the committee.

Senator CRERAR: I am opposed to this change because I think it is much better to leave it under the existing legislation.

Senator BRUNT: Hear, hear.

Senator CRERAR: Then you have a better chance of reviewing all the conditions that arise. I think, definitely, we are justified in considering the possible consequences that might flow from this in the future.

Senator LEONARD: Might I ask Mr. Robertson what the situation is with respect to endeavouring to pass on this tax to the buyer in the United States?

Mr. ROBERTSON: We cannot get anywhere on that, senator. If the buyer would pay more we would take his money ourselves.

Senator LEONARD: If the tax comes off—this is just an hypothesis—your price still remains the same?

Mr. ROBERTSON: Yes, that is right. We can get no more than what the Americans are prepared to pay for it.

Senator LEONARD: Thank you.

Senator LAMBERT: Referring to the point that Senator Crerar made, or raised, would the adoption of this part in this bill prejudice, to a certain extent, at least, the case which the witness is trying to present to this committee? Personally, I think that the point he has been clearly making here is that it will interfere with the potential exchange of trade between these two countries, and I would be somewhat concerned about the prejudicial effect now in that connection if this part were included in this bill. For that reason I think it should be considered apart from it.

Senator CROLL: My only observation, in regard to Senator Crerar's saying he would rather leave it as it is, is that the present act—and it may be the Exportation of Power and Fluids and Importation of Gas Act—is being repealed except section 4.

Mr. ROBERTSON: Yes, and that is the section.

Senator CAMPBELL: Mr. Robertson, Senator Leonard asked if you were able to pass on these charges. What would be the total tax so far as the British Columbia Electric Company is concerned?

Mr. ROBERTSON: It varies very much.

Senator CAMPBELL: In dollars?

Mr. ROBERTSON: We have not done any substantial exporting since 1953. The only figure I have on that is that in November, 1953 we paid $16,100.

Senator CAMPBELL: I understand that Ontario pays about 95 to 99 per cent of this tax of $1 million. Is that so?

Mr. ROBERTSON: I have not the figures, but I know that Quebec pays a substantial tax. I do not know how it compares with Ontario.

Senator CAMPBELL: Your amount of $16,000 is really negligible.

Mr. ROBERTSON: That was a month.

The CHAIRMAN: If there are no other questions—

Senator HUGESSEN: Might I ask the witness a question, Mr. Chairman? In regard to the first matter he presented he rather surprised me when he talked about the fact of there being an intercommunication across the border by means of a line which resulted in surges of power back and forth between the two countries. I suppose you might liken it to two tides which are side by side, and the power flows from one side to the other, and vice versa. He said that when that happens—when there is a surge from Canada to the United States—the power that goes out, even though it comes back 10 minutes or an hour later, is considered to be exported from Canada, and they pay the tax on it.

The CHAIRMAN: That is right.

Senator HUGESSEN: I wonder if that is really an export of power within the meaning of this section that we have before us. I would have thought that a person who exported electric power must have performed some sort of positive action. I am wondering if that situation about which he complains could not be cured by the Governor General in Council under section 9 saying that it is not really export at all, but a surge back and forth. Can you get some help from that if we pass sections 8 and 9?

Mr. ROBERTSON: Well, sir, we have made representations and complaints over the years in correspondence with Mr. Power's branch. Their answer has been that they have had rulings from the Department of Justice that these are exports within the meaning of the act, and that they are going to collect taxes from us.

Senator HUGESSEN: That is a rather strained interpretation of the act.

Mr. ROBERTSON: We have urged exactly what you have suggested, but it has not prevailed with the department.

The CHAIRMAN: Mr. Mainwaring is here. Have you anything to add, Mr. Mainwaring?

Mr. W. C. MAINWARING (*President, Peace River Power Development Company Limited*): Yes, Mr. Chairman and gentlemen. First of all, I would like to endorse everything that Mr. Robertson has said to you in so far as my company —that is, the Peace River Power Development Company Limited—is concerned.

This is a new company which was organized for the purpose of, first of all, investigating the vast power resources of the Peace River, which is one of the

greatest power rivers of the world, and ascertaining whether or not it is feasible in the northern part of British Columbia to harness this river, create a lake some 250 miles long, and store the tremendous amount of water which, as Mr. Robertson mentioned, is in excess of 100 million acre-feet. There is not a storage basin like that anywhere in North America. If the result of our studies satisfies us that it is feasible, then we intend to proceed with the immediate development of that river. During the fall and winter of 1956 through all of 1957 and 1958, and now through 1959, we have had an army of engineers and economists who, compiling this report which, by agreement with the provincial Government of British Columbia, we must file with them on or before December 31 of this year. It will surprise you when I tell you that this feasibility and engineering report, when we complete it by the end of this year, will cost us $5,300,000. We are well advanced with our studies and we will make a report on time. If the report is satisfactory, and we have every reason to believe at the present time that it will be, we will be able to show that this is an economical project. We will have to proceed with our initial financing in the early part of next year, 1960. Our initial financing will be an amount between $400 million and $500 million. Our first development will be approximately 500,000 kilowatts.

As Mr. Robertson mentioned, this river at the one point we are going to develop first has a potential of 3 million kilowatts, and it is expected that all of that will be developed over a period of 10 years. It is expected that the total cost of this development when we have harnessed these 3 million kilowatts, or if you would prefer me to state it in horsepower, 4 million horsepower,—that when we have developed all of that power and built the necessary transmission lines to the lower mainland area of British Columbia, will represent an investment of approximately $1 billion. It is hardly necessary to tell you what that will do in the way of employment in that north country.

During the heaviest years of our construction we will be employing some 5,000 people. We are opening up a new frontier. We are opening up completely new forestry resources, and what appears to be a country tremendously rich in mineral resources. The tax which is in existence at the present time is something that is causing us great concern, and we would naturally have approached the Government to eliminate the tax on the amount of the power that we found it necessary to export to make our project feasible.

We are thinking in terms of an export rate for this energy at the border of approximately 5 mills, and this means that we would have to pay, at the rate of taxation provided, a tax of 6 per cent. I am not going to say that it would kill our project but I can tell you that it could have a very serious effect on our being able to finance it at all.

Senator ASELTINE: Yes, but we are not dealing with the doing away of this tax now.

Mr. MAINWARING: I appreciate that.

The CHAIRMAN: These witnesses have come a long distance and I think we should hear them. It is not taking very long.

Mr. MAINWARING: I was just going to answer part of Senator Crerar's previous question. I was going to follow up and say that if the tax remains in its present status we can approach the Government of Canada and we can show them that this tax would have a serious effect on our being able to go ahead with this project, but if it becomes statutory as it would if it goes into the Excise Tax Act, then it would only be by an act of Parliament that we could ever get it changed. If it remains in its present state we are in a position to deal with it. We are in an extremely poor position to deal with it when it becomes statutory.

Senator MACDONALD: You could deal with the Government a lot easier than you could deal with Parliament, in other words?

Mr. MAINWARING: Correct. I would like to make this very important point. Mr. Robertson points out to me that the time factor is the thing that is concerning Peace River Power. We must be able to show financial ability in connection with this project in our report that we have to file before the end of this year. If this becomes statutory we could not possibly deal with it until the next session of Parliament. If it remains as it is we are in a position at any time to place our economic status before the Government and show them whether this tax would be responsible for preventing us from doing our financing and going ahead with the project.

I have been in this business, gentlemen, since 1911. I have been in the utility business continually since that time, and I think the important thing here is that the conditions—and I think we can show this to the Government—that existed years ago when it was necessary to impose this tax in eastern Canada, are completely different to the conditions that exist now in western Canada, in British Columbia, where we are proposing to develop two of the biggest power projects in the world, and where we know we cannot proceed with those projects unless we do export in the earlier stages of development a substantial amount of power.

The distances are great and the two situations are so different that I think we can convince the Government they would be justified in eliminating this tax on the power we have to export. I would point out that only the power that is surplus to Canada is going to be exported and it will bring us millions of dollars.

A gentleman over here asked Mr. Robertson how much tax the B.C. Electric paid. It has been infinitesimal compared to the total amount or roughly $1 million the Government has collected, but it would be disastrous to a project like Peace River Power where in the earlier stages a considerable proportion of our energy would have to be exported.

Senator EULER: Do you share the fear that Senator Crerar has expressed, that you could not recapture the power?

Mr. MAINWARING: No, I have no fear in that regard whatsoever, for I am satisfied that the contracts will have to be approved by the new National Energy Board where they first have to satisfy themselves that the power is surplus, and they insist on a date just exactly as exists in the case of the West Coast Transmission Agreement to sell power in the United States. It is for a fixed number of years.

The CHAIRMAN: That is for gas.

Senator EULER: It is a contract that terminates?

Mr. MAINWARING: Yes, these contracts under the National Energy Board will have a termination date. There is another feature which relieves me of too much concern, and that is that the United States utilities know that in the next 10 to 25 years they have to provide large sources of thermal power because all hydro energy will be in service. They are planning now for large thermal plants for the future which will use oil or possibly coal or nuclear power for generating electricity. So they have other sources of power they can use to generate electricity. So I personally have no concern over being able to limit these contracts. I would be glad to answer any questions, and I do appreciate the hearing we have had.

The CHAIRMAN: I am going to suggest that as it is now 12.45 we adjourn until 2 o'clock and resume our deliberations at that time.

The committee thereupon adjourned until 2 p.m.

—Upon resuming at 2.10 p.m.

The CHAIRMAN: I will call the meeting to order. We resume the hearing of Bill C-47, to amend the Excise Tax Act. We have several additional witnesses to be heard: Mr. C. H. B. Frere, General Solicitor, The Consolidated Mining and Smelting Company of Canada Limited, and Mr. R. C. Anderson, President and General Manager of the West Kootenay Power and Light Company, Limited.

Senator CROLL: Now that you are making those provisions, Mr. Chairman, may I make a request that you call Mr. Lorne McDonald of the Ontario Hydro?

The CHAIRMAN: Oh, yes, I have noted him, and also Mr. Lemieux, of the Quebec Hydro. Mr. Frere?

Mr. C. H. B. FRERE (*General Solicitor, The Consolidated Mining and Smelting Company of Canada Limited*): Mr. Chairman, since the committee did not seem disposed this morning to delete section 2 of Bill C-47, we have had to depart from our written text.

I should mention first that the West Kootenay Power and Light Company Limited, of which Mr. Anderson is president and general manager, is a subsidiary of the Consolidated Company, which operates our company's power plants on the Kootenay and Pend-d'Oreille Rivers. The West Kootenay Power and Light Company, Limited, operates those plants as an agent of the Consolidated company.

In principle, our submission is largely a repetition of what—

Senator LEONARD: Mr. Chairman, is the witness under the impression that we have decided not to delete section 2 of the bill?

Mr. FRERE: That was my impression this morning.

Senator LEONARD: Is that correct, Mr. Chairman?

The CHAIRMAN: I do not think we could say that.

Senator LEONARD: I would not like the witness to proceed on that basis.

The CHAIRMAN: I think you should proceed on the basis, Mr. Frere, that we have not made any decision one way or the other with respect to that section.

Senator ASELTINE: We certainly have not.

Senator MACDONALD: On the other hand, I do not think the witness should assume that we are going to.

Senator BRUNT: He has not.

The CHAIRMAN: He is entitled to make his presentation in whatever form he likes. If he feels that he has to buck an obstacle he can approach it from that point of view. If, on the other hand, he feels it is smooth sailing, he can approach it from that point of view. The risk is his, no matter how he presents it.

Senator MACDONALD: We want to hear both sides of the question before making up our minds; we are here with open minds.

Senator GOLDING: Give your evidence on the merits of the case; never mind anything else.

Mr. FRERE: I think you probably know that our company operates mining properties throughout the various parts of Canada and is actively engaged in mining exploration throughout the Dominion. We own chemical and fertilizer plants in Calgary, Alberta, and Trail, British Columbia, and a non-ferrous smelter and refineries at Trail. This year the company will start construction of an iron smelter at Kimberley in British Columbia. All of these plants, smelters and refineries are heavy users of electricity.

The company owns four plants on the Kootenay river and one power plant on the Pend-d'Oreille River, in British Columbia. The West Kootenay Power and Light Company, Limited, which as I mentioned, is a subsidiary, also operates

a plant on the Kootenay River for the sale of electric power to the public. The total generator capacity of these four plants on the Kootenay River is approximately 300,000 kilowatts, and on the Pend-d'Oreille River, at Waneta we have an installed capacity of 180,000 kilowatts; and as Mr. Anderson will explain, there are settings for two generators which, if we had the water, would be able to produce an additional 180,000 kilowatts of power.

The company also has a power site on the Pend-d'Oreille River, known as the "Seven-Mile" site, which has not yet been developed, but has been under engineering investigation. The potential output of the site is 360,000 kilowatts.

Storage water for the regulation of the power plants in the Kootenay River is maintained in Kootenay Lake, in British Columbia, from August to April, after the high water of the spring and early summer. The Waneta plant on the Pend-d'Oreille River, is a run-of-the-river plant, whose water supplies varies with storage regulation upstream in the United States.

The company produces and consumes annually more than 2 billion kilowatt hours of electrical energy in the operation of its mines at Kimberley, Bluebell and Salmo, of its smelters and refineries at Trail, and of its chemical fertilizer plants at Kimberley and Trail. This consumption of electrical energy is practically the same as the quantity consumed in the Greater Vancouver area.

The company submits:

1. That no duty should be imposed on electric power exported from Canada, since no export duties are imposed on coal, oil or natural gas, and consequently that subsection (1) of section 2 of Bill C-47, An Act to Amend the Excise Tax Act, be deleted.

In making that submission I would refer to the statements made this morning regarding the Electricity and Fluid Exportation Act. When the present act was revised in 1955, the Minister of Trade and Commerce at that time explained that while an export tax of three one-hundredths of one cent per kilowatt hour, or roughly $2.00 per horsepower per annum, had been imposed since 1925 on electricity exported, no tax had even been levied on the export of gas or other fluids, and it was not the policy of the Government to impose one.

The Exportation of Power and Fluids and Importation of Gas Act, as was mentioned this morning, is premised on situations that arose out of the development of the power potential of Niagara Falls in 1907, and crystallized the policy of no firm commitment for the exportation of power, that licences should be on a surplus interruptible basis only, and that they would have to be renewed annually. It may be suspected that the provision for a duty to be imposed on the export of electric power was maintained as part of that policy. In substance, the provisions of the Exportation of Power and Fluids and Importation of Gas Act are being incorporated in Bill C-47 and the proposed Bill C-49, an act for the Establishment of a National Energy Board.

We submit that that policy which originated in 1907 should be modified to take into account the fact that a large hydro-electric development, to be economic, should be able to dispose of its output when the power plant commences operation. Many hydro sites require plants much larger than Canada's immediate requirements, such as the Peace River plant, if it comes into operation, which was mentioned by Mr. Robertson this morning. Those plants are costly, so that every opportunity should be given to the plant operator to dispose of surplus power, without the necessity of paying a duty. Electric power can be transmitted now at much higher voltages, consequently, at much greater distances, than in 1907; but just as in the case of a petroleum or natural gas pipeline, the principal consideration in the construction and operation of a high-voltage transmission line is that sufficient power must

be transported for such length of time and at such a price as will permit the amortization of the costs of construction. So that the situation with power is exactly the same as with gas or with oil.

I might interject here that gas is exported from Alberta to Montana, and gas is also exported from British Columbia into the northwestern United States. The gas from British Columbia is transported by Westcoast Transmission and it enters the pipe line of Pacific Northwest Gas Company and goes to our competitors at Pasco, Washington, where there is a liquid ammonia plant. I might point out that we manufacture liquid ammonia in Calgary and we now are converting our plant at Trail to manufacture it there. So in that process we will use natural gas. You will see, therefore, that gas goes from Canada to the United States to be used in competition with our company's liquid fertilizers. We do not say that that gas should not be exported from Canada, on the other hand we wholly agree that surplus over Canadian requirements should be capable of export.

Senator MACDONALD (*Brantford*): In that case the tax is an advantage to your company?

Mr. FRERE: There is no tax on gas, and that is the very point I would like to make, that natural gas goes into the United States without any tax, yet surplus power connot be exported by us to the United States without paying a tax on it.

Senator HUGESSEN: So far I have not been made aware of what your interest was. You say your company has a number of power plants and consumes a vast quantity of electric power but you have not said that you export it.

Mr. FRERE: We are not exporting it at the present time because we have not been able to obtain a permit to do so.

Senator HUGESSEN: What is your interest then?

Mr. FRERE: Our interest is in being able to export power, or more particularly in being able to interchange power. There was a lengthy discussion on the subject of interchange in this committee this morning, and it is the desire of our company to be able to interchange power with plants in the United States. Also, our interest is in being able to develop, for instance, the Seven-Mile site on the Pend d'Oreille River, which would also require an interchange of power. Our interest stems from two factors: We have a plant on the Pend d'Oreille River in southeastern British Columbia which cannot be fully developed for the production of firm power without some arrangement for interchange, and we also have a potential site on the Pend d'Oreille River which cannot be developed without interchange.

Senator HAIG: Did you make representations about this before the House of Commons?

Mr. FRERE: No, sir.

Senator HAIG: Did you make them before the Government?

Mr. FRERE: We applied for a permit.

Senator HAIG: How long ago?

Mr. FRERE: Five years ago, and we have made representations since that time on and off for the past five years.

Senator DAVIES: That is, to the federal Government?

Mr. FRERE: That is right.

Senator HUGESSEN: This bill would not affect any application for a permit to export.

Mr. FRERE: That is correct, but now we would have to apply for that permit under provisions of Bill C-49.

Senator MACDONALD: Have your representations been made to the Government to reduce the present tax?

Mr. FRERE: Yes. They were for a permit to export power and we also made representations that there should be no tax on the export or interchange of power.

Senator MACDONALD: That was five years ago?

Mr. FRERE: Yes, but we have been back to see the Government on frequent occasions since that time, and I might add the reason given why we did not get an export permit was that the Columbia River basin was being investigated and that the Governement did not want to deal with our application until principles in connection with the Columbia River had been settled.

Senator MACDONALD: I think Senator Haig's question was, did you make representations to the present Government?

Mr. FRERE: The answer to that would be yes.

Senator ASELTINE: When?

Mr. FRERE: Not in the form of an actual application for a permit. We had informal talks from which we got the feeling that there would be no use to make an application for a permit. There has not been a formal application.

Senator MCKEEN: What you are concerned with is the downstream benefits arising from American sources in the river?

Mr. FRERE: Yes, in our Waneta plant our storage is all upstream.

Senator MCKEEN: The same principles apply as in the other case but from a different side of the line?

Mr. FRERE: That is correct.

Senator HAIG: You know that they are engaged now in negotiations regarding these power developments?

Mr. FRERE: That is correct.

Senator HAIG: Well, I want to know what you think,—do you think any Government would make a change under those conditions until they knew the outcome of the negotiations?

Mr. FRERE: Well, sir, I would say the principles that might come out of these negotiations should not affect our situation. We think we have a unique situation which does not depend on what is done on the Columbia River because as Mr. Anderson will explain, all that we want to do is to borrow some power from the United States during part of the year and return it later in the year, and we do not think the principles that come out of the Columbia River investigation should have any bearing on that unique position.

Senator MCKEEN: Does the B.C. Electric Company and Peace River Power have anything to do with the International Joint Commission?

Mr. FRERE: No.

Senator ASELTINE: Your company is not interested in the Peace River project?

Mr. FRERE: That is right, we are not interested.

I think I can conclude my submission by merely stating that we submit that the tax or the export duty proposed by Bill C-47 should be deleted or, in the alternative, that it should be left as a matter of regulation. As was said by the Chairman this morning, when a tax is put into a statute there is no opportunity left for flexibility, and as you can see there are these various situations which arise in our case, as pointed out by Mr. Robertson this morning, for instance, in connection with firming up our power supply. We think that

we should be left free to approach the Government and say, "You have a regulation to impose a tax, but here is our situation . . . gas is going out of the country and there is no tax on it and we would like to interchange power with the United States, and we think it unfair to pay a tax on power."

Senator HAIG: Do you think we, as legislators, ought to take a tax off or put a tax on? Should not the whole of Parliament do that?

Mr. FRERE: I would suggest that this committee recommend to the Senate that this tax be taken off.

Senator HAIG: But we are not elected to do that.

Mr. FRERE: If that is not possible, we would submit that the tax should at least be left in the form of a regulation so that when this situation does arise representations can be made to the Government to have some exemption or abatement of the duty.

Senator MACDONALD: You think it is more flexible the way it is at the present time?

Mr. FRERE: Definitely.

Senator MACDONALD: That means the Government can lower the tax this month and later on raise it.

Mr. FRERE: That is correct.

Senator MACDONALD: Just moving the tax around like pawns on a chess board.

The CHAIRMAN: Or on a checkerboard.

Senator CROLL: Mr. Frere, it just occurs to me, to follow you through. You know that there is a tax payable by the automobile manufacturers and last year they had a very bad year, as they did the year before. Would they therefore be justified in coming before the Government and would the Government be justified in removing some portion of the tax because the automobile business was bad?

Mr. FRERE: I would be inclined to answer that question, yes, particularly as a consumer.

Senator CROLL: My question was, would the Government be justified in making these variations in tax from time to time, because the industry happens to be in a bad condition?

The CHAIRMAN: That is a matter of Government policy.

Senator CROLL: That is what the witness was talking about.

The CHAIRMAN: The witness says the situation should be such that that could be done.

Mr. FRERE: I would like to call on Mr. Anderson to give you a better idea of this question of interchange.

The CHAIRMAN: Mr. Anderson is President and General Manager of the West Kootenay Light and Power Company.

Mr. R. C. ANDERSON (*President and General Manager, West Kootenay Light and Power Company*): Gentlemen, the interchange of power between electrical systems is usually necessary because of a deficiency in water supply in one system, that is a seasonal deficiency, and at the same time a surplus in the other system. Later in the season that condition is reversed. So, both systems are in the position of borrowing at one stage of the season and returning at another stage. So that in a 12-month period it is balanced off. We are interested in this interchange arrangement. We have a rather unique position. We are on the Pend d'Oreille River, which rises in the United States and

flows for only 14 miles in Canada; it parallels the border within a few hundred yards, or within a quarter of a mile at the most in that 14 miles. In that stretch it falls 400 feet, which makes for two excellent sites.

The Waneta development was built in 1952 at the lower site, and developed 210 feet of head. There is no possibility of storage in that 14 miles, as it cuts through a rock canyon.

During recent years the United States interests have built storage upstream amounting in total with their last development to 5 million-acre feet. The Americans built these storages for their own economic use, principally to supply the Grand Coulee dam on the Columbia River when the flow is low on the main Columbia River. The Americans operate these storages entirely for their own interests, and it is quite correct, from our point of view. We have no complaint. Our river is on the Canadian side, and we have to take the water as it comes to us. That flow fluctuates very greatly in relation to the requirements for Coulee. So, at times we have a very low flow.

With the development of the iron and steel industry at Kimberley our surplus power is going to be taken up. We may shortly have to proceed with the installation of more units. Under present conditions it would not be economic to put in the third and fourth units at Waneta because for three or four months of the year, August and September, and the latter part of February, March and part of April, the flow is such we would have to shut the units down. We would have no guarantee of power on which to operate the industry.

The way to get around that situation, at the time the flow is restricted in August, September and at other times, when there is a surplus of power on the Columbia River in the United States and they would be restricting the flow on the Pend d'Oreille River, we would borrow power and return it later. So, to develop the Canadian resources in Canada, to create another 240,000 horsepower at this site, we must interconnect to borrow power at times of low flow, and when higher flows are released in the winter we would return the power. Otherwise there is no way we can generate firm power except by arrangement with another system that has surplus power when we are restricted.

The proposal is simply to borrow power and repay it. We think it is inequitable to impose a tax on the export of power when we bring it in initially. We would import it initially when there is a shortage in the early part of the year, and we would return the borrowed kilowatt hours. With our development we would be faced with this tax perpetually, unless there is some way of explaining the conditions, under the regulations, to the Government.

To give you an idea of the kilowatt hours involved, in the next two units we put in at Waneta, in the average yearly period we would import in the order of 215 million kilowatt hours and export the same amount, and balance off on a 12-month period.

If we develop a second site it will probably be two and a half times that amount, and we would have a surplus of power for export. We would be faced with a tax on the sale of that export power.

The problem is that in order to justify the building of these large plants, at a cost of $50 million or $100 million, on an economic basis, we have to have some means of exporting power. The imposition of tax on electricity is discriminatory at the present time; it is simply an added cost to the power, placed against Canadian production.

Senator THORVALDSON: Your situation is really identical to that described by Mr. Robertson?

Mr. ANDERSON: Yes, except we are on an international stream, and do not have control of the flow.

Senator THORVALDSON: How long have you been involved in this interchange?

Mr. ANDERSON: We have not yet been involved in the interchange, because we have not been allowed to put in an interconnection.

Senator THORVALDSON: You are just coming into that period now?

Mr. ANDERSON: We are just coming into that period now, and we want to know where we are headed.

Senator MACDONALD: Your company is West Kootenay Light and Power Company?

Mr. ANDERSON: The West Kootenay Light and Power Company.

Senator MACDONALD: Do you supply the Consolidated Mining and Smelting Company?

Mr. ANDERSON: West Kootenay is a public utility, and has its own plant. Consolidated has five plants of its own, which West Kootenay operates as an agent for them.

Senator MACDONALD: Do these plants belonging to the Consolidated Mining and Smelting Company supply power to any of the mines and industries in that neighbourhood?

Mr. ANDERSON: No. West Kootenay supplies the other industries.

Senator THORVALDSON: When your associate a few minutes ago was telling us that representations had been made to the Government from time to time within the past five years, representations in that regard have simply been requests that the tax be removed, and did not invlove this exchange situation?

Mr. ANDERSON: Initially we applied to export power. We built the Waneta plant, and we had surplus for about five years. We endeavoured to make some arrangement to export it. We had tentatively completed agreements in the United States to export power, but we had to build the interconnecting facilities, which we were not allowed to do. We could get no permit to build those facilities; so, we have not been permitted to export power, and we have had a loss in revenue of some $2 million a year, of which the federal Government would have received about 50 per cent. Interchange would have been involved at that time if we had been allowed to export power, but not to the same extent.

Senator THORVALDSON: That did not involve a tax problem; it involved term of export.

Mr. ANDERSON: Yes.

Senator MACDONALD: Do you supply power to any mines or industries on the American side?

Mr. ANDERSON: No.

Senator MCDONALD (*Kings*): How does the price of power compare between the United States and Canada?

Mr. ANDERSON: Well, the Bonneville Power price is the cheapest of any I know anywhere. I think it is in the order of 2½ mills, and I do not think there is any price in Canada that low.

Senator THORVALDSON: The Bonneville project is a United States public development, built by public funds.

Mr. ANDERSON: Yes, completed in 1938.

Senator MCDONALD: (*Kings*): What is the price of electric current in Oregon and Washington?

Mr. ANDERSON: That is the Bonneville system. For sale of power in large blocks I think it is 2½ mills.

Senator LEONARD: Mr. Anderson, price does not enter into it? Your arrangement for power is in kilowatt hours?

Mr. ANDERSON: Yes.

Senator HUGESSEN: I suppose the price you can charge for your power is regulated by the British Columbia Power Commission.

Mr. ANDERSON: Yes, that is true.

Senator KINLEY: Is the American source of power on an international stream, too?

Mr. ANDERSON: Yes.

Senator KINLEY: And yours is an international stream?

Mr. ANDERSON: Yes, it discharges into the Columbia on the Canadian side.

Senator THORVALDSON: Mr. Anderson, would you not agree that your problem is really one that requires to be, and no doubt will be, dealt with thoroughly by the new energy board? That is what it is for. It is part of the whole export of power situation that we are involved with?

Mr. ANDERSON: Yes, we would like them to deal by regulation, too, in the export of power.

Senator THORVALDSON: But it is all part of it, and this is simply an incidental.

Mr. ANDERSON: We do not think it is very incidental. It amounts to quite a percentage.

Senator MACDONALD: Your representations are directly connected to the taxation problem; is that correct?

Mr. ANDERSON: Yes.

The CHAIRMAN: Senator Thorvaldson was saying something about the functions of the new board as and when it is set up. Were you suggesting that the new board when it was set up might entertain, and have any authority to deal with, problems such as the problem of whether the tax should be lowered or dropped? They would not have any authority in that respect.

Senator THORVALDSON: No. I do not think there is any doubt that the national energy board will consider this problem of taxation. In fact, when the bill comes down you will see that there are advisory functions in regard to all these matters, and I have no doubt that this will be one of the things that it will deal with very thoroughly. I will advise as to the tax angle as well as to anything else.

The CHAIRMAN: Well, we will remember what you said as and when the bill comes. It is a matter of record.

Mr. FRERE: Mr. Chairman, I have just one further word on this matter on what application was made to the Government for an export permit. We would not want any unjust criticism of either department officials, or the previous Government or the present Government, in connection with the application, so I had better explain again what transpired. We made the application for an export permit. As I mentioned it was rejected on the basis that there were discussions going on in regard to the Columbia River Basin. At the time we made the application we did ask for the departments interpretation of the word "export"—did it include interchange—and in the interpretation given quite informally, we were advised that it would. We never pursued that subject further because from these informal discussions we had, about how things were going in connection with the Columbia River Basin, and our chances of getting the export permit, we did not think there was any reason for doing so.

We do feel, as I mentioned before, that actually what happens in connection with the Columbia River should not prejudice our case, but I hope I have clarified for the record what happened precisely in connection with that application.

The CHAIRMAN: We have Mr. McDonald here on behalf of the Ontario-Hydro. Would you care to come forward, Mr. McDonald?

Senator HAIG: Do they want their money cut down. or increased?

Senator ASELTINE: Give him a chance.

Senator CAMPBELL: In order to relieve Senator Haig's mind I might ask Mr. McDonald the first question. A statement was made here about $1 million in revenue being received by the federal treasury as a result of this tax—

The CHAIRMAN: That is in a year.

Senator CAMPBELL: Yes. What percentage of that tax would be paid by the province of Ontario?

Mr. LORNE MCDONALD *Q.C., (General Counsel, Hydro-Electric Power Commission of Ontario)*: In 1958, Senator Campbell, we paid something like $980,000.

Senator CAMPBELL: You can see who is paying the tax.

Senator HAIG: His statement is incorrect, because the rest of Canada paid more than $20,000.

Mr. MCDONALD: Our figure was $980,000 and some odd. I do not know what the total figure was.

Senator HAIG: Then, the total tax was more than $1 million. Let us settle that. How much did Manitoba pay?

Mr. MCDONALD: I have no idea.

Senator HAIG: How much did Quebec pay?

Mr. MCDONALD: I do not know.

Senator HAIG: How much did British Columbia pay?

Mr. MCDONALD: I do not know.

Senator HAIG: I will suggest to you that if you are correct I will vote any way you want me to on this bill, and if I am correct you have got to vote the way I tell you.

The CHAIRMAN: Order, please. Will you go ahead, Mr. McDonald?

Mr. MCDONALD: Mr. Chairman and gentlemen, my terms of reference to attend this meeting were simply to observe and to be a spectator, and perhaps I should plead the fifth amendment to begin with, but I think it might be desirable to say a few words, and I am happy that you have asked me to do so.

I would like to proceed on two assumptions. One is that it is rather obviously not a function of this committee to determine the propriety or impropriety of this tax. The other assumption is that it strikes me the solution that we arrived at should be the most flexible solution to suit all of the circumstances.

Ontario-Hydro has one real objection to this tax, and I might illustrate it this way; we are interconnected with the Detroit Edison Company at Detroit, and again at Port Huron and Sarnia. We have lines running from Windsor to Sarnia, and the Detroit Edison has lines from Detroit to Port Huron. We are also interconnected across the river at each point. In accordance with the general characteristics of electricity, and quite beyond anyone's control, if we are sending power from our thermal station in Windsor to the Sarnia area,

and if our lines on the Canadian side are loaded, that power will flow into Detroit and up the American side and back in at Sarnia, and we pay duty on every kilowatt hour of that energy.

By the same token the Americans have the same problem. If their lines are loaded their power from Detroit to Port Huron will flow across into Canada and back in at Sarnia, and we pay tax on the American power going back into Port Huron.

That is a situation which we feel is, perhaps by way of understatement, not entirely fair, but our objection is to the method of the imposition of tax. We have lived with this tax now since 1925, I think—or, perhaps it is 1927—and we have paid substantial sums of money to the federal Government in export duty, but, as I say, I do not think that this is the time or the opportunity to discuss the propriety of that tax. It occurs to me there may be a solution to the problem that at least for the time being might be satisfactory to everyone. This committee is called upon to examine and report upon the sections of the bill and, as I understand the procedure, the committee has the right to offer amendments to the various sections that it is reporting. I think it might be a solution, and I say so very humbly and for what it is worth, that section 2 be reported with the following amendment. Section 8 of Part II of the export duty on electricity reads:

> Every person who exports electric power from Canada by a line of wire or other conductor shall pay an export duty of three one-hundredths of one cent. . .

My suggestion is that the word "of" be deleted and that the words "not exceeding" be inserted. I suggest this because it then produces a bill which is exactly the same in principle as the one that is being repealed, which now provides that an export duty not exceeding $10 per horse power per annum will be charged. I say humbly and respectfully that I believe it is within the right and jurisdiction of this committee to do this.

Senator ASELTINE: Isn't that what the section means as it reads now?

Senator BRUNT: No.

The CHAIRMAN: No, it is a specific tax.

Senator BRUNT: Of so much.

Mr. MCDONALD: Yes, it is a specific tax of so much. The part that is being repealed provides for a tax not exceeding so much, and if is my suggestion that it would be helpful and flexible and perhaps, at least for the time being, satisfactory to all the power interests from the point of view of export if the same principle were followed in this bill and it were made to read "a tax not exceeding".

Senator LEONARD: You would have to add a further provision that the actual amount less than one-third be set by order in council.

Mr. MCDONALD: As the bill stands I think it probably would result in the precise tax being fixed by order in council under the next section.

Senator HUGESSEN: Yes.

The CHAIRMAN: There would have to be more words added.

Mr. MCDONALD: There might possibly be some additional words, but the tax is three-tenths of a mill now and there would be no difficulty in leaving the tax at that figure and, at the same time, provide flexibility, which I think everybody desires.

Senator BRUNT: Having it done by order in council.

Senator DAVIES: Has it ever exceeded that amount?

Mr. McDONALD: No, sir. It has never exceeded three-tenths of a mill, as far as I know.

Senator CROLL: Yes, that was the evidence.

Senator HAIG: Suppose we amend this bill in the way you wish and the House of Commons does not accept it. What happens?

Mr. McDONALD: That is a question beyond my ability to answer.

Senator HAIG: The old law stands.

Mr. McDONALD: No.

Senator HAIG: Yes. They don't have to accept it.

Senator MACDONALD: If this suggestion is adopted here and is not accepted by the House of Commons, then they would accept the clause in the present bill and not in the act.

Senator HAIG: They don't have to.

Senator MACDONALD: We would have to come to an agreement.

Senator HAIG: Suppose the Government didn't want to do it.

Senator MACDONALD: Then they strike it out.

The CHAIRMAN: Wait a minute. We are getting far afield.

Senator THORVALDSON: Had we not better hear this witness?

The CHAIRMAN: Yes.

Mr. McDONALD: On the subject of what governments might want to do, I might also add that we have been making representations for some years on this matter of power flowing back and forth across the Detroit River, but without any success.

Senator CROLL: You would not want to win the first battle here, would you?

Senator BRUNT: He would be very happy to win it anywhere.

Senator CAMPBELL: Have you ever attempted to draft a definition of the word "export" to relieve you of the problem that exists in the Windsor-Detroit area?

Mr. McDONALD: No, I have not tackled that. I feel myself the determination of whether or not power is an export is more a matter of common sense than a definition in any statute.

Senator CAMPBELL: But they have not gone along with that.

Mr. McDONALD: No.

Senator CROLL: I have heard a lot of talk about the exchange of power and what your situation is, and so on, but the meters are put there to keep you honest and that is the reason for it. Let's face it.

Senator BRUNT: I would hate to think the Ontario Hydro is dishonest.

Mr. McDONALD: It cost a substantial amount of money to install the necessary equipment to prevent that type of thing, and we are inter-connected with Manitoba, Michigan, New York Mohawk and the New York Power Authority and Quebec, we are all in a great composite grill of power and it flows anywhere. Power will flow actually into our Niagara area from the St. Lawrence through New York state. We do what is called "wheeling of power" for other authorities on the same basis. But that is power which is theirs and we should not have to pay somebody to put it out.

Senator CROLL: The trouble is that there is no way for the Government to know what power is theirs and what power is yours, so they put a meter on.

Mr. McDONALD: Yes there is. It can be measured very accurately. I can tell you this, Senator Croll, that in a month something like 23 to 25 million kilowatt hours flow across from Windsor to Sarnia via the United States, and

approximately the same amount with a net difference of something under a million kilowatt hours flows the other way. The difference may be a million one way one month and a million the other way the next month, but there is something like 25 million kilowatt hours per month that take this escape route.

Senator DAVIES: I know that you do not represent private companies, Mr. McDonald, but the private companies were represented before the committee this morning. In addition to paying a tax on the export of power do they also pay a corporation tax?

The CHAIRMAN: Oh, yes.

Senator MCDONALD: It is close to 3 o'clock.

The CHAIRMAN: I suggest we adjourn to meet when the Senate rises later this afternoon. Mr. Lemieux is here and I think we should make an effort to hear all the witnesses today.

Mr. LEMIEUX: I am from the Quebec Hydro and I do not have any special presentation to make. I am merely here to represent the interests of our Commission.

Senator BRUNT: Would you not like to address the committee? We would like to hear from you.

Senator MACDONALD: We would like to hear what your interest is.

Mr. LEMIEUX: As you wish.

The CHAIRMAN: We will hear from you later this afternoon. We will adjourn now.

The committee thereupon adjourned until the Senate rises.

—At 4.40 the committee resumed.

The CHAIRMAN: When we adjourned we were about to hear a few remarks from Mr. Lemieux. I would now ask Mr. Lemieux to come forward.

Mr. Lemieux, we would be interested in hearing whatever you would like to tell us in connection with the section we are now considering. But first, may I ask you whether you have the figures as to how much tax Quebec paid in 1958?

Mr. Edmond LEMIEUX (*Quebec Hydro, Comptroller of the Quebec Hydro*): In 1958 the Quebec Hydro paid $140,000.

Senator HAIG: May I ask whom this gentleman represents?

The CHAIRMAN: He represents the Quebec Hydro Commission, with headquarters at Montreal.

Senator REID: Have you any connection with the Ontario Hydro?

Mr. LEMIEUX: We are interconnected with the Ontario Hydro.

Senator HAIG: Where is the gentleman who said they paid $1 million, and somebody said he paid $980,000; so I said that leaves $20,000.

Senator CROLL: He didn't say that.

Senator BRUNT: No, he didn't say that at all.

Senator HAIG: That is what I took down.

Senator CROLL: No; Mr. Robertson said he thought it was $1 million; but Mr. McDonald said, "But we pay $980,000"; and Mr. Robertson may have been wrong, not Mr. McDonald.

Mr. LEMIEUX: I believe, sir, the actual amount collected in the year 1958, and I believe it is the fiscal year, was about one million four not $1 million.

Senator HAIG: That is more like it.

Mr. LEMIEUX: Mr. Chairman, and gentlemen, I have not been delegated to give the views of our Commission, but to be an observer, and to answer such questions as I might be able to answer.

In connection with the exchange of power that was described this morning, someone might have compared it to the advertisement that occurred in a newspaper, in the classified section, about a young man who was paid on the first of the month, and broke by the 15th, and would like to get in touch with a young man who was paid on the 15th and broke on the 30th. The situation with respect to the exchange of power is very similar to that.

Senator MACDONALD: Is there any exchange of power between your company in Quebec and the United States?

Mr. LEMIEUX: No, there is no direct exchange of power between our company. We sell to the Cote Rapids Commission, a subsidiary of the Aluminum Company of America, that is a direct sale. We deliver much power to the Ontario Hydro, some of it for their own use, and some of which, I understand, they re-sell to Detroit Edison.

Senator MACDONALD: There is no exchange of power?

Mr. LEMIEUX: There is no direct exchange between Quebec Hydro and American Utilities.

The CHAIRMAN: Any other questions? Thank you, Mr. Lemieux.

I think at this time we should hear whatever answer the department wishes to make on this point. Who is going to be the spokesman—Mr. Irwin?

Mr. IRWIN: Mr. Chairman, all I think I should say is to point out, first of all, that the Minister of Finance is counting on the revenue from this tax in his budgetary planning this year. That may not be a point at issue.

The second point I should draw to your attention is that in speaking on this proposal—

Senator MACDONALD: May I interrupt for a moment? This bill is not founded upon a ways and means resolution is it?

Senator CROLL: No.

Mr. IRWIN: This bill follows a budget resolution.

Senator MACDONALD: Of the ways and means committee?

Mr. IRWIN: Of the House of Commons committee, yes sir.

The CHAIRMAN: Is this particular item in the resolution?

Senator MACDONALD: I would be very much surprised if it were.

Mr. IRWIN: A resolution preceding this bill was before the House of Commons Ways and Means Committee. There was no resolution on this particular point.

The CHAIRMAN: There was no resolution on this point; it is not a new tax.

Mr. IRWIN: There was no resolution because it was not a new tax; there was no change in the tax.

Now, in speaking on this point, the Minister of Finance made it clear that he did not approve of the way in which this tax is now imposed, and he said that he did not approve of a tax imposed by Order in Council.

Senator BRUNT: Would you read what he said?

Mr. IRWIN: I will now read what the Minister of Finance said, as appears in the House of Commons Hansard for May 19, 1959, at page 3820:

> Section 4 of this act of 1955 which will now be repealed if this clause is adopted by the committee gave the Governor in Council the power to make regulations imposing export duties. This is the language of the clause:
>
> 4. The Governor in Council may make regulations imposing export duties, not exceeding ten dollars per horse power per annum, upon power exported from Canada and respecting the manner in which such duties, shall be calculated and paid.

The Minister of Finance then went on to say:

> The feature of that existing law, which I must say I could not approve, is that it gives power to the Governor in Council subject to a ceiling to establish the rate of the tax.

Senator MACDONALD: Will you read the next two paragraphs?

Mr. IRWIN: (Continuing):

> It happens that the rate of tax on the export of power is 3/100 of one per cent per kilowatt hour. What we are doing is to make that a statutory tax and to remove any power to establish a tax by order in council. I hope that change will commend itself to the committee.

The CHAIRMAN: Anything further? Mr. Irwin says he has nothing to add to this statement. Are there any questions?

Senator CRERAR: I was rather curious about one thing. The minister made an observation about a change that he hoped would commend itself to the committee. I should like to hear more about that.

Mr. IRWIN: There would be no change in the revenue. The point I wish to make, sir, is that the minister had counted upon this tax continuing in force.

Senator CRERAR: But he could count on just as much revenue if this legislation were not passed?

Mr. IRWIN: Yes.

Senator HAIG: He wants it fixed; he does not want it touched by order in council at all. He wants the law to say what it is.

Senator MACDONALD: In fact, he could get more tax under the former law.

Senator CRERAR: The only logic of that argument is that if it is in a statute it is irrevocable. Otherwise, the Government might weaken and make a concession.

Senator HAIG: I think the general feeling of our house, at least, it is my feeling, and always has been, that we like the taxes put on the statutes themselves, and not the Government have the right to fix the taxes. We think that is the better policy. If it is in the statute we know then what it says. I think the public would rather see it as a matter of legislation actually in the statute books, where they can find it.

Senator BRUNT: This tax was put on by statute, and all the order in council does is give you the right to change it.

Senator CROLL: While we are making observations, and before you adjourn, Mr. Chairman, there is one observation I should like to make. If ever there was a mandate for a government to do what it is proposing to do now, this Government has it. They have been running up and down the country talking about improper uses of orders in council and stating that they should be statutory, and Parliament should put them on the statutes. This Government has a mandate, and I think we should be very careful before we interfere with that.

Senator MACDONALD: Why didn't they follow that course in the Energy bill, then?

The CHAIRMAN: Just a minute, now. We do not settle anything by argument, and if there are no further questions from this witness, then that concludes the evidence on this particular section. I understand that various senators have engagements this evening, and I am willing to entertain a motion to adjourn until 10.30 tomorrow morning.

Senator BRUNT: Agreed.

—Whereupon the committee adjourned until Thursday, June 4, 1959, at 10.30 a.m.

—Upon resuming Thursday, June 4, at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Order, please. We will resume our consideration of Bill C-47. We had heard all the witnesses who wished to be heard in connection with the bill dealing with export duty on electricity. Is the committee ready to deal with this section now before we proceed to the next section of the bill?

Some SENATORS: Carried.

Senator BRUNT: No, it is not carried. I want to move an amendment. I move that section 2 be struck out, deleted from the bill, so that the matter of export duty will go back under section 4 of the Exportation of Power and Fluids and Importation of Gas Act the way it is at the present time.

The CHAIRMAN: You have an amendment proposed in connection with clause 2 of the bill, Part II. It will be seen that clause 2 says:

> The said act is further amended by adding thereto, immediately after Part I thereof, the following heading and sections:

Senator MACDONALD: I understand the motion is a negative motion; it does not carry. If it does not carry, then the former section stands.

Senator BRUNT: If that is what you desire, I am content.

Senator ISNOR: I do not think that is quite correct, Mr. Chairman, although I do not know the legal angle of it. It would have no effect, would it? We have a bill, I understand, which is being repealed?

The CHAIRMAN: No.

Senator DAVIES: I would like to hear the reasons for this amendment.

The CHAIRMAN: The only suggested amendment is that we strike out this section. However, in striking out the section you can accomplish the same result by voting against this section when I say, "Shall this section carry?" If you do not want it to carry, you vote against it; that is the effect of striking out the section.

Senator CROLL: Senator Davies asked for the reasons for proposing the amendment.

Senator BRUNT: Well, at the present time the rate of export duty has been fixed by statute, the maximum rate, and the Governor in Council has power to vary this rate as it sees fit. I feel that if this section carries that power will be lost to the Governor in Council and rates can only be changed by statute, which I think puts the Government in a strait-jacket, and that unless Parliament is meeting you cannot do anything about adjusting rates of duty.

Senator MACDONALD: This is not rates; this is a tax.

Senator BRUNT: All right, the rate of tax, then.

The CHAIRMAN: Just to refresh my own memory, if I recall correctly, the evidence of those who appeared for the company yesterday was that they did have a flexibility under the present statute, and to continue to have that

flexibility between now and the end of the year was important to them, because of reports and surveys and decisions which they had to make as to whether they were going ahead with this project. That is the reason they gave. And they said that under the present act there is a flexibility, that is, that "if we want to try to bargain down on the rate for the purposes of going ahead with this deal, at least we can go to the Government and bargain; whereas if it goes into the Excise Tax Act it will be at a fixed rate, and we cannot bargain with the Government".

Senator GOLDING: Does it not amount to this, that what you are trying to do is to have Government by order in council rather than by Parliament?

Senator BRUNT: No.

The CHAIRMAN: You are not suggesting that is what I was trying to do, are you, senator?

Senator GOLDING: No, but that is actually what would be accomplished. I heard the discussion yesterday, and there was a good deal of merit in the proposals that were made, but all those proposals could be dealt with by Parliament, and that is where they should be dealt with.

Senator REID: Mr. Chairman, I would like to ask a question to bring out some information. Does this propose a tax on electricity exported from Canada even though there is no monetary compensation at all for the expenditure of the electricity. Yesterday I heard one of the witnesses from British Columbia saying that this is a quid pro quo, that they pay a tax on electricity exported from British Columbia but there is no credit for the electricity retained or when it comes back.

Senator ASELTINE: That is not what this legislation is dealing with.

The CHAIRMAN: Let us clarify this: Yes, Senator Reid, the witnesses yesterday gave that evidence and we listened to it. I did point out at the time that our immediate concern in consideration of this amendment was confined to the point as to whether or not we should pass or reject section 2 which provides for this tax. We are not called on at this time to decide whether or not there should be an export tax, there is one—all we are called on to do is to decide whether we are going to permit a transfer of it from one statute to another with the incidence that will follow.

Senator HAIG: This bill has come to us with the recommendation of the Government, and it has passed the House of Commons, so it comes here with their recommendation too. This, Mr. Chairman, is in line with my idea of what ought to be done in any event. There may be certain occasions arise, for instance, where we are negotiating with foreign powers and the Government needs to have the authority in their own hands to carry out these negotiations, but I do not think that the fixing of rates of taxation is one of the things that the Government should have in their own hands. I think Parliament should fix the rate.

The CHAIRMAN: Well, Senator Haig, in 1955 and earlier than that Parliament did the thing you are now critizing, and you helped to do it.

Senator HAIG: I know, but that does not make it right now.

The CHAIRMAN: How do I know it is right now.

Senator HAIG: I am not saying the Government is right. What I am saying is that in my judgment I do not think I can vote to give the Government power to determine a tax. I am not asking anybody else to vote that way, and I am not saying that the Government is right or wrong. The Government has asked us to do this, whether it is right or wrong.

Senator LAMBERT: Mr. Chairman, as was pointed out yesterday, and according to the way I understand this legislation, Part 2, so-called, is a duplication of the provisions already in the Exportation of Power Act.

The CHAIRMAN: That is right.

Senator LAMBERT: Now that condition has subsisted for a long time, and in its present state it gives full opportunity to petitioners, under the Exportation of Power Act, to have dealings with the officials when the occasion arises. The present arrangement gives them more flexibility in dealing with their case, and to my way of thinking it enables enterprising people in this country to promote the development of Canada in a legitimate way.

Senator BRUNT: Hear, hear.

Senator LAMBERT: And I think that is the real issue in connection with this legislation. I have no interest one way or the other as to how the revenue is raised, although I think it is important that it should be raised, but this legislation will not alter that fact one iota. I think that Parliament is in duty bound to give full consideration to petitioners particularly if they represent what you might call a minority interest in this country, and this is distinctly, coming from the province of British Columbia, with the enterprise that is being reflected in this petition, a minority interest in relation to the rest of Canada and for that reason I would urge that the duplication be eliminated and that this Part 2 be removed from the bill.

Senator HUGESSEN: Mr. Chairman, I listened to the evidence of the witnesses very carefully yesterday and it seemed to me that their primary concern was not really so much with this bill as in laying a foundation in the future for a change of policy by the Government and Parliament in which this export tax on electricity can be eliminated, and I thought they made a very strong case for that. That of course is not what we are primarily dealing with in this bill.

Their second point was that if you eliminate this paragraph in the bill, and go back to the old act, there will be some flexibility to make representation to the Government. That may be true in a sense, but I would remind the committee of the question I asked one of the Government witnesses right at the beginning of yesterday's proceedings: had there ever been an exception granted to anybody from this rate of tax. The witness said there had not.

From what the witnesses from the various power companies said, it seems perfectly clear that at the moment the Government is not disposed to make any dispensation whatsoever. I would think that the best thing for us to do would be to put this section through. I quite agree with Senator Haig, that it should be in the taxing act. Then next year, or the year after, whenever the Government gets around to determining policy on the general question of whether there should be an export tax on electricity—and for myself I think it is a bad tax—then we can amend the Excise and remove this provision.

Senator HAIG: Hear, hear.

Senator HUGESSEN: On those grounds I would be disposed to vote against the amendment, but I think we have been given the ground work for something which we have to consider very carefully.

Senator CROLL: Mr. Chairman, I agree with the observations made by Senator Hugessen. There is, however, one thing that troubles me about this bill in addition to what has already been said by Senator Hugessen and Senator Golding. I am not going to repeat what I said yesterday, but I think it very important for this committee to know that no approaches were made to the Government before this bill was passed requesting them to retain that alleged flexibility. The approach is now being made to us after the House of Commons has passed the bill and the Government approved it. If an approach had been made and the matter had been considered, that would have put a different light on it. But as it is, Parliament has never had an opportunity to consider that approach, recently, in any event. For that reason I think it is hazardous on our part to interfere with this bill at this time.

Senator MACDONALD: Mr. Chairman, I would like to state my position, and it is my personal position only.

In the first instance, I do not put any strength in the argument advanced by Senator Haig, that this bill has passed the House of Commons and the implication is therefore that we should accept it. I think we should review this bill very carefully, as we should every bill that passes the other house.

Senator Haig also suggested that because it is a Government bill it has been approved by the Government, therefore we should accept it. I don't take that stand. I think we should review any and all bills, whether or not they have been approved by the Government. It is not likely any bills will come here that are not approved by the Government.

So, in my opinion this bill stands like any other bill that comes before us, after passing the House of Commons, and we must review it.

I listened to the evidence given yesterday, and I thought it was very well presented.

I was convinced that the tax is too high, and that something should be done about it. I think the witnesses put that quite clearly. We may only have one side of the question, but at least, in looking at their side of it it appears that the tax is excessive, and something should be done about it.

But, Mr. Chairman, this committee, as you have stated, has no power to reduce the tax. We would not assume that power. You may say we have the power, but I do not think a committee of the Senate would assume the responsibility of reducing it, and the proposal in this bill does not reduce the tax. The others who have spoken here have emphasized—and I do not need the repeat it—that the taxing power should remain in Parliament and not in the hands of the Government. It is all very well to say it has been done in the past. It is quite true that it has been done in the past, and I regret it. It has been done in the past, but apart from this bill I know of no instance where it has been done in the Excise Tax Act. There may be other instances, but I cannot think of them. I think that this is the only item in the Excise Tax Act that can be varied by the Governor General in Council.

Now, there may have been a reason for it originally, but I, personally can see no reason for it now. I can understand the necessity of leaving the power within the executive if the matter had to be decided suddenly, but this matter has been under consideration, apparently, by the Government for years—the previous Government and this Government—and I cannot conceive of a situation arising where a decision would have to be taken when Parliament was not sitting, and I see no special circumstances in connection with the exportation of electricity to warrant giving the executive powers that should rest entirely with Parliament.

That is the reason why I cannot support the proposal that we should go back to the old powers in the act. I think that would be a retrograde step. I feel the taxing powers should be restored to Parliament wherever they are in the hands of the executive, and can be restored to Parliament. If we can take that step, then, I think we should take it.

I might say I was quite impressed by the evidence of the witness, Mr. Robertson. I do not want to single him out because the other witnesses were very good, but evidence was given by him yesterday, and I think he will fully understand that anything we do today will not affect the tax whatsoever. He did suggest that it might be easier—I do not know whether these were the words he used—for the cabinet to make the change than for Parliament to do so. I could not understand why he said that. I think I asked him if it would be easier to influence the cabinet than Parliament. I am not sure that I said that, but that should not be the situation.

I am forced to come back to a stand, and which I will have to take in connection with other bills, that where power is sought to be given to the cabinet it should not be so given. It should rest in Parliament, and I will resist any such legislation. I repeat that I think the tax is too high, but we cannot do anything about that, and I think taking the power from the executive and restoring it to Parliament is a step in the right direction.

Senator BRUNT: Just to continue the argument of Senator Macdonald that Parliament should be the only body which is allowed to change the rates of duty, we know that is not the case today. Hearings are held before the Tariff Board and duties are adjusted all the time by order in council.

Senator MACDONALD: Oh no. I doubt that very much.

The CHAIRMAN: Oh, yes. That is correct.

Senator MACDONALD: They can reduce but not increase.

The CHAIRMAN: Yes.

Senator BRUNT: That is done to meet changing conditions in Canada all the time, and I think we should leave this and go back to the old section so that the Government can meet changing conditions as they arise. This tax was imposed by statute. Nobody is arguing that it was ever imposed by order in council. All that I am arguing is that we should leave it in a very flexible state so that it can be changed to meet any emergency which may arise in connection with the development of Canada, and that is far more important to me than whether the change takes place by statute or by order in council.

Senator MCDONALD (*Kings*): There is one thing bothering me. From the evidence we heard yesterday I was led to believe that putting this in the statute might interfere somewhat with progress. In other words, if it is under regulation there is a chance you might be able 12 months of the year to go to the Government, but if it is in the statute you have not that option and therefore it might at a very critical time prevent progress.

Senator CRERAR: I was unavoidably late so might I ask whether there is an amendment before the committee?

The CHAIRMAN: No, there is not. We have decided that those who oppose the clause in the bill simply vote against it. I did not think, in the circumstances, I could accept an amendment.

Senator CRERAR: Very good. That clarifies the situation. Now, I disagree with the view put forward that it is desirable to make this change. I am opposed to the change and I am in favour of leaving the situation as it has been under the Exportation of Power and Fluids and Importation of Gas Act, which has prescribed a limitation at the upper level beyond which the Governor in Council cannot go but can reduce it.

Let me say first that so far as the amount set here is concerned, I disagree with Senator Macdonald that we have not the power to reduce it. We cannot increase it but ways and means are not so sacrosanct to a committee of the Senate that the committee cannot reduce a tax and, in fact, has done it before. It has removed from ways and means proposals that were advanced by the Government and through the House of Commons.

Senator MACDONALD: May I just interrupt to correct the impression you have gathered from my remarks? I said that whether or not we had the power to reduce it, it was undesirable.

Senator CRERAR: I beg your pardon. I misunderstood you. Now, as to the merits of the case. I am as much opposed to order in council administration as anybody, but Parliament legislated in this measure, in the existing act, when it said that you cannot impose a tax above a certain level. At the

same time it allowed flexibility and, notwithstanding what my honourable colleague from Toronto-Spadina (Hon. Mr. Croll) has said, that is the most important thing in this measure. There may be situations arise that we cannot foresee and Parliament cannot foresee, and we must trust to the wisdom of the administration to deal with that when the problem arises. Whether the tax is too high or too low or should be eliminated is not a matter for discussion at the moment, but I maintain that it is infinitely better to leave the flexibility with the Governor in Council who has to accept the responsibility. If we make this change and embed this as a direct instruction in the law of the land as to the tax that shall be levied in all cases and in all circumstances, by that very act is carried the implication that that is the tax that is intended, and you remove the flexibility altogether. For that reason, Mr. Chairman, I am going to oppose this section when it comes to a vote.

The CHAIRMAN: Senator McKeen?

Senator MCKEEN: Mr. Chairman, there are several impressions that have been brought forward, and I think this should be clarified. In the first place, there is the impression that this is a British Columbia matter. Being a senator from British Columbia I would like that cleared up. This tax was not accepted, I think, by any company, in the sense that they were in a position to export power, up to the present time, to any great amount. The tax was paid, and they objected to it, but they did not object too strongly because there was not too much money involved. However, with the Beechwood project in New Brunswick now in a position that they are going to have to export power, and with the St. Lawrence Seaway starting, and the Ontario Hydro having the power to export, as well as the British Columbia Power Commission, through expansion in British Columbia, expecting to have to sell power to the American side, as well as the Peace River Power developing, which will no doubt have to export power, things are somewhat different. What Canada needs, in my opinion, is export business. What we need is American dollars. Now, if we are going to put a tax on one particular power project, which is electricity, is that reasonable, when we do not tax gas, oil, fish or minerals? Those things are all wasting assets, with the exception perhaps of fish—with due respect to Senator Reid, who has done so much to build up the fishing industry so that fish cannot be regarded as a wasting asset; but all the other projects exported from this country means that we are taking something out of the country. With electricity that is not so, as nothing is taken out; the water is there, and as long as it continues to run nothing is lost to the country. Why electricity is singled out to be taxed on export, I do not understand. It is the only product that is singled out for tax, with the possible exception of whiskey, which I believe has had a tax imposed upon it in the past few years. As shown by the witness who appeared from the Ontario Hydro, there is an interchange of power, and they have to pay $4,000 a month for nothing, because the power just goes back and forth. The West Kootenay Power is in a different position; they have power for two months in the year, and then they have to get power from the American side to keep the Consolidated Smelting and other projects out there going when the water is down. Two months later they can supply that power back. They do not buy it, they borrow it, and yet when they ship it out they have to pay tax on that power. Two months later when they bring that power in as exchange they do not get any credit or drawback on their taxes. No money changes hands at all.

I would like to support the view that the Government, under the new situation that arises, can export from New Brunswick, or from Ontario. In regard to Ontario, Quebec now exports through Ontario; and British Columbia will also export power. That is why I submit that this should be left as in the past. The Borden Commission has been appointed to inquire into this

whole subject, and in the meantime, I cannot see why we should put them in a strait-jacket now when we have not done it before. At least, this matter should be held up until such time as the Borden Commission on Energy makes its recommendations to the Government or to Parliament. For that reason, I think it should be left as in the past, though conditions have changed. Like Senator Macdonald, I am not in favour of Government by order in council, but in this case I think the situation is entirely different from others, in that this is a particular instance, where industries, as given by evidence yesterday, have made expenditures amounting to $2 billion, and if a change is made now these projects may be held up or abandoned altogether until something is done; and at this time we certainly need employment and power for industry in Canada, which we cannot afford to get by putting in large units which cannot be used in Canada for many years to come. We need part of that power right now, and in this way we can get it.

Senator KINLEY: Mr. Chairman, the engineer from Ontario who was here yesterday said that 90 per cent of this tax was paid by Ontario.

The CHAIRMAN: $980,000 out of about one million four.

Senator KINLEY: The way I look at this bill is that it is a revenue bill. We all agree that the Government needs money. If it needs money it has to go where money is available, and that is what it is doing.

The CHAIRMAN: No, this is not imposing a tax.

Senator KINLEY: No, I know, but is it not opening the door? Now, there is an Energy Board being appointed, and it seems to me they have a function which might have something to do with this.

The CHAIRMAN: I can tell you, senator, if you will allow me, that under the National Energy Board Act, which has passed the House of Commons, there is a provision in that act for the repeal of this exportation of power statute, except section 4, which is the taxing section in the statute; and they continue that.

Senator KINLEY: The intention of the Government in this matter is pretty strong, is it not? They need money, and they put this in the act deliberately. Upon my word, I do not know enough about it to say that the Government should not collect money this way and they should not put it in the statute. I was always in favour of the statutory law instead of order in council law, although things are changing, and you have to be a little flexible, but I don't know if we are not taking ourselves too seriously when we want to change this bill.

Senator LAMBERT: Mr. Chairman, regarding what Senator Kinley just said, this legislation does not affect the raising of the revenue one particle.

The CHAIRMAN: That is quite clear.

Senator LAMBERT: That revenue will be raised just the same; it has been raised before, and the provision in the other act is there.

I wanted to make just one point. On the basis of appeal, I think that it is only fair and just to permit the petitioners to have the right to appeal to the foot of the throne, if you like to say it that way, and by passing this bill with Part II established in it practically denies the right of the petitioners in this case —practically denies the right to go to the Governor in Council with any proposition that they like to put before them. If it is a reduction in the tax, all right, let them do so; we can do that here because the legislation in connection with the other act already provides for the tax. To come back now to the word "flexibility" again. Flexibility is gone in this particular case if this bill passes the way it stands. I am certainly in favour of giving the benefit of any doubt that exists at all to petitioners.

Senator GOLDING: Mr. Chairman, we have had a long argument with reference to this tax, whether it should be passed or not. Now, I do not think that is what this bill is for.

The CHAIRMAN: Everybody agrees with that but everybody talks about it nevertheless.

Senator GOLDING: Well, I think the talk is for a purpose. Now let us deal with the facts. I am convinced of this, that anyone who has a good case can go to Parliament, particularly in cases of this kind, and I might say that this appears to be a long-term affair and it will be a long time before this power is ready to be exported. What I want to say is that anyone who has a good case can come to Parliament and get justice from Parliament.

The CHAIRMAN: Those who are in favour of approving the section as it stands in this bill before us will please raise their hands.

The CLERK: 12.

The CHAIRMAN: Those who are opposed please raise their hands.

The CLERK: 13.

The CHAIRMAN: The section does not carry.

Senator CROLL: Thirteen, with the Chairman?

The CHAIRMAN: I should point out under the rules the Chairman can vote only on the resolution, he does not have a casting vote in case of a tie.

Senator MACDONALD: The Chairman voted last.

The CHAIRMAN: Well, the Clerk came to me last.

The CHAIRMAN: I do not think we need to spend much time on clause 3 of the bill. Clause 3 of the bill is ameliorating in a sense that the basis of value for calculation of sales tax on importations differentiates between the article itself and the value of the package and the wrapping material, so that if this amendment becomes law you are not faced with the duty value of the article as the basis, which would be higher, because under the Customs Act, as I recall it, even the wrappings and the packaging are valued on the same basis as the article itself, so this is ameliorating.

Shall clause 3 carry?

Agreed.

The CHAIRMAN: Would you care to say something about that, Mr. Irwin?

Mr. IRWIN: Clause 4 provides the amendment that was discussed when the committee was considering clause 1. It provides that a person who wraps packages, puts them up in boxes or otherwise prepares for sale cosmetics or pharmaceuticals shall be deemed to be a manufacturer and a sales tax will be collected at that point.

Senator BRUNT: Will this produce more revenue for you?

Mr. IRWIN: It might.

The CHAIRMAN: I would think it is bound to produce some.

Senator ISNOR: Mr. Chairman, would the witness enlarge on this point and tell us what is meant by the word "exclusively" in the eleventh line on page 3, where reference is made to the retail store exclusively.

Mr. IRWIN: One reason, Senator Isnor, is that you do not want to require every small retailer to become licensed as a manufacturer and require him to account for the tax. For example, if this exception were not made the druggist who made up prescriptions might be called a manufacturer and required to account for sales tax on the prescriptions. That is the reason the retailer is excluded.

Senator ISNOR: That is all right, but the words used are, retail store exclusively.

The CHAIRMAN: Senator Isnor, you are right. The language is not in line with the explanation as I see it, because the language says that the retail store, in order to enjoy this exemption, must sell its product exclusively and directly to the consumer, it has nothing to do with any of the other activities of the retail store.

Mr. LABARGE: Mr. Chairman, I think this is a way of distinguishing so that you have a clear-cut line between a retailer whose job is retailing to the consumer and, in addition, retailers who on top of doing that operate a wholesale operation and become a manufacturer and gets into the business of selling to wholesale houses or to other retail houses.

Senator ISNOR: Will you read it leaving out the word "exclusively" just for the moment, and see if you do not arrive at the exact same answer.

Mr. LABARGE: It is there for emphasis. We find this, that when you are being as specific as this, where there is a question of a man doing both operations, and in this case here if he sells directly to consumers I suppose, by sticking to that, you would have to check all his sales and you might have discussion as to whether or not a certain consumer is a normal retail consumer.

The CHAIRMAN: Well, then, if he is not a normal retail consumer the tax will apply.

Senator ISNOR: There is a very definite distinction between an exclusive store and a retail store not catering to exclusive trade.

Mr. LABARGE: Oh!

Senator ISNOR: Just read that as I asked you to a moment ago by dropping the word "exclusively" and I think you will see that your purpose will be served just as well.

The CHAIRMAN: I think the addition of the word "exclusively" has this effect, that if I am operating a retail drug store and I sell these cosmetics which have been wrapped in accordance with this section I sell them directly to consumers but I might have one sale to some person who does not fit that definition. And so if you take out the word "exclusively" I think I could argue that my prevailing operation was the sale directly to the consumer and therefore I am entitled to the benefit of this section. But when that word "exclusively" is put in the provision they are in effect saying that if you have one sale to a person not a consumer then you are not protected under this section.

Senator KINLEY: Mr. Chairman, there are different types of drug stores. In the rural areas the drug stores job Parke Davis, Wyatt's and other pharmaceuticals to the doctors, and the doctors carry medicine and sell it. The drug stores get an extra discount because they have a big turnover in retail drugs. Are you going to class them as manufacturers?

Mr. LABARGE: No. If he is not doing a job of re-packaging.

Senator KINLEY: For instance I know one drug store in Newfoundland that has a wholesale and retail department, and there are many others like it. They sell to the doctors and certain trades. It seems to me you are getting them in the position of manufacturers.

Mr. LABARGE: This would only affect them, senator, if they had a manufacturing operation.

Senator KINLEY: If a man has one store and puts stuff up, he is all right, but if he has three stores and has a little building in which he puts stuff up, he is a manufacturer.

Mr. LABARGE: Yes.

Senator REID: What is regarded under the statute as a substitute for candy? Would maple sugar and block honey come under that classification?

Mr. LABARGE: Maple sugar is exempt under the statute. A product that causes some trouble is sugar popcorn. That is a substitute for candy. There are also certain kinds of so-called biscuits, marshmellow chocolate coated biscuits; if they are sold on the counter next to the candy they are a substitute for candy. There are a number of items like that.

The CHAIRMAN: Shall this subsection carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: What about subsection 2?

Mr. IRWIN: Subsection 2 corresponds to clause 3 which was just explained. One deals with excise tax and the other deals with sales tax.

The CHAIRMAN: Shall subsection 2 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Clause 5 of the bill: What have you to say about that, Mr. Irwin?

Mr. IRWIN: This is largely administrative, and Mr. Labarge will deal with it for the most part.

I might point out that paragraph (c) merely changes the wording, but not the substance.

Paragraph (*d*) covers the situation where a licensed wholesaler purchases goods, but instead of selling them again retains them for his own use, or puts them out on a rental basis.

The CHAIRMAN: You are thinking of such things as sick-room equipment?

Mr. LABARGE: Heavy machinery.

Senator BRUNT: Such as shoe repair machinery?

Mr. IRWIN: The licensed wholesaler does not pay the sales tax at the time he purchases the goods, but at the time he sells them.

Senator BRUNT: I understand that the modern shoe repair machinery is such that it is impossible to buy, and is used on a rental basis.

Mr. LABARGE: This applies largely to the manufacturer of rented goods. You have shoe machinery, the kind you can't buy; and I.B.M. machinery which is very costly to manufacture. In such case the tax is paid by the manufacturer. The licensed wholesaler privilege has been operated so that a wholesaler purchases goods, whose sales are 50 per cent for exempt purposes, does not have to go through the procedure of refunding claims to get back more than 50 per cent of the money he paid. So it is a facilitation for that purpose.

That was the purpose of the licence. But since it was found that a man by importing or buying heavy equipment for, say, resale to an exempt user like the logging industry or farmers, he suddenly decides he can get this thing tax free if he goes into the business of renting, as the manufacturer would. This provision is to make sure that when he does that, he is in the same position as the manufacturer and pays the tax on it.

Senator BRUNT: Is not this a case also to catch up with the wholesaler in Canada who imports this shoe machinery from the United States and rents it out here?

The CHAIRMAN: He is caught now.

Mr. LABARGE: The shoe machinery is exempt as being for the manufacture of goods, used directly for that purpose.

The CHAIRMAN: I thought you were talking about the type of shoe machinery used for repair purposes.

Senator BRUNT: That is right.

The CHAIRMAN: I was referring to repair machinery.

Mr. LABARGE: On repair machinery he buys a different type of equipment, and in that case it is taxable, because he is not the manufacturer.

The CHAIRMAN: Shall section 5 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Clause 6 of the bill deals with the manufacturing license.

Mr. LABARGE: That is really consequential on last year's amendment whereby the annual renewal went out, and they have a permanent license.

Senator BRUNT: This can give you some control.

Mr. LABARGE: Yes. It is just as embarrassing to them, because they have to make returns marked "nil" as long as they have the license.

The CHAIRMAN: Shall section 6 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 7. This deals with the continuing liability on a bond even after it is cancelled. We could pass all the statutes in the world, but unless the conditions in the bond are retained I don't know how it would carry on beyond the date of cancellation.

Senator BRUNT: This is entirely new.

Mr. LABARGE: It is just what the chairman has said. This clause was in the bond, but since there is a termination in the bond, at its termination the clause goes out. This is to permit the clause to continue in effect.

Senator BRUNT: You preserve your right.

Mr. LABARGE: Yes. It is recommended by the Department of Justice.

Senator BOUFFARD: Even in the case where it is not in the contract?

Mr. LABARGE: We insist that it be in the contract.

The CHAIRMAN: If it is not in the bond, we can pass all the statutes we want, and they won't change the liability of the bonding company. That liability is determined by the conditions of the bond.

Senator MACDONALD: I don't see how the passage of this provision would put that clause in the bond, if it was not there in the first place.

The CHAIRMAN: It would not.

Senator MACDONALD: If it is in the bond, why is this section necessary?

Senator MCKEEN: If you have an open end bond which carries on for the period, and if default takes place in the period covered by the bond, can you still collect without the benefit of this provision in the act?

Mr. LABARGE: No.

Senator MACDONALD: I will be pleased to pass the section, but I am not convinced of its need.

The CHAIRMAN: Mr. Labarge says he thinks he can explain it. It seems like a lot of words to me. All I know is, if I get a bond from a bonding company, and it contains certain conditions under which the bonding company is liable to pay, and the bond terminates, unless there is something in that bond which says it shall have effect beyond the termination date, then it does not carry on.

Mr. LABARGE: These bonds have to be approved by the minister, and contain a clause which says that certain provisions remain in effect after the bond terminates. But the Department of Justice felt that we have to have authority to confirm the continuance of this provision, since someone could argue that the cancellation of the bond cancelled out that clause.

The CHAIRMAN: I see your point. The Department of Justice felt that if you took a form of bond which contained a condition which carried the liability beyond the termination date, and there wasn't any authority in the statute for you to take a bond with such a clause, that you should have statutory authority.

Mr. LABARGE: That is about it.

Senator BRUNT: Now you have dotted your i's and crossed your t's.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 8 deals with the cancellation of license.

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 9 deals with the refund of goods sold to the provinces. This is just a change in the method, and is made at the request of the provinces: they would be able to apply directly for the refund rather than go to their suppliers.

Some hon. SENATORS: Carried.

Senator MACDONALD: I don't know why we should accommodate them, but we will.

Senator BRUNT: We are just good fellows.

The CHAIRMAN: Then we come to clause 10 which I think we should discuss for a few minutes. I think, first of all, we should have an explanation from the representatives here as to the kind of situation which clause 10 is intended to cover.

Mr. LABARGE: The manufacturer or importer of goods is responsible under the law for the tax. He is the only person who is liable. He is licensed under it, and he has to pay the tax. When he makes a sale of anything that is taxable he collects the tax from the purchaser. If it is a sale to an exempt user then that person supplies him with a certificate that it is going to be used directly in production, or that it is for another exempt purpose. He has the onus on him, because he is the taxpayer, of making sure that what this man says to him is right, and that he is going to use it for that purpose. This has prevailed since the act has been in effect, and the same is true in customs. He feels a real sense of responsibility in making sure of this. May I say that not all people are that conscientious. Some have felt that they could print on a certificate a good reason why they think a thing should be exempt if it was used in a certain way, and allow the sale to go through as exempt. This has happened many times. It encouraged the sale of articles that could be exempt, and people were signing these certificates although they had no intention of using the article for that exempt purpose. Afterwards the man would say: "I didn't read the small print", but he was getting it that way without tax.

Then you have the other case of the buyer who comes in and says he is going to use it for an exempt purpose, and he signs a certificate to that effect, and the person from whom he is buying may not have any particular reason to doubt him, or may not know the fellow too well. Then, when he gets the certificate through he goes and uses it for another purpose than the exempt purpose.

The CHAIRMAN: Those are two types of cases, and they have the same pattern running through them. There must be a third type.

Mr. LABARGE: There are many types but we will stop at three, I think. The other one, which is not unusual and which depends somewhat on economic conditions and emergencies and prices, is where a man presents a certificate that he is going to use it for farm use, or logging. Then conditions change.

Either an attractive proposition is put to him of a taxable character which he goes out and works on having obtained the thing for the other purpose, or he just decides that the purpose for which he bought it no longer exists and he wants to go out into another taxable kind of operation. An example would be tractors for the farm. The farmer says: "Well, I have bought a big chunk of equipment here and my farm is not paying the thing off". Maybe the heat is on him for repayment on the instalment plan. He says: "I can work on the roads. Here is an opportunity", or he may say: "I can go and work on this new development. There has been a community development, and I can go in there and work", and he does that with equipment that has been exempt, and he is working alongside taxpayers who have tax-paid equipment.

Senator BRUNT: You cannot do that under this section, because there is nothing in the declaration at the time he made the purchase—

The CHAIRMAN: They are only talking about the dealer. A dealer may acquire a lot of tractors which may have a use that would exempt them from sales tax. That dealer, in the beginning, as a matter of law, is liable to pay the sales tax right there and then, but the department in its administrative functions is lenient. and if a representation is made that that machinery is going to be sold for an exempt purpose, and it is the type which might ordinarily be used for that purpose, they will say: "Well, we will not collect tax from you now, but you sign this agreement". There is an agreement signed, as I understand it, in which the dealer undertakes that if subsequently the machinery should be used for a purpose which is not exempt then he will pay the tax. What this section is attempting to do is to give some right to the dealer, if he is subsequently called upon to pay the tax, whereby he can go to the person who has committed the violation and collect from him the duty.

Senator BRUNT: But there must be a false representation.

The CHAIRMAN: May I go on and explain that the wording of this section is such that it only gives that benefit to the dealer in a case where the person who bought the machinery, and gave a certificate that he was going to use it for an exempt purpose, made a false statement in the certificate.

Some of the examples which have been given here are examples of where a farmer might acquire a tractor and he gives a certificate to the dealer and obtains the exemption, and the farmer, after six, eight or twelve months realizes, in a winter of heavy snow, that there is an opportunity to make some money by wheeling that tractor out on to the highway and getting some revenue. Immediately he does that, why, under the terms of the agreement and the condition of the law he has committed a violation, but you have no false statement anywhere in connection with it yet. By virtue of the agreement the Government can go to the dealer and claim the tax. The question is: What can the dealer do in relation to the farmer? This section does not help a dealer there.

Senator MCDONALD (*Kings*): Suppose a farmer takes the tractor and goes out to clear a road so that the road will be open for the general public, and he receives no compensation for that.

The CHAIRMAN: Then, I would say he is all right.

Senator MCDONALD (*Kings*): That happens often in the country.

Senator MCKEEN: There is another case, and I want to know if it is covered. We bring in a lot of marine equipment and use it for 10 to 15 years,

and when it is of no further use to us we have sold it to, say, a mining company which has taken it for a power plant. In that case we pay duty on the assessed value to the customs directly, and not through any dealer.

Then, we may have a community which is having trouble with its power plant, and which may ask for the use of a diesel electric unit that is on a vessel to supply them with power for a few weeks. Would that make that vessel subject to duty because it is not used for marine purposes?

Mr. POWER: Equipment used for the generation of power is exempt from duty under another section.

Senator MCKEEN: If it used for anything other than marine use we pay the duty which is assessed.

Senator KINLEY: With regard to the case of the farmer and his tractor, is he not only responsible for duty to the provincial authorities if he puts that tractor on the highway and works on a construction job?

The CHAIRMAN: No, it is a matter of sales tax, and the conditions under which you may get exemption from sales tax.

Senator KINLEY: And this farm machinery is all subject to sales tax?

The CHAIRMAN: Not if it is used for farm purposes only.

Senator KINLEY: For instance, he uses gasoline, and he is not supposed to go on the highway. You have nothing to do with that?

The CHAIRMAN: That is under the provincial Government.

Senator KINLEY: I thought that when he went on the highway with his tractor to a construction job he was only responsible to the provincial authority.

Mr. LABARGE: Well, he has to pay sales tax.

Senator KINLEY: If a man who owns a tractor on the farm rents his equipment to a contractor does he have to pay sales tax on that rental?

Senator BRUNT: Yes.

Senator KINLEY: To the federal Government?

Senator BRUNT: Yes.

Senator KINLEY: But not to the local Government?

Mr. LABARGE: The tax really applies to the article which becomes exempt when it is used for a particular purpose, for instance, farm equipment for farm purposes only. That is in the law. In another case it is logging exclusively.

Senator KINLEY: The trouble is that under this legislation you are dealing with people who do not know the score and you are going to get into difficulties. I doubt if it will pay you. You will have too much trouble for the revenue you get.

The CHAIRMAN: Oh, they collect all right. They do not collect from the farmer who makes a violation of the exempt use but they collect from the dealer. It is very simple for the department to collect but here they are trying to preserve the dealer's position against the parties who have made an unauthorized use. I think it is a commendable thing but the moment they get into that mood I would like to see them carry it to the full limit and not only cover the case of a false representation to be used for an exempt purpose but to carry it to the point where there was a subsequent use for a purpose which

did not entitle the person to an exemption. Those are the two classes of cases. If in both these cases you reserved the right of the dealer, I would be perfectly happy with it.

Senator HUGESSEN: Following along that line I was going to suggest that if it is desired to preserve the right of the dealer I think the section should be changed to read something like this. Take out the word "falsely" so that it would read:

> "Where a purchaser of goods from a wholesaler, producer, manufacturer or importer has represented that the goods were intended for a use rendering them exempt from tax under any provision of this Act . . ."

and then you could add something like:

> "and such goods are subsequently used for a purpose not so exempt. . ."

That would cover both cases where a man made a false representation at the time or where he made one that was perfectly true at the time but was subsequently falsified.

The CHAIRMAN: Would you go slowly on that, Senator Hugessen? I want to see how you put that. You have suggested taking out the word "falsely".

Senator HUGESSEN: Yes.

Senator BRUNT: It is in line 16 on page 5.

Senator HUGESSEN: I would delete the word "falsely" and add certain words at the end. It would then read:

> "Where a purchaser of goods from a wholesaler, producer, manufacturer or importer has represented that the goods were intended for a use rendering them exempt from tax under any provision of this Act, and such goods are subsequently used for a purpose not so exempt. . ."

Senator REID: Why not leave it as it is?

Mr. LABARGE: Senator Hugessen, I would say there is a weakness in that wording in that the man could use it for the exempt purpose for a limited time. He could say, "That is what I said I would use it for." That purpose in the law may read "exclusively" or "only".

Senator HUGESSEN: But the illustration given to us by Senator Brunt when he explained the bill in the house was that of a farmer who buys a piece of equipment in perfectly good faith, making the representation that it is to be used solely on his farm. Then six months after he has bought it winter comes along and he is asked by his municipality to use it for a week or two in clearing the district roads. There was no false representation at the time he purchased it but it so happens, by reason of circumstances, it is used for a period for a purpose that is not exempt. That is the illustration Senator Brunt made in the house. We tried to show in the Senate chamber that that case is not covered in the language here.

Mr. LABARGE: I think you are right.

Senator BRUNT: There is another illustration. A farmer may buy a piece of equipment and die six months later. The executor winds up his estate and holds an auction sale and starts selling the equipment. The auctioneer does

not inquire from the buyer whether he is a farmer and is going to use the equipment solely on his farm. Supposing the auctioneer sells to a contractor? What happens then?

Mr. LABARGE: In most cases the auctioneer is wise enough to provide the tax.

Senator BRUNT: They are not in my vicinity.

Senator ASELTINE: I never heard of it in any auction sale.

Senator BRUNT: If it is sold to a contractor what happens? No tax has been paid.

Mr. LABARGE: The equipment becomes taxable and the original vendor of that who had a certificate, the dealer, is the one wo would go to for the tax.

Senator BRUNT: What does the dealer do?

The CHAIRMAN: That is the problem.

Senator ASELTINE: Does he go and collect from the estate of the deceased?

The CHAIRMAN: Not unless he had an agreement.

Senator BRUNT: The deceased farmer had nothing to do with it being used in clearing roads.

Mr. LABARGE: The Customs Act comes into play. It has a different kind of clause and places the responsibility on anyone who has diverted it from an exempt purpose.

Senator BRUNT: I would point out that companies like Massey-Harris and Cockshutt make tractors right in Canada.

Mr. LABARGE: Following the case you have illustrated I am not just sure where we would get the tax, but I can tell you where we would try first. First we would ascertain whether the man who bought it in this case deemed it to be tax paid or non-tax paid and if he realized this had been sold to a farmer and was exempt, we would ask him for the tax first. If he did not want to pay it, we would go back to the dealer and say, "Look, here is a piece of equipment for which you took the responsibility because we let it go past the incidence of tax on your word that it would only be used for this purpose." If we were to take the law as it stands today, here is what we could do. Every piece of farm equipment sold by a manufacturer or an importer would be sold with the tax, and the manufacturer or importer would pay the tax that time, and then it could go on to the ultimate user and when he had it in his hands he would pay the tax too. Then the would make application all the way through this channel for a refund. That way we would be pretty safe, wouldn't we?

Senator BRUNT: No.

Mr. LABARGE: For the first instance.

Senator BRUNT: Yes, but after you refunded the tax, if the equipment was improperly used, you would start the whole process again.

Mr. LABARGE: Yes. This is a good example of the difficulties of conditional terms with respect to an exemption.

The CHAIRMAN: May I say that it is an illustration of the difficulty of having an exemption based on end use.

Mr. LABARGE: Yes. What I would like to point out about this section is that we have been endeavouring to meet in some way what we think is a fairly reasonable objection on the part of honest-to-goodness dealers dealing with honest-to-goodness people in the first instance, who later on have this thing fall into the hands of somebody else through an estate or something like this.

Senator MCKEEN: Couldn't there be a time limit?

The CHAIRMAN: Senator, I was going to say that in dealing with the situation in this section, where the word "falsely" occurs, you are getting into the realm of criminal law and intent, and how the federal Parliament could come along and indicate something that seems to me to be strictly a matter of property and civil rights in the provinces and establish some legal liability as between the dealer and the farmer, something that the dealer does not see fit to provide in his contract with the farmer, is beyond me. My feeling is that if we write something into this section of the statute to cover the situation where there is no intent to deceive, it would be a meaningless sort of thing and the dealer would still have to cover his right of recovery in his contract with the farmer who gives him the certificate certifying that it is going to be used for an exempt use. That is the way the dealer has to protect himself. I would like by statute to protect the dealer in all these circumstances, but what is the use of flying in the face of the law when the dealer can protect himself?

Senator BRUNT: This section does provide a certain amount of protection. We have to decide whether to take that away from him or to leave him with a bite of a cherry.

The CHAIRMAN: In my humble opinion, I think what we give him in section 10 is possibly all that the Federal Parliament can give him, and it lies in his own hands to get the rest of it by agreement.

Senator MACDONALD: Then we do not say that it is necessarily effective. The power of the Federal Government to allow the importer, the wholesaler, to collect from a third party without having a contract, I think is very doubtful.

Senator BRUNT: I do not think we should take away what we give him under this section.

The CHAIRMAN: Oh, no.

Senator KINLEY: What I am concerned about is frivolous prosecutions with the man who does not know. For instance, if my neighbour commits an offence I cannot bring an action against him.

Mr. LABARGE: No, but you can complain vociferously against him.

Senator PRATT: May I ask how old a machine must be before it is described as obsolescent?

Mr. LABARGE: There are many factors there, senator, the nature of the machine, and how it can stand up, and the kind of wear and tear it gets.

Senator PRATT: Should there not be some time limit, where a person who has a machine and gets it under these conditions, and then operates it, and eventually feels disposed to get another one, does so?

Mr. LABARGE: Take a $3,000 tractor, or a $30,000 piece of equipment. If you set a time limit there it would be unreasonable, because the one can outlive the other considerably; and this is supposed to be for the lifetime of the equipment.

Senator PRATT: But a person may spend perhaps half of what the machine is worth on repairs to fix it up again.

Mr. LABARGE: Well, we try to use a discretion here. For instance, an ordinary, standard farm tractor runs I think somewhere around three years, maybe a little more, that is what you would call average. Now, I do not think we go after the fellow who simonizes it every week.

Senator PRATT: Do I take it that there is a time limit borne in mind in each instance?

Mr. LABARGE: Very much.

The CHAIRMAN: For instance, if you had a machine for three years and put it to an unauthorized use, I think the department would establish a basis at the end of the three year period on which they would base the tax.

Mr. LABARGE: About the time we say it has completed its purpose.

Senator PRATT: Would it be feasible to have a time limit?

Mr. LABARGE: We have thought of time limits, but because of the nature of equipment and the seasonal uses and the different kind of wear and tear, it is very difficult to get a scale that is really applicable.

Senator PRATT: As far as application goes, time limit does prevail, although it is not laid down?

The CHAIRMAN: Yes, and I think it probably works better than not having it physically.

Senator HORNER: It is very difficult to place a time limit because those machines over the years might have done very little work, whereas others might have worn out through work.

Senator CRERAR: I was going to ask the witness what occasioned this?

Mr. LABARGE: It is an effort to help as much as we can those people who have found themselves, as they feel, holding the bag because of somebody elses action in telling them they were going to use it for a larger purpose, and then not using it.

Senator CRERAR: Does this arise out of snow-clearing operations?

Mr. LABARGE: No, it has arisen from general complains since the beginning of time.

Senator DAVIES: Do I understand there is an excise tax on machinery manufactured in Canada?

Mr. LABARGE: Sales tax.

The CHAIRMAN: Shall the section carry?

Section 10 agreed to.

The CHAIRMAN: Shall section 11 carry?

Senator MACDONALD: When this bill is in the house I will reserve my remarks on third reading.

The CHAIRMAN: Shall we record that this section is carried on division?

Section 11 agreed to.

The CHAIRMAN: Clause 12 adds some exemptions to Schedule III.

Senator REID: Does this exempt feeds for animals?

Mr. LABARGE: This is only adding the underlined words, senator.

Senator REID: Why are you adding the words, "Feeds for fur-bearing animals whose pelts have commercial value"?

Mr. LABARGE: That is already in the act. This is just to show that this amendment will fit into the schedule.

Senator REID: Would fish be included in feeds for fur-bearing animals be exempt?

Mr. LABARGE: Yes, fish is exempt, anyway.

Senator MCKEEN: Does fish include whales?

Mr. LABARGE: Here it would not matter whether it is a whale, or peanuts, or anything; if it is a feed for those animals.

Senator MCKEEN: In this case, whales are?

Mr. LABARGE: Yes.

Section 12 agreed to.

—On Section 13—Coming into force.

The CHAIRMAN: This clause simply gives the dates of coming into force.

Senator MACDONALD: Does this affect any changes that we have made in the bill? We have made one change. This act shall be deemed to have come into force on the 10th day of April, 1959, and the clause that we have struck out has been in effect.

Senator BRUNT: No, we struck out section 2.

Senator MACDONALD: All right. The whole bill came into effect?

The CHAIRMAN: Yes.

The LAW CLERK: Mr. Chairman, by re-numbering clause 2, it seems to me that we shall have to re-number the other clauses. I would suggest a motion that the necessary consequential changes in this numbering be made.

The CHAIRMAN: Is that satisfactory? Carried.

Section 13 agreed to.

The CHAIRMAN: Shall I report the bill with the amendments?

Senator BRUNT: Carried.

Senator HAIG: On division.

Senator ASELTINE: On division.

The CHAIRMAN: The bill is reported with the amendments, on division.

Senator MACDONALD: With regard to clause 2, only 8, 9 and 10 are new, is that right?

The CHAIRMAN: That is right.

Senator MACDONALD: Now, subsections 2 and 3 of section 10 are not new. Are they going to remain in the bill?

The CHAIRMAN: The motion was to strike out clause 2, and they are part of clause 2.

Senator DAVIES: I do not understand. We voted to eliminate clause 8?

The CHAIRMAN: Clause 2 in its entirety. We voted to eliminate clause 2 which includes 8, 9 and 10.

Whereupon the committee adjourned.

Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-22, intituled: An Act to amend the Export Credits Insurance Act

---

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JUNE 10th, 1959

WITNESS:

Mr. A. W. Thomas, Assistant General Manager of Export Credit Company.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

21461-9—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine
Baird
Beaubien
Bois
Bouffard
Brunt
Burchill
Campbell
Connolly (*Ottawa West*)
Crerar
Croll
Davies
Dessureault
Emerson
Euler
Farquhar
Farris
Gershaw
Golding
Gouin
Haig
Hardy
Hayden
Horner
Howard
Hugessen
Isnor
Kinley
Lambert
Leonard
*Macdonald
McDonald
McKeen
McLean
Monette
Paterson
Pouliot
Power
Pratt
Quinn
Reid
Robertson
Roebuck
Taylor (*Norfolk*)
Thorvaldson
Turgeon
Vaillancourt
Vien
Wall
White
Wilson
Woodrow—50.

**Ex officio member.*

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, May 27th, 1959.

Pursuant to the Order of the Day, the Honourable Senator Methot moved, seconded by the Honourable Senator Monette, that the Bill S-22, intituled: "An Act to amend the Export Credits Insurance Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

21461-9—1½

REPORT OF THE COMMITTEE

WEDNESDAY, June 10, 1959

The Standing Committee on Banking and Commerce to whom was referred the Bill (S-22), intituled: "An Act to amend the Export Credits Insurance Act", have in obedience to the order of reference of May 27th, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 10th, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 P.M.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Bouffard, Brunt, Davies, Dessureault, Emerson, Farris, Gershaw, Golding, Hugessen, Isnor, Kinley, Leonard, Macdonald, McKeen, Monette, Pouliot, Pratt, Reid, Thorvaldson, Vaillancourt, Wall and Woodrow—24.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

Bill S-22, An Act to amend the Export Credits Insurance Act, was read and considered clause by clause.

On motion of the Honourable Senator Brunt it was resolved to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

Mr. A. W. Thomas, Assistant General Manager of Export Credit Company, was heard in explanation of the Bill and was questioned.

It was resolved to report the Bill without any amendment.

At 10.30 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. FORTIER,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 10, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-22, to amend the Export Credits Insurance Act, met this day at 10.00 p.m.

Senator HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, we have Mr. A. W. Thomas, Assistant General Manager of the Export Credit Company, to tell us the chief purpose of the Export Credits Insurance Bill.

Mr. THOMAS: Mr. Chairman, I think as all you gentlemen know we are in the insurance business. We insure exporters against nonpayment under policy of insurance for goods exported from Canada. The policy of insurance is subjected to terms and conditions and to a co-insurance which is normally not in excess of 85 per cent of any loss which might be suffered by the exporter from his shipment of goods to an overseas buyer.

In some cases, particularly where a substantial project of capital equipment is involved, the exporter has reported that the banks have been somewhat reluctant in providing the necessary financing. That is often due to the term that the project may run, the deferred payment portion. It may run four or five years. It could be the amount involved. It could possibly be a position the bank could not take because of the foreign exchange; for example, the purchase price might call for U.S. dollars and the bank might not want to take the position of U.S. dollars for a four or five-year term.

The purpose of this bill is to amend the act to provide a facility for the corporation when authorized by the Governor in Council, so that it will be a Government responsibility to provide a direct and unconditional guarantee to the lenders, who could be the Canadian chartered banks or any other lender who would finance a Canadian exporter to the extent he required to produce goods for export, and where he would not get payment for possibly some extended term.

I think the substance of the bill is in this matter of guarantee. The responsibility is going to be taken by the Government and not by the corporation, for we are an insurance corporation. This is the real purpose behind the bill. Anything else is ancillary to the question of guarantees. In other words, the bill proposes that the Government could authorize us to purchase any guaranteed bill of exchange or to lend money or sell it.

Senator BRUNT: Could we go over the bill section by section?

Senator MACDONALD: I would like to ask a few general questions.

The CHAIRMAN: I think the chief purpose, as the witness has stated, is to extend the scope of the operation but only where the Government authorizes you to do so. That authority is in the statute now. We were told by Mr. Aikens when he was here that you have operated to some extent, even without this amending bill, in covering transactions and that you have lost little if any money in doing so. This bill is to add something further by way of guaranteeing payment of negotiable instruments so that the foreign buyer of the goods

may go to the Canadian seller, and the corporation would guarantee to the extent that the Canadian seller would be able to cash or negotiate the instrument in Canada, isn't that right?

Mr. THOMAS: That probably is right except the intent is to guarantee negotiable paper, which would be in the hands of the lenders, who would be the chartered banks normally.

The CHAIRMAN: You have to start with the basis of the transaction. That is, there is a foreign buyer and a Canadian seller and the foreign buyer gives something to the Canadian seller which would be negotiable after a fashion of some kind or other, but it is much more negotiable if the corporation guarantees it.

Senator KINLEY: Give a note?

The CHAIRMAN: It could be a note.

Senator PRATT: Do you mean to say that apart from insurance you are setting up financial facilities for these interests?

Mr. THOMAS: No. We will only administer this part of the act on behalf of the Government who would authorize us to do it. The intent is not to finance the export transaction. The exporter would still have to arrange his own financing with any lender who would lend him the money he requires.

The CHAIRMAN: Just following that through, if the Canadian seller accepts an order from the foreign buyer the Canadian seller is going to somehow or other get something from the foreign buyer that he can use for credit purposes in Canada. True, he may go to the bank and borrow if the collateral is proper, but he can borrow a lot faster if he has your guarantee.

Mr. THOMAS: The intent is to guarantee the paper, as yau say. We can do that in a number of ways. We can do it by endorsement or by a letter to the lender of the money. I might just mention that the guarantee would not become effective until the goods had been delivered to the foreign buyer and accepted by him. So that there is generally an extended interval of a production period which we call the pre-shipment period. It extends anywhere from a few months to possibly two or three years before the goods are actually delivered to the foreign power and accepted by it.

Senator KINLEY: In the meantime the goods are insured?

Mr. THOMAS: In the meantime the intent would be to issue a policy of insurance to cover the pre-shipment period, and the guarantee would take effect once the goods had been accepted by the foreign power.

Senator MACDONALD: You will continue to carry on your operation as an insurer?

Mr. THOMAS: Oh yes. This part of the bill will only apply to capital goods projects, which are few and far between.

Senator MACDONALD: Did I understand you to say when goods are shipped from Canada they are insured by you?

Mr. THOMAS: Now.

Senator MACDONALD: And they will continue to be insured by you until they are delivered in the foreign country, and until the vendor gets the paper, a note or some security for payment?

Mr. THOMAS: That is arranged at the time the contract of sale is entered into.

Senator MACDONALD: Under your insurance at the present time I understood you to say that you just cover up to 85 per cent of the invoice.

Mr. THOMAS: Effectively, we pay 85 per cent of the loss.

Senator MACDONALD: What about the new arrangement? If the transaction is completed in the foreign country, and the vendor gets a note, will you guarantee 100 per cent or just 85 per cent?

Mr. THOMAS: The intention is to guarantee 100 per cent.

Senator MACDONALD: Is there anything in the act that requires you to insure just up to 85 per cent?

Mr. THOMAS: No.

Senator MACDONALD: But your practice has been up to 85 per cent?

Mr. THOMAS: That is the general global practice.

Senator MACDONALD: And now you are going farther?

Mr. THOMAS: On this guarantee.

Senator MACDONALD: You are going to guarantee up to 100 per cent?

Mr. THOMAS: Yes, but this is to cover capital goods only. There would be an administrative limit established which would be to the order of a quarter of a million.

The CHAIRMAN: Where does it say "capital goods"?

Mr. THOMAS: It doesn't. That is administrative.

Senator FARRIS: What is your protection on that guarantee?

Mr. THOMAS: There is no protection except the bill of exchange which we guarantee.

Senator FARRIS: What is your inducement for doing it?

Mr. THOMAS: Once we accept an insurance policy, or issue an insurance policy, to cover an export transaction, we are taking the risk that the buyer will pay. If he does not pay, we will have to pay. This merely extends the facilities of the guarantee up to 100 per cent of the paper without any terms or conditions attached to it. That will be given to the bank—we hope that the bank will take this unconditional guarantee, will buy the paper from the exporter without recourse, so that the exporter can get it out of his accounts receivable.

Senator METHOT: Are any of the goods refused as not being good?

Mr. THOMAS: No; we would not have to pay.

Senator METHOT: Even if you have guaranteed the bank?

Mr. THOMAS: The guarantee is not effective until the buyer accepts delivery of the goods.

Senator KINLEY: You give 85 per cent of the sales price?

Mr. THOMAS: We pay 85 per cent of any loss. It may be only half the sale price, depending on what he loses.

Senator MACDONALD: He is an insurer with you to the extent of 15 per cent?

Mr. THOMAS: The exporter is a co-insurer to the extent of 15 per cent.

Senator MACDONALD: Under this arrangement you are going to assume the total risk, I gather?

Mr. THOMAS: I believe that is intent.

The CHAIRMAN: The idea is to encourage more export business by giving this financing, and hoping that you will never be called upon to meet the guarantee.

Senator FARRIS: What is the legislation to further this proposal?

Senator BRUNT: Let us get down to the bill and see what we are asked to do.

Senator WALL: May I ask a general question? Is this an additional risk? Senator Macdonald has pointed out one factor of it, that there is a risk element in the insurance. Is there some calculation of the additional element of risk, and is this additional risk going to be paid for?

Mr. THOMAS: It will be charged for; I anticipate it would be to the order of 1 per cent.

Senator PRATT: Because of the long-term nature of the sale?

Mr. THOMAS: It would take up the additional risk of 15 per cent which the exporter would be carrying under his policy, and which the bank would be carrying—

Senator PRATT: You are referring to the capital goods type of sale?

Mr. THOMAS: Yes.

Senator PRATT: Which is different altogether from your general operation of insurance?

Mr. THOMAS: The general operation on consumer goods involves no problem about financing. It is short-term.

Senator WALL: Has this additional risk been calculated? Would it be another 18 per cent or another 20 per cent?

Mr. THOMAS: Under section 21 we have not paid a loss.

Senator MACDONALD: Let me ask this question: I am an exporter, and I sell goods to the value of $100,000 to a purchaser in a foreign country, and receive for it a note for $100,000. Can I take that note to your corporation and get the $100,000?

Mr. THOMAS: No sir.

Senator MACDONALD: Under the provisions of this bill, can I do it?

Mr. THOMAS: You could if this bill were passed; you could if we would take it.

Senator MACDONALD: That is the purpose of the bill, I take it. As an exporter I would not have to go through the bank.

Mr. THOMAS: Generally he does.

Senator MACDONALD: But according to the terms he does not have to.

Mr. THOMAS: That is true. Incidentally, I may say that there could be a case—I have not run into one in my 14 years experience—where an exporter could finance the production of goods over a relatively short period of time, and then come to the corporation and ask for the guarantee. But the practice has been that the exporter company in many cases—and this involves substantial deals, running into many millions of dollars—have had difficulties with the banks, in getting financing. So I don't think there would be any demand for the exporter to come directly to us.

Senator MACDONALD: One more general question: is this going to enlarge the capital sum?

Mr. THOMAS: No.

The CHAIRMAN: It is limited at present by the statute.

Mr. THOMAS: To $200 million.

The CHAIRMAN: And no extra money is being provided?

Senator WOODROW: Is that $200 million the full extent of the government guarantee at any and all times?

Mr. THOMAS: It is the maximum liability which the corporation can assume under section 21 and the proposed new section.

Senator WOODROW: And that includes the total amount of the Government guarantee?

Mr. THOMAS: Precisely.

The CHAIRMAN: Shall we deal with the bill section by section?

Section 1 would delete the Governor of the Bank of Canada as a member of the Export Credits Insurance Corporation.

Senator BRUNT: Is anyone being substituted in his place?

Mr. THOMAS: The Governor of the Bank of Canada has asked to be relieved of his duties because of other commitments, and also he feels there would be a certain conflict that could arise in his duties as Governor of the Bank of Canada with the banks themselves.

Senator BRUNT: All I want to know is, has anybody been named in his place?

The CHAIRMAN: In a later section the board of Directors is increased by one.

Section 1, carried.

Section 2 is only a broadening of the language of section 4 to cover this new type of extended businesss under section 21.

Some SENATORS: Carried.

The CHAIRMAN: Section 3 of the bill increases the directors from four to five, and also deletes any reference to the Governor of the Bank of Canada, where it occurs.

Some SENATORS: Carried.

The CHAIRMAN: Clause 4 repeals certain subsections of section 21. Section 21 is the section which authorizes this corporation to act on the direction of the Government.

Senator METHOT: They are included?

The CHAIRMAN: They have replaced them.

Section 5 contains certain definitions; and you will note the power to guarantee, which is in general language. It says (2) When authorized by the Governor in Council the corporation may . . . That is under subsection 2, which is subsection 2 of the new section 21 that is being created by section 5 of the bill. It says,

> When authorized by the Governor in Council the corporation may guarantee, by an appropriate endorsement or otherwise, the payment of an instrument given by an importer to an exporter or to the nominee of an exporter under or in respect of an export transaction entered into between the importer and the exporter.

Senator KINLEY: Every individual transaction must be brought before the Governor in Council?

Mr. THOMAS: That is correct. There are not very many. This year to date we have only done two. But we hope we will do more with this facility.

The CHAIRMAN: This is as safeguard as it can be. If the Governor in Council authorizes them then it is their risk.

Senator ASELTINE: How much do these two amount to?

Mr. THOMAS: They were relatively small, probably in total a million dollars.

Senator BRUNT: A million? What is a million?

Senator KINLEY: Have you got a ceiling that you can use without reference to the Governor in Council?

Mr. THOMAS: Not under this bill.

Senator KINLEY: Can you do that under any other legislation?

Mr. THOMAS: Not paper, but we can insure.

Senator MACDONALD: You can purchase a guaranteed instrument?

Senator KINLEY: It is only intended for big amounts?

Mr. THOMAS: Precisely.

The CHAIRMAN: Shall this section 5 carry?

Carried.

The CHAIRMAN: We have a new section 21B created by this section 5, dealing with the limit of liability under a contract and guarantees which shall not exceed $200 million.

Senator WALL: Mr. Chairman, what is the sum total of liability that the export credit corporation can take on?

Mr. THOMAS: We have a limit there of $200 million on insurance. It is $400 million altogether.

Senator PRATT: What is the ordinary limit in which you operate? You say you have a limit of $200 million. How far do you go in your insurance?

Mr. THOMAS: Under our own insurance, in an individual transaction? Well normally we do not like to have about five million out in any one country at any one time, particularly long-term stuff, but short-term stuff we do not mind because it is being turned over rapidly.

Senator PRATT: But the sum total of your insurance ordinarily would amount to what?

Mr. THOMAS: Since we have started we have placed $700 million of insured exports, about one-third of which have been insured under section 21.

Senator PRATT: Over how long a period?

Mr. THOMAS: Fourteen years.

Senator MACDONALD: Do the insurance contracts have to get the approval of the Governor in Council?

Mr. THOMAS: No, sir, only under section 21.

Senator BRUNT: Have you any limit that would limit the amount of any one policy?

Mr. THOMAS: Not by law.

Senator BRUNT: In practice?

Mr. THOMAS: In practice, as I mentioned, we do not like to go over $5 million in any one country, at any one time.

Senator BRUNT: That could be in one policy?

Mr. THOMAS: Yes, but normally it is not.

Senator KINLEY: Have you made any profit in your operations?

Mr. THOMAS: In the 14 years we have made an operating profit of $207,000.

Senator PRATT: Is that profit taxed?

Mr. THOMAS: We are subject to tax but we do have it set out that they have agreed to allow us to build up an underwriting reserve of $5 million, but once we exceed $5 million unless we can get the Government to bump it up to $10 million we will be suject to tax.

Senator PRATT: Why cannot you use that profit to reduce your premiums and encourage the export trade?

Mr. THOMAS: There has been no complaint about our premiums. We hear a lot of talk but it is not based on fact. Our premium rate has averaged, including the substantial long-term contracts, just over one per cent; in one short-time business it is three-quarters of one per cent.

Senator BOUFFARD: Have you made any capital losses?

Mr. THOMAS: Irrecoverable losses? We have written off in our 14 years $250,000 as irrecoverable. We have a total of about $3 million. We have written off $250,000, and about 2.5 million is in blocked foreign currency in foreign countries.

Senator BRUNT: How much is in Turkey?

Mr. THOMAS: There are 2,800,000 U.S. dollars. We have paid $2.5 million Canadian.

The CHAIRMAN: I would like to have a motion to print 600 and 200 copies of our proceedings in English and French respectively.

Senator BRUNT: I will move that motion.

Senator KINLEY: Who do these 600 copies go to?

The CHAIRMAN: The same distribution as we have for *Hansard*. That does not leave many over.

Senator WALL: Mr. Chairman, I did not hear the witness reply as to the amount of contracts outstanding under section 21A. I think we sold $60 million or $50 million worth of aeroplanes. Where is that?

Mr. THOMAS: Those contracts have not been signed as yet and the orders in council have not been issued as yet.

Senator PRATT: How many exporters are there now using your insurance facilities?

Mr. THOMAS: We have 229 policies current.

Senator PRATT: Some time ago there were 3,000 exporters in Canada.

Mr. THOMAS: Yes, but not active. A great number of those exporters do business with the United States and we do not insure normally the United States transactions. There are private credit insurers and we do not compete with them.

The CHAIRMAN: Shall the section carry?

Carried.

Shall the bill be reported without amendment?

Carried.

The committee adjourned.

Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill C-48, intituled: An Act to amend the Income Tax Act

---

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JUNE 10th, 1959.

WITNESSES:

Mr. J. Gear McEntyre, Deputy Minister, Taxation Division, Department of National Revenue; Mr. F. R. Irwin, Director, Taxation Division, Department of Finance; Mr. D. R. Pook, Chief Technical Officer, Assessment Branch, Department of National Revenue.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

21459-3—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

**Ex officio member.*

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, May 27th, 1959.

Pursuant to the Order of the day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Pearson, for the second reading of the Bill C-48, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

21459-3—1½

REPORT OF THE COMMITTEE

WEDNESDAY, June 10th, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-48), intituled: "An Act to amend the Income Tax Act", have in obedience to the order of reference of May 27th, 1959, examined the said Bill and now report the same with the following amendments:—

1. *Page 11, line 16:* After "or" insert "charterparty".

2. *Page 11:* Strike out clause 19.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 10th, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Brunt, Croll, Davies, Emerson, Euler, Farris, Gouin, Hugessen, Kinley, Lambert, Leonard, Macdonald, McKeen, Pouliot, Power, Pratt, Reid, Thorvaldson, Turgeon, Vaillancourt, Wall, White, Wilson and Woodrow—27.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-48, An Act to amend the Income Tax Act, was read and considered clause by clause.

On MOTION of the Honourable Senator Macdonald it was RESOLVED to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

The following witnesses were heard:—

Mr. J. Gear McEntyre, Deputy Minister, Taxation Division, Department of National Revenue, Mr. F. R. Irwin, Director, Taxation Division, Department of Finance and Mr. D. R. Pook, Chief Technical Officer, Assessment Branch, Department of National Revenue.

After discussion clauses 1 to 17 were carried, clauses 18 and 19 were postponed. Clauses 20 to 24 were carried.

At 12.30 p.m. the Committee adjourned until 8.00 p.m. this day.

At 8.00 p.m. the Committee resumed consideration of Bill C-48, An Act to amend the Income Tax Act.

Present: The Honourable Senators:—Hayden, *Chairman;* Aseltine, Bouffard, Brunt, Davies, Dessureault, Emerson, Farris, Gershaw, Golding, Hugessen, Isnor, Kinley, Leonard, Macdonald, McKeen, Monette, Pouliot, Pratt, Reid, Thorvaldson, Vaillancourt, Wall and Woodrow—25.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

The following witnesses were further heard in explanation of the Bill:—Messrs. J. Gear McEntyre, F. R. Irwin and D. R. Pook.

Clauses 25, 26, 27 and 28 were carried.

The Committee then reverted to the consideration of clauses 18 and 19.

After discussion the following amendment to clause 18 was moved:—

Page 11, line 16: After "or" insert "charterparty". The question being put on the said Motion, the Committee divided as follows:—

YEAS:	NAYS:
13	8

and so it was declared carried in the affirmative.
The question being put on a Motion to strike out clause 19, the Committee divided as follows:

YEAS:	NAYS:
12	5

and so it was declared carried in the affirmative.
It was RESOLVED to report the Bill with two amendments.
At 10.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, June 10, 1959

The Standing Committee on Banking and Commerce, to whom was referred Bill C-48, an Act to amend the Income Tax Act met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Honourable senators, we have before us this morning Bill C-48, a bill to amend the Income Tax Act. We already have passed a resolution providing for the reporting of evidence to be taken this morning. I suggest, therefore, we proceed with consideration of the bill.

We have with us officials from the several departments concerned: Mr. Irwin, Director, Taxation Division, Department of Finance; Mr. Isbister, Assistant Deputy Minister, Department of Finance; Mr. McEntyre, Deputy Minister, Taxation Division, Department of National Revenue. I understand Mr. Irwin and Mr. McEntyre may be in the forefront in answering questions; so, I would ask them to come forward and take the preferred seats.

Gentlemen, since this bill consists of a series of what might be called unrelated sections, related only by virtue of the fact that they either impose additional tax or resolve what are supposed to be problems that have been developed. I fancy perhaps in the rare instance they are ameliorating. Perhaps the best way would be to consider the bill section by section, and you can get whatever explanation you want as we go along.

Some SENATORS: Agreed.

The CHAIRMAN: Dealing with section 1 of the bill: this, I suppose, is an ameliorating section. Mr. Irwin, are you going to explain it?

Mr. F. R. IRWIN (*Director, Taxation Division, Department of Finance*): Mr. Chairman, clause 1 adds the underlined words only for the purpose of clarification of what is meant by the term "group insurance plans". With these clarifying words the term "group insurance plan" could cover any kind of insurance purchased by a group. It is believed that the addition of these words will not restrict any existing insurance arrangements.

Senator BRUNT: The words that you put in are words of limitation.

Mr. IRWIN: They are words of limitation, but they clarify what is meant by the term.

Senator LEONARD: Was there any other kind of group insurance plan that you ran into?

Mr. J. Gear MCENTYRE (*Deputy Minister, Taxation Division, Department of National Revenue*): Mr. Chairman, I don't think we ever ran into any group of insurance plans, other than life, sickness or accident; but it might be possible that there would be some casualty insurance or something of that kind, which I don't think was ever intended.

Senator BRUNT: Would you be plugging any possible loop-hole for the taxpayer to get something in which you think should not be put in?

The CHAIRMAN: Is not accident a sort of casualty insurance?

Mr. MCENTYRE: Usually sickness and accident go together in these plans, and they cover hospitalization, doctor bills, loss of earnings, and that sort of thing.

Senator KINLEY: Sickness is a comprehensive word, is it not, covering doctor bills, medicine benefits, and everything like that?

Mr. MCENTYRE: Yes.

Senator KINLEY: You deduct from a workman say, half of the group insurance plan for life and that type of coverage; the company pays half and the employee pays half. The amount the employee pays is deducted from his salary for income tax purposes.

Mr. MCENTYRE: Mr. Chairman, the employee would have to bring into his income tax calculations the salary he received, but if a portion was borne by his employer no value would be placed on that portion. But, if a portion is paid out of the employee's salary, that is not deducted.

Senator KINLEY: The employer's part is a portion of his profits; so, it is the same thing.

Senator BRUNT: How does this fit into the present section of the act? It is pretty difficult to set in this clause (a). Is this an exemption that is provided?

The CHAIRMAN: It is a deduction section, is it not?

Senator LEONARD: The only new words are "life, sickness or accident".

Senator HUGESSEN: It is not a deduction section. Section 5 begins this way:

> "Income for a taxation year from an office or employment is the salary, wages and other remunerations, including gratuities, received by the taxpayer in year plus—"

Senator BRUNT: And this is added in?

Senator LEONARD: It always has been there.

The CHAIRMAN: This is an exception in that "plus".

Senator BRUNT: I did not think what you collected under an insurance policy is added into an income that you receive.

The CHAIRMAN: The clause reads, "(Except the benefit he derives from his employer's contributions to or under a registered pension fund or plan, group, life, sickness or accident insurance plan, medical service plan or supplementary unemployment benefit plan)."

So it is an exception within the spelling out of what is income. As I said in the beginning, it is ameliorating in a sense except that there are words of limitation.

Will the section carry?

Carried.

The CHAIRMAN: We will now deal with section 2.

Senator MACDONALD: Is this ameliorating also?

The CHAIRMAN: I would hesitate very much to say. Mr. Irwin, what have you to say about this section?

Mr. IRWIN: This new paragraph deals with group life insurance and it provides that the amount of premium paid by an employer to provide an employee with group life insurance coverage in excess of $25,000 will be added to the income of the employee. The method of making this calculation is set out as an example in the explanatory notes.

Senator WALL: Who will make this calculation, the empolyee?

Senator BRUNT: No, Mr. McEntyre will.

The CHAIRMAN: I would think the answer, Senator Wall, would be that if the employee does not do a good job on it that when his returns being reviewed the calculation will be made in the department.

Senator DAVIES: Will it not be deducted at the source the same as it is now?

Mr. MCENTYRE: It is a question whether all the facts would be known sufficiently in advance to permit the employer to establish what portion of the premium must be included in the man's remuneration so that the deductions at source could be calculated at that time. But we do not anticipate that the additional income resulting from this calculation will be very substantial, it will happen only in a few cases.

Senator KINLEY: Well, a $25,000 policy means you are getting into pretty big money.

The CHAIRMAN: Tell me this, Mr. McEntyre, there is the obligation on the employer to take and remit, in other words, to withhold the amount of tax in connection with salary paid to an employee. Now, how would you consider that obligation if the employer does not make this calculation when the employer does know that there is group insurance in exces of $25,000 a year on the life of one of his employees. Would you penalize him and levy some interest penalty against him for not withholding the amount which he should?

Mr. MCENTYRE: There is a provision in the regulations for waiving the deduction at source or agreeing to an amount different from that set out in the tables and I would think that in a case of this kind if the employer made a fair attempt to arrive at the amount that had to be added to the remuneration of the employee and made the deductions in consequence that we would be quite satisfied with that.

Senator KINLEY: Mr. Chairman, when you take out a policy of $25,000 on an employee you are getting into big money, and I would imagine that this would only take place where a director or a manager is so important to an organization that if he dies it is going to be detrimental to the company so the company insures his life and pays a premium and the benefit will go to the company on his death. Is that so?

Mr. CHAIRMAN: Senator Kinley, this is not that kind of policy. This is group life insurance as part of a pension plan.

Mr. MCENTYRE: It may be part of a pension plan or it may be group life but it is group life insurance for the benefit of the employee.

Senator BRUNT: It has nothing to do with policies issued to individuals in the company. To take an example, supposing Canadian Pacific Railway insured its president, Mr. Crump, for $1 million under one policy. Would this section have any application?

Mr. MCENTYRE: That would be an insurance policy taken out by the C.P.R. and the C.P.R. would be the beneficiary of that policy. That is not the type of circumstances that this section is directed to.

Senator MACDONALD: Is it correct to say that this clause applies only to group insurance, to a policy taken out under a group insurance plan?

Mr. MCENTYRE: Yes.

Senator KINLEY: What would happen to the $25,000? Of course that would not bother many of us.

Mr. McENTYRE: Under $25,000 the existing section applies which means that the premium which the employer pays on behalf of his employee as part of a group insurance policy is not added to the income of the employee.

Mr. Chairman, perhaps I should mention that it has been brought to my attention that this premium which is added to income is not added to income in remuneration, salaries and wages, covered by section 5, which is subject to deduction at source, but is added to income under section 6. So that there is no question of the employer having to withhold tax at source on the amount of the premium.

Senator REID: May I ask if there are any great numbers who come under the $25,000 group? I am just interested in knowing the number.

Mr. McENTYRE: We have no statistics on the various groups in force. We do not know how many would have employees receiving coverage of $25,000, but we think that they would be in very small proportion to the total groups in operation.

Senator BRUNT: Mr. Irwin, can you tell me the thinking behind this? Why is this put in? We have had the Income Tax Act since 1917, and we have got along for 42 years without this. Why was it put in?

Mr. IRWIN: Mr. Chairman, there is a limit to what I can say towards explaining Government policy.

The CHAIRMAN: You cannot go back 40 years.

Mr. IRWIN: No. I would suggest that the exception that has been in the law for a good many years dates from a time when group life insurance covered very small amounts, or much smaller amounts than have appeared in recent years. It is, I think, well known that some group life plans do provide coverage well in excess of $25,000, and if an employer pays a premium to provide a substantial amount of life insurance, that is a benefit conferred upon the employee, and since benefits which when received by virtue of employment are subject to income tax it seems only fair that this particular benefit should also be brought into account for tax.

The CHAIRMAN: Or that there should be a limit above which the benefit would be brought into tax?

Mr. IRWIN: Well, a limit has been brought in here, and it is only above this amount that this—

Senator BRUNT: Do you expect it will produce any substantial sum in the way of revenue?

Mr. IRWIN: No, sir.

Senator McKEEN: Mr. Chairman, some insurance companies are now issuing policies—they have them in the States already—where they don't pay in the dollars of the day; they increase the premium as the dollar goes. Now, what would the situation be in a case of this kind? This act is in effect, and the policy is $25,000, and the group plans goes up on account of the dollar going down. Is there any provision for that? They do not pay it in the dollar of the day, they pay it as the dollar value goes down. One company has a policy years. It is, I think, well known that some group life plans do provide coverage for teachers and professors, and the amount of the payment on death, or through benefits, is increased as the dollar value goes down. I think they have started that in five States. Apparently, the premium is the same. They do it by investing the funds in common stocks rather than in bonds. It is quite a factor, because you can well understand that in selling insurance, if you sell a fellow a policy for $100 a month, the value in ten years might be very different. What effect would this legislation have on that?

The CHAIRMAN: You have a ceiling of $25,000, whatever that means at the time.

Mr. IRWIN: I think the kind of insurance the senator is referring to is more in the field of variable annuities, where there is going to be an income derived from the policy. I do not think that this has come into use in the field of group life insurance. If it does, I suppose we shall have to look at it.

Senator MCKEEN: Would you re-value the policy then from year to year?

THE CHAIRMAN: Well, first of all, Senator McKeen, this section deals only with group life.

Senator MCKEEN: Well, they are talking about group life. This is something very new, and just passed by the legislature on the American side in the past two months.

The CHAIRMAN: But this fixes it in the amount of $25,000; it is not variable.

Senator MCKEEN: What effect would that have, I am asking. The excess over $25,000 may be very variable. It would have to be calculated every year, how much in excess of $25,000. Of course, these cases are very rare, and I will not press it.

Senator WALL: May I ask what is the relative benefit to one who is receiving $25,000 of insurance with the premiums paid by an employer? What is the relative benefit to that person? Supposing an ordinary person wanting $25,000 in insurance. I would have to pay it out of my income. Tom Smith is working for a company and getting $25,000 worth of insurance, which is paid for by the company, and therefore rather than having him pay for it the company pays for it. What is the extent of that benefit? Is it $200 a year or $500? What is the average premium? I know it will vary with age.

Senator BRUNT: Apply the formula.

The CHAIRMAN: No, the formula calculates the excess which is for the account of the taxpayer.

Senator WALL: I am thinking of up to the $25,000.

Mr. IRWIN: Mr. Chairman, the law here sets out the rule for determining the dollar amount of the premium, and the rule is based on the average premium, it looks at the total premium paid by the employer to the life insurance company, and then calculates the premium that is paid for an individual, for coverage in excess of $25,000. Then it allows a deduction for such part of the premium paid on that insurance by the employee.

Senator WALL: The point really at issue is that an average Canadian not so covered by those provisions could say "I am being discriminated against."

The CHAIRMAN: There is nothing new about that.

Senator KINLEY: The problem today with insurance is that you may be paying premiums with good dollars and make a settlement later with bad dollars.

The CHAIRMAN: The only way you can cover that is to insist on a contract that will protect you.

Senator KINLEY: I talked to a man the other day who had a $5,000 policy in England, and settled it in the present currency at about half that figure.

The CHAIRMAN: The income tax people can't adjust that.

Senator DAVIES: This is not going to affect the great mass of employees, is it?

Senator BRUNT: No, it is an exception. Let us pass it.

Senator GOUIN: What is meant by the technical expression "experience rating of the fund"?

Mr. IRWIN: I understand there is a premium fixed, which the employer has to pay the insurance company based on the number of employees and their ages; then, after a year's experience, if the claims have been low, they may find he has paid too much, and allow a refund.

The CHAIRMAN: The formula is predicated on the dollars that are actually expended for the purpose of premium; so, if there is a refund you operate on the net?

Mr. IRWIN: That is correct.

The CHAIRMAN: The approval of subsection 1 of section 2 of the bill would take us down to the bottom of page 2. Can we approve of that portion?

Some SENATORS: Carried.

The CHAIRMAN: Subsection 2: What is the effect of that subsection, Mr. Irwin?

Mr. IRWIN: This is a new paragraph, and merely adds a cross-reference in section 6. Section 6 of the act lists the amounts that have to be included in computing income. So, for uniformity this refers to the amount received by the taxpayer under a registered retirement savings plan. There is no change in substance.

The CHAIRMAN: As a matter of fact, taxpayers have been required to include that, have they not?

Mr. IRWIN: Yes.

Senator HUGESSEN: It is just to clean up this section, as a result of the insertion of section 79B a year ago.

Mr. IRWIN: Correct.

The CHAIRMAN: Shall the subsection carry?

Some SENATORS: Carried.

The CHAIRMAN: Subsection 3, at the bottom of page 2: that is another cross-reference, is it?

Mr. IRWIN: This follows from the amendment we have just discussed, dealing with group life insurance, and it states how the expression "policy year" shall be construed. It was thought that this was necessary, as otherwise it might be possible to have a policy year for less than 365 days.

The CHAIRMAN: Carried?

Some SENATORS: Carried.

The CHAIRMAN: We come now to section 3: this simply gives statutory effect to a practice that has been carried on in the department for years. Is that not right?

Mr. IRWIN: Yes.

Senator BRUNT: That is under clause 1?

The CHAIRMAN: Clause 1, yes. It is subclause 1 of clause 3, dealing with the transfer fees, and fees payable to the registrar of a company and to transfer agents.

Senator BRUNT: This is a break to the taxpayer.

The CHAIRMAN: In practice, my understanding is this has been allowed to the taxpayer, is that right?

Mr. IRWIN: That is right, Mr. Chairman.

Senator WALL: What is the problem then? If this has been done in practice, why are we giving it statutory validation?

Senator BRUNT: On account of a court decision.

Mr. IRWIN: Yes, a recent court decision threw some doubt on the rights of the department to allow the deduction.

Senator HUGESSEN: Is that the Distillers-Seagram case?

Mr. IRWIN: Yes.

The CHAIRMAN: Shall subsection 1 of section 3 carry?

Some SENATORS: Carried.

The CHAIRMAN: Subsection 2.

Mr. IRWIN: Subsection 2 deals with the transfer of pension funds. The general provision of the Income Tax Act is that amounts received as payments out of a pension plan must be included in income, and this rule includes lump sum payments withdrawn from a plan when an employee leaves the employment, for one reason or another, before the retirement age. This amendment provides that these withdrawals do not have to be included in income to the extent that the amount that is withdrawn is used as a contribution to a registered employee's pension plan, or as a premium under a registered retirement savings plan.

Senator BRUNT: That is, registered as to an individual?

Mr. IRWIN: Yes, a registered retirement plan as defined in the Income Tax Act. This permits an employee who moves from one employer to another to take a withdrawal from the first employer's pension plan, and place it in a second plan, provided the second employer agrees, without having to pay income tax on the amount withdrawn.

Senator BRUNT: What is the present practice in circumstances such as you have outlined?

Mr. IRWIN: Mr. McEntyre may want to speak on this, but I understand in those cases where there has been a withdrawal from one plan and a transfer to another, and the money did not go to the employee, that this plan has been followed. But that does not always happen. An employee may not make a direct transfer from one employer to another. Also, of course, this amendment will take care of the situation where an employee leaves employment and becomes self-employed and wishes to start a plan for his retirement by paying premiums into a registered retirement savings plan.

Senator DAVIES: But he has got to put all the money he receives into the plan; if there is any left over from the first employer he has to pay a tax on it.

Mr. IRWIN: He is not taxable on that portion of it which is withdrawn and is used in this way.

Senator DAVIES: But what is left over is taxable?

Mr. IRWIN: Yes, and always has been.

The CHAIRMAN: What Senator Davies is saying, if an employee contributed less than the full amount that he took out of an existing plan, and he contributes less than that amount to a second employment plan, then he is taxed on what he keeps in his own hands.

Mr. IRWIN: Yes, that is correct.

Senator MACDONALD: What is the present plan when the money is so withdrawn?

Mr. IRWIN: There is a special section in the Income Tax Act which allows the employee an option to have that lump sum taxed on the average of his tax for the past three years of employment. If he does not choose to take that option, it is taxed as ordinary income.

Senator BRUNT: In the year in which it is received.

Mr. IRWIN: In the year in which it is received.

Senator MACDONALD: Will that section of the act be amended, if we pass this amendment?

Mr. McENTYRE: There is an amendment in the bill.

Senator WALL: Mr. Chairman, perhaps this is a mischevious question, but I do not intend it to be : suppose I as an employee withdraw a sum of money at the beginning of the taxation year 1959 to buy a registered plan on December 29, 1959, is there going to be any problem in timing in the taxation year?

Mr. IRWIN: Not if it is done within the year or 60 days after the end of the year.

The CHAIRMAN: That is what the amending section does.

Senator DAVIES: Whose responsibility is it, that of the employer or the employee who is withdrawing the money, to notify the Income Tax Department?

Mr. McENTYRE: The employer would advise the Income Tax Department of any withdrawal from the pension fund and then it would be up to the individual taxpayer himself to claim the deduction, explaining the circumstances under which he returned the money withdrawn to another pension plan.

Senator DAVIES: You say the employer would. Is he bound to do so under the act?

Mr. McENTYRE: Under the regulations. It is part of the regular reporting procedure that employers do in reporting remuneration paid to employees.

The CHAIRMAN: Any other questions? Shall the section carry?

Carried.

That deals with subsection 2.

Now, subsection 3 of section 3, at the top of page 4.

This introduces a different subject. Would you just give a brief explanation, Mr. Irwin?

Mr. IRWIN: This deals with the situation where depreciable property has been sold and the proceeds of disposition are not all collectible. When depreciable property is disposed of for more than its depreciated value, as you know there is a provision under the act for recapture of this excess. However, the proceeds of disposition are not always collectible and this amendment will permit a deduction from income of a certain amount of the proceeds of disposition that can be established as becoming a bad debt.

Senator ASELTINE: This is a relieving section?

Mr. IRWIN: Yes.

Senator DAVIES: Is there anything in this which deals with the amount of rent that can be collected on a property? Is it within the power of the Income Tax Department to say what a landlord shall charge for property that he is renting to another?

Mr. IRWIN: That is not covered under this particular section.

Senator DAVIES: But there is some clause in the Income Tax Act that deals with rentable property and its rentable value, is there not?

The CHAIRMAN: You mean sepcifically?

Senator DAVIES: Well, if a person owns a house and is charging a certain rent for it and the Income Tax Department thinks that you are not charging enough rent they can make you report more rent and say this proptrty should be rented for so much.

The CHAIRMAN: Not if the parties are at arms' length.

Senator BRUNT: If I own a house and rent it at $10 a month nobody can say that I should rent it at $50 a month.

Senator DAVIES: They can do it. They did it with me, and they made me pay $600 extra.

The CHAIRMAN: Maybe you needed a lawyer.

Senator DAVIES: No, I was renting this property at more rent than the assessment made it necessary, but the Income Tax Department said it was not enough rent and therefore you should get more and then they made me pay tax on what rent they thought I should have been getting.

Senator BRUNT: Was the person to whom you rented the property related to you in any way?

Senator DAVIES: No.

Senator BRUNT: Was it in Canada or in England?

Senator DAVIES: Right here.

Senator MACDONALD: If I bought a house in 1950 for $10,000 and have been depreciating it over the years so that its depreciated value is now $5,000 and I sell the house for $20,000 do I have to account for the increase?

The CHAIRMAN: There is a recapture of the depreciation you have written off.

Senator LEONARD: Just the recapture of the depreciation.

Senator BRUNT: But if you have about three transactions you will be taxed on them.

Senator MACDONALD: The depreciation on that house I mentioned is $5,000.

The CHAIRMAN: Yes.

Senator MACDONALD: Would that be shown as income for me in that year and be added to any other income I have made?

Senator BRUNT: That is right.

Senator HUGESSEN: But if you could not collect the $20,000 from the person to whom you sold the house, this section would be advantageous to you.

The CHAIRMAN: After having paid the tax and not being able to collect, you could write off the bad debt in a subsequent year.

Senator BRUNT: If you sell the property on credit over a term of years, when do you pay? During the taxation year that the sale was made or as you collect the money over the long term that you have given?

Mr. MCENTYRE: There is a section in the act which requires that at the time of sale the price be taken into account as a receipt, and then if the term of the sale is over two years there is provision for a reserve being set up which would postpone a portion of the profit until a later year. As a matter of fact, there is an amending section to the bill which deals with that and which we are coming to later on.

Senator PRATT: You set up a rate of depreciation which has the effect of diminishing the value of the property year by year?

The CHAIRMAN: As you get paid, you bring it back into income.

Senator KINLEY: Suppose that some years ago I made an agreement of sale for over $5,000 and certain things had depreciated on the property. Would the man you sell that to have any interest in this?

The CHAIRMAN: He is not interested in that. It is the seller only.

Shall the section carry?

Carried.

Subsection 4 of section 3—I am just curious, Mr. Irwin, to know how you happened to hit on a date like 1955. You say subsection 1 is applicable to the 1955 and subsequent taxation years, and then you have assigned 1959 to the other parts. Have you any particular reason for the difference in dates?

Mr. IRWIN: 1955 relates to these deductible corporate expenses.

Senator LEONARD: You have in practice been allowing that.

Mr. IRWIN: Yes. This is done in case the department might want to go back and deny these deductions in the light of this court decision. I think 1955 will take us back beyond the four-year period.

The CHAIRMAN: Shall subsection 4 carry?

Carried.

Section 4 of the bill. This deals with inventory. Have you any comment to make on that, the value of your closing inventory and the value of the opening inventory the following year must always be the same.

Senator PRATT: That seems to obvious. Is there any reason for that?

Mr. IRWIN: This amendment is just for greater certainty.

The CHAIRMAN: Did you run into some problem which made it necessary for you to spell it out this way?

Mr. IRWIN: No, but it has been suggested that this point might be somewhat obscure with the repeal of the former subsection 1 of section 14.

Senator BRUNT: Surely there has never been a return filed showing the closing inventory of one year not agreeing with the opening inventory of the year following.

Senator LEONARD: It was when you made a change in the act whereby you changed the method by which inventory could be calculated. Am I not correct?

The CHAIRMAN: There are two ways of valuing—you can value at cost or market. Suppose at the end of the year you valued your inventory at cost and let us assume it was possible to get permission of the department to change your basis of valuation you could conceivably come up with a lower valuation, and also come up with a higher one.

Mr. MCENTYRE: Yes, that is right.

Senator MACDONALD: Is this not based on the famous case of Dr. Lifo, the case that went to the Privy Council?

The CHAIRMAN: No, that was that Lifo and Fifo case. The thing that bothers me is that somewhere in the statute it says I am entitled to value my inventory at cost or market. Am I being locked in here? Because that would not be available to me at the full limit that it might otherwise be available.

Senator BRUNT: Do you not have to follow whatever system you start to adopt and continue? You do not allow switching, do you?

Mr. MCENTYRE: I think it is governed by a court decision that if you establish your closing inventory under one method you must have your opening inventory under the same method for income tax purposes, and that if your opening inventory was on some other method there might be a profit or loss between one year and the next; and this is to prevent that event from happening.

The CHAIRMAN: But in this amendment, if we pass it, where is there any authority in the minister to permit me to change my method of valuation once I have established it? The only time I am concerned with inventory is closing at the end of the year and opening the next year. Does not a combination of what is in section 14(2) now, and this amendment which is to be added by section 4 of the bill, have the effect of locking you to one method, and nobody can change that?

Mr. MCENTYRE: There is a regulation dealing with inventory valuations, which I do not happen to have with me.

The CHAIRMAN: Of course, I know the regulation, but I do not know how any regulation can prescribe something that the law does not permit. That is what would bother me.

Senator PRATT: Whatever cost you bring in at the end of the year would come into the beginning of the new year; but that does not affect the general system that is prevailing or the rights of valuation at the end of any year, does it?

The CHAIRMAN: When I am approaching the end of a fiscal year and I have been following a cost method, conceivably I can go to the department and make representations to change the method. If they agree and I change the method, I am stuck with that in the new year.

Senator MCKEEN: Can you not change during the year? Take lumber, for instance. The cost of that lumber when bought might be in $50 logs at the sawmill, and the value might drop, and the cost of production would be higher than the actual value of them on a cost basis, because perhaps you would be making it out of $25 material.

Senator HUGESSEN: That is covered by section 14(2), which says:

> . . . the property described in an inventory shall be valued at its cost to the taxpayer or its fair market value, whichever is lower . . .

So you could put your logs at market value.

Senator MCKEEN: But the logs have gone down and your lumber has not.

Senator HUGESSEN: Well, whatever the inventory is at the end of the year is put at cost or market value, whichever is lower.

The CHAIRMAN: You still get some benefit from the regulation. Section 14(2) says:

> . . . or in such other manner as may be permitted by regulation.

Senator MCKEEN: That is what I say; we have not had an academic ruling.

The CHAIRMAN: This is an order in council method of relieving. We have had so much discussion about taxation by order in council in another matter. I am all in favour of flexibility.

Senator HUGESSEN: This subsection really limits the department to re-value a valuation.

The CHAIRMAN: You can always build up during a year to get ready for the end of a year.

Senator MACDONALD: It fixes the value; you must use at the end of the year the same you start with at the beginning.

The CHAIRMAN: No; it is the other way.

Senator BRUNT: It is reversed.

Senator HUGESSEN: You have the value at January 1 as you valued it at December 31.

The CHAIRMAN: That is right. Shall section 4 carry? It is very important, by the way, to make this section applicable to 1958 and subsequent years.

Mr. IRWIN: Only that it goes back to the time section 14 (1) was repealed.

Section 4 carried.

The CHAIRMAN: Section 5, fiscal period for individual member of partnership wound up.

Mr. IRWIN: This deals with the fiscal period of a member of a partnership. When a partnership is wound up the fiscal period of that partnership is deemed to end at the time, or would be if it were not for the provision of the law. The law has for a number of years provided that when a partnership is wound up under certain circumstances an individual may if he wishes have the fiscal year of the partnership deemed to end at the time it would have ended had the partnership not been wound up.

The CHAIRMAN: All it means is that it preserves the previous fiscal period if the taxpayer wants to preserve it.

Mr. IRWIN: That election was only open to him if the partnership was wound up by reason of death or withdrawal of a partner, or by reason of a new member coming into the partnership. Those restrictive words are being removed by the amendment.

Senator GOUIN: Supposing I wound up a partnership on July 1st of this year, what would be the effect of that?

Mr. IRWIN: Well, if you had a partnership whose fiscal year ended December 15, but you wound it up in June, without this provision in the law the fiscal period would be deemed to have ended in June. This might have meant a bunching of income in the one year. So it might be to your advantage to deem that the fiscal year of that partnership would be ended not in June but in December.

Senator GOUIN: This year?

Mr. IRWIN: Well, perhaps I should have used an example where the fiscal year ended in the next year in January.

Senator MCKEEN: What is the date that you take, at the time of the distribution of the assets or of the appointing of the liquidator?

The CHAIRMAN: We are talking about a partnership.

Senator MCKEEN: Well, this is the section I am talking about. Supposing you decide to dissolve a partnership and there are certain assets to be liquidated and distributed to the two partners. This is a voluntary breaking up of the partnership. Would you take the date of the liquidation or the date the assets were distributed?

Mr. MCENTYRE: If there were distribution I would say we would take the date it was agreed the partnership would cease.

The CHAIRMAN: There are some problems there, Mr. McEntyre, because what I agreed to do I could agree to undo.

Mr. MCENTYRE: In any event, under this provision the partnership's fiscal period can be continued until the date on which it will ordinarily end. So, unless the winding up took place very close to the end of that fiscal period, there would be no question that the year end would be the regular fiscal period for the partnership.

Senator MCKEEN: But it might take two years to dispose of the assets. For instance, if the partnership owned any real estate, the liquidator would hold the property until he sold it, and then distribute it to the two partners, would the partners have to pay tax on the income before they get it?

The CHAIRMAN: We are mixing up a number of questions here. The only question that concerns this section is the one which Mr. McEntyre and Mr. Irwin have explained. That is: when a partnership is wound up, no matter what may be the reason for doing so, the taxpayer may now take either the time on which the affairs are wound up or the regular fiscal end of the company.

Now, the question you are asking, Senator McKeen, is a question that is inherent in the section, as to whether apart from this amendment, when can you say the affairs of a partnership have been wound up? Is it the date when you pass all the resolutions and make an agreement, or is it when you physically distribute the assets?

Senator FARRIS: Is that involved in this section?

The CHAIRMAN: No.

Senator FARRIS: Don't you think it would be in order to suggest that the senator get a lawyer to advise him instead of asking the officials of the department to do it?

The CHAIRMAN: I was very subtly trying to suggest that.

Senator McKEEN: We have already done so.

The CHAIRMAN: Shall we pass this section?

Some SENATORS: Carried.

The CHAIRMAN: Section 6 really only deals with some definitions, by changing the location of quotation marks.

Mr. IRWIN: That is correct.

The CHAIRMAN: It might be interesting to the committee to know why it is thought necessary to insert an amendment for the purpose only of changing the placing of quotation marks.

Mr. IRWIN: This is a technical amendment which, I believe, is for the purpose of simplicity, so that we will not have to use the whole expression "depreciable property of a tax payer" every time we mean "depreciable property". Also, we won't have to use the whole expression "total depreciation allowed to a taxpayer" when we really only mean "total depreciation".

The CHAIRMAN: Surely there must be some reason for the proposed amendment, other than saving the use of a few words, because I am sure if we went through the statute we could find many instances where words could be saved. Was there a decision of the courts?

Mr. McENTYRE: There was a decision of the Supreme Court, and the reasons for judgment suggested that if we were going to use this term we had to use all the words within the quote, and if we used only some of the words the definition was lost. So, in order to prevent the necessity of repeating this whole long expression, we felt it would be a little easier for the taxpayer if we simply cut down the phrase in quotation.

The CHAIRMAN: Let us put it this way: it would be a little easier in the administration of the income tax?

Mr. McENTYRE: Perhaps it would be a little simpler to draft some of these things, yes.

Senator BRUNT: Anything that would simplify the act, let us pass it.

The CHAIRMAN: Any other questions? Carried?

Some SENATORS: Carried.

Senator DAVIES: If you are dealing with depreciable property of a taxpayer, it is the taxpayer's property whether you describe in two words or five words.

Senator HUGESSEN: Not quite, Mr. Chairman, because section 20 refers in a number of instances to depreciable property without the words "of a taxpayer". What this amendment is designed to do is to make sure those words apply throughout the section.

The CHAIRMAN: That is right.

Some SENATORS: Carried.

The CHAIRMAN: Section 7.

Mr. IRWIN: This section deals with family assistance payments made to the children of new Canadians. The children of new Canadians are not eligible for family allowance payments during their first year in Canada, but they are paid a monthly amount of, I think $5. This amendment provides that the parents of such children will be treated for income tax purposes as if their children were qualified for family allowances. That is, they will be able to claim only $250 deduction for the children, instead of $500 as they would otherwise do.

Senator BRUNT: Is the amount paid under the family assistance the same regardless of the age of the child? You mention $5?

Mr. IRWIN: I believe so, but I am not certain of that.

The CHAIRMAN: You mean, paid in this particular case?

Senator BRUNT: Yes.

Senator DAVIES: The payment is per child?

Mr. IRWIN: Per child.

Senator DAVIES: The new Canadians definitely get $5 per child, and not a varying amount, is that correct?

Mr. IRWIN: I understand so, but I could be wrong on that. It is paid by the Department of Citizenship and Immigration.

Senator WALL: Actually, to take the minimum tax rate of 10 per cent, on the difference between $500 and $250, we are really recovering $25 out of the $60 per child.

Mr. IRWIN: This is to put the parents of a child receiving family assistance on the same basis for tax purposes as the parents of a child receiving family allowances.

Senator WALL: But he receives far less.

The CHAIRMAN: He may receive less.

Senator BRUNT: As I understand it, the maximum payment under family allowance is $8 a month, per child.

Senator MACDONALD: The explanatory note says this clause extends to the 1959 taxation year. What about subsequent years?

Mr. IRWIN: Mr. Chairman, this money is paid under the annual appropriation bill. It appears in the estimates of the Department of Citizenship and Immigration, and that is why this particular amendment must be a yearly amendment.

The CHAIRMAN: Carried?

Some SENATORS: Carried.

The CHAIRMAN: Section 8

Mr. IRWIN: This would add the underlined items to the defined medical expenses.

The CHAIRMAN: That is subsection 1.

Mr. IRWIN: Subsection 1.

The CHAIRMAN: Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection 2 deals with the question of the right to deduct medical expenses where there is a hospital plan to which the federal authorities contribute.

Mr. IRWIN: That is correct. This changes the definition of medical expenses to exclude those expenses which are paid on behalf of the taxpayer under a hospital plan of the province, to which the federal Government contributes under the Hospital Insurance and Diagnostic Services Act.

The CHAIRMAN: And that is regardless of the federal contribution to the plan. In other words, if the federal authority contributes a fraction of 1 per cent to the plan, the right to deduct by the individual is gone?

Mr. IRWIN: That is right.

Senator DAVIES: If you have a partial dependent who has an income, including the old age pension, of more than $950, are you allowed to deduct any medical expenses at all?

Mr. MCENTYRE: You are only entitled to deduct medical expenses for yourself or for a dependent.

Senator DAVIES: That is for a complete dependent. What about a partial dependent?

Mr. IRWIN: A dependent as defined in the income tax law.

The CHAIRMAN: I have only one question on this, Mr. Irwin, and perhaps I should not ask you as it is a matter of policy. Do you have any explanation as to why this has developed? Previously, you had a hospital plan to which the federal authority contributed, and an individual might be a member of Blue Cross or some other insurance plan in order to protect him against hospital payments; if he came within the formula for income tax purposes, he could deduct hospital expenses. True, he had paid somebody else to give him that protection. These hospital plans are contributory so he is still paying something. I wonder what the theory is as to why he is not entitled to any deduction within this. He is making a direct contribution to the plan that has federal approval and pays an indirect contribution to the expense in his taxes.

Mr. IRWIN: I think there is this difference. Under the old arrangement the individual did have a liability to pay for his hospital bills. Some people paid for them out of savings, some people borrowed and some people arranged in advance to have them paid for them by the Blue Cross or other hospital plans. The law did not search into how the taxpayer found the money. If he had it paid on his behalf by an insurance plan it was also a medical expense just as if he had borrowed or had taken money from his savings. Under the arrangement of provincial hospital plans the bills are paid for under the plan. The taxpayer does not have to pay these hospital bills and it seemed anomalous that the taxpayer should be allowed to deduct an amount that he did not have to pay.

The CHAIRMAN: But he is paying.

Senator BRUNT: He is paying for that privilege.

Mr. IRWIN: Of course all taxpayers are paying for the provincial hospital plan just as all taxpayers are paying for any universal social benefit, but he is getting a wider coverage. He is paying for it in conjunction with all other taxpayers, and I think the analogy here is that just because a taxpayer pays for a social benefit it does not mean he may deduct it for income tax purposes. To give an example, all taxpayers pay for old age pensions but they do not deduct old age pensions when they receive the benefit under the plan.

Senator BRUNT: But on this particular scheme the taxpayer pays three ways. He pays it in taxes that the Dominion Government collects, he pays it on the taxes that the provincial Government collects, and then out of his own pocket he pays the monthly premium. Now, you do not do all that in old age pension payments.

Senator CROLL: But even at that it is still a bargain.

Senator BRUNT: Well, I am not going to get into whether it is a bargain or not. That has nothing to do with it.

Mr. IRWIN: The method of payment varies from province to province, but in the long run the general body of taxpayers will have to pay for it. In some provinces it is paid for entirely in taxes. In others the individual pays a special contribution as well as provincial taxes and also federal taxes from which the federal contribution to the provincial plan arises. In Ontario there is a special earmarked contribution, but in all provinces the taxpayer pays for the hospital plan.

Senator MCKEEN: In British Columbia we pay it under a sales tax and as far as I know we are still going to do that. Some will still be paying tax for hospital insurance. Why is it that we can not take the hospital outlay as a deduction from our taxable income?

The CHAIRMAN: Well, that is a question of Government policy and we cannot expect Mr. Irwin to go very far into the question of Government policy.

Senator DAVIES: He is here representing the department.

The CHAIRMAN: Even so, if we want to go into that we should talk to the minister.

Senator WALL: May I inquire what the constitutional position is or the propriety of us striking this section out? Would we be interfering with ways and means?

The CHAIRMAN: I think we would.

Senator MACDONALD: If you reduce the revenue you would be doing so.

Senator DAVIES: Has this department anything to do with the administration of hospital insurance? I agreed with Senator Croll that hospital insurance is a big bargain, but I do think there will have to be some amendments made sooner or later. For instance, if a person goes into hospital and the wards are filled up and you have to take a private room the extra amount should be deductible.

The CHAIRMAN: That is a matter of administration.

Senator DAVIES: That has nothing to do with this department, has it?

The CHAIRMAN: No. Senator Wall, you raised the question of what we could do. To do what you suggest would be interfering with ways and means although we have the general right to strike something out.

Senator WALL: Would it be fair to ask if we would be in order to make a strong recommendation to the Government that it is not worth the effort it has caused so much concern among Canadians that they had better look at this again for next year.

The CHAIRMAN: There seem to be too many words in what you have suggested, Senator Wall.

Senator KINLEY: If the provincial plans are not adequate and a man pays in for other benefits and he gets a benefit for which the Government does not pay, does he not have the right to deduct that?

The CHAIRMAN: Oh, no.

Mr. IRWIN: Yes.

Senator KINLEY: The sickness benefit is paid, he gets paid $25 a week, let us say. That is a sickness benefit, that comes under an income and he pays that half and half.

The CHAIRMAN: You mean if he has a supplementary policy outside? Yes, he gets that.

Shall the section carry?

Carried.

At the top of page 6 we have a subparagraph (d). This deals with a particular situation of the Royal Canadian Mounted Police. There is no problem in that.

Mr. IRWIN: No, I think not.

The CHAIRMAN: Shall the section carry?

Carried.

Now we come to section 9.

Senator CROLL: On section 9, Mr. Chairman, may I ask first the reasons for it, and secondly what has been the experience in the past, percentagewise, Mr. Irwin. What has been the normal giving under that section, percentagewise?

The CHAIRMAN: You mean the average?

Senator CROLL: Yes, one per cent or two per cent?

The CHAIRMAN: Overall?

Senator CROLL: Yes.

Mr. IRWIN: First of all, the reason for this change is this. Honourable senators will remember that last year the maximum limit deductible as charitable donations by corporations was increased from 5 per cent to 10 per cent but that change was not made in this particular section which deals with life insurance companies. This amendment is to correct that oversight. As to the second part of your question, I believe taxation statistics show that the givings of corporations in 1956 as charitable donations were of the order of one or two per cent of their income.

Senator FARRIS: Mr. E. P. Taylor had that in the newspapers yesterday.

Senator MCKEEN: I am inclined to think that life insurance companies would give the maximum allowed because that is only a fraction of their total givings.

Mr. IRWIN: My answer covers all corporations. We have no statistics separate for life insurance companies.

Senator MCKEEN: I would think life insurance companies would give the maximum because in addition to that their givings are charged against the policyholders of the company.

Mr. IRWIN: That is right.

Senator HUGESSEN: I was wondering if Mr. Irwin could give us any indication of whether it appears as a result of the amendment made last year to increase the deduction for corporations, the amounts given by corporations generally to charitable organizations are showing a tendency to increase or decrease.

Mr. IRWIN: I may have to ask Mr. McIntyre to speak about that, but I would doubt if we had any returns yet based on 1958 donations.

Mr. MCENTYRE: Yes, particularly with respect to corporations which have six months after the end of the year to file their returns, we would not have sufficient information to form an opinion on that.

Section 9 carried.

The CHAIRMAN: Section 10 is just a table of rates.

Senator FARRIS: Should there not be some explanation of the difference is in rates in section 10? There is nothing in the explanatory note to indicate the difference in the amounts given from those given before.

The CHAIRMAN: In the budget they gave calculations.

Senator BRUNT: 2 per cent in points, and everything over $3,000. Is that not correct?

Mr. IRWIN: That is right.

The CHAIRMAN: It started at $3,000.

Senator MACDONALD: Where is that stated?

Senator BRUNT: It is in the fine print in the explanation note of clause 10, on the right hand side of the bill.

The CHAIRMAN: It quotes from the budget resolution; it really means two per cent.

Mr. IRWIN: Take, for instance, paragraph (e); it formerly read 20 per cent, and now reads 22 per cent.

Senator MACDONALD: What about paragraph (a)—the 11 per cent?

Senator MACDONALD: What paragraph (a)—the 11 per cent?

Mr. IRWIN: Well, the rates on the first $3,000 have not been increased, so paragraphs (*a*), (*b*) and (*c*) have no change.

Senator WALL: Does it not mean that paragraphs (*c*) and (*d*) previously were 17 per cent?

The CHAIRMAN: That is right, because in the previous total that range was $2,000 to $4,000. Now it is split up.

Shall subsection (1) of Section 10 carry?

Carried.

Now, subsection 2. What is the purpose of it?

Mr. IRWIN: Subsection 2 follows from the amendment concerning group life insurance. This merely provides that if an individual is required to take into income some amount because his employer provides him with group life insurance coverage in excess of $25,000, that amount shall be taxed as earned income and not as investment income.

The CHAIRMAN: This subsection 1 which we did deal with, gives the total for 1959 and subsequent taxation years, is that right?

Mr. IRWIN: I think it is the other way about. Subclause (3) gives the rates for 1959.

The CHAIRMAN: Subclause 3 we are coming to now, deals with 1959, since it is part of the year. Shall subsection 3 carry?

Subsection 3 carried.

Have you a brief explanation to make on section 11, Mr. Irwin?

Mr. IRWIN: This provides for the credit or abatement for individual income taxpayers in the province of Quebec. This extends for another year the provision that the credit for such taxpayers shall be 13 per cent of the federal tax otherwise payable instead of 10 per cent of their tax otherwise payable.

Senator BRUNT: It applies only to the province of Quebec?

Mr. IRWIN: Yes, that is the only province imposing a personal income tax.

The CHAIRMAN: The language does not limit it, but that is only where the facts would support the application of the section.

Section 11 carried.

Section 12, transferred pension fund contributions to be subtracted.

Mr. IRWIN: This provides an amendment we referred to earlier in that it amends section 36. You will recall that if it were not for the amendment in clause 3 lump sums withdrawn from pension plans would be subject to tax. Section 36 of the act provides a favourable formula for computing the tax on these lump sums, and this amendment prevents an amount equal to the amount excluded from income under clause 3 from being used or being subject to this favourable rate of tax provided by section 36.

The CHAIRMAN: It is consequential on the earlier change?

Mr. IRWIN: That is right.

The CHAIRMAN: Section 12 carried.

Section 13?

Mr. IRWIN: Section 13 provides increased rates on corporations.

Senator BRUNT: There is no change up to $25,000, is that right?

Mr. IRWIN: Not under this act.

Senator KINLEY: What do you mean by "associated corporations"?

The CHAIRMAN: It is defined in the Income Tax Act.

Senator KINLEY: Can you be a little more definite?

The CHAIRMAN: That is why we have witnesses. It is not entirely relevant, but I think the witness will give you the answer.

Mr. McENTYRE: The reduced rate of 18 per cent which applies to the first $25,000 was so arranged that a large company could not break itself up into small companies and take advantage of that rate for more than $25,000; and to do that it was necessary to make a definition, which in the term used is "associated corporations", so that only one of the associated group could get this beneficial tax rate; and there is a definition set out in section 39 of the Income Tax Act which describes all the various relationships which create associated companies.

Senator WALL: Would the relationships cover profits arising in the construction industry?

Mr. McENTYRE: The definition is general for all taxpayers; it is not limited to industries.

Senator McKEEN: I think you said this was to prevent a big company from breaking into small parts. How does it affect small companies which came together and did not get separated, but through allied interests became interested in the same group? Would they lost their $25,000 deduction?

Mr. McENTYRE: As long as two taxpayers become associated within the definition of the act, then only one of them can get the reduced rate of tax, or they can divide the $25,000 between them.

But for the total of the two companies, only $25,000 would be subject to a reduced rate.

Senator McKEEN: Why do you suggest a breaking up, to beat the tax? You collect that extra tax from the one company?

Mr. McENTYRE: Yes.

Senator KINLEY: What if you have three companies.

Mr. McENTYRE: Associated companies means more than two—it can mean any number.

The CHAIRMAN: Shall subsections 1 and 2 carry?

Some SENATORS: Carried.

The CHAIRMAN: Subsection 3 simply prescribes rates for part of the year, where only part of the taxation year of the corporation is in the year 1959. In those circumstances it provides a method for determining the rate to be charged.

Shall subsections 3 and 4 carry?

Some SENATORS: Carried.

The CHAIRMAN: We are now at the top of page 10, section 14. This simply extends the period for giving notice.

Some SENATORS: Carried.

The CHAIRMAN: Section 15. There is a footnote there. Is there anything to add, Mr. Irwin?

Mr. IRWIN: I think not. It merely substitutes the Canadian Universities Foundation for the National Conference of Canadian Universities.

Senator BRUNT: Does one of the bodies go out of existence?

Mr. IRWIN: Yes.

Some SENATORS: Carried.

The CHAIRMAN: Section 16.

Senator MACDONALD: May we have an explanation of that section?

Mr. IRWIN: Mr. Chairman, the law provides that an individual who derives an income from a trust or an estate may claim the dividend tax credit for that proportion of income that is the same as the proportion of the estate's income from dividends to total income.

Senator BRUNT: Would you give us an example of that, in a few figures?

Mr. IRWIN: Supposing the income of an estate or trust is $100, 25 per cent of which is from dividends of taxable Canadian corporations, and the individual derives $4 from this estate. In those circumstances he could claim a dividend tax credit on $1, being one-quarter, the same proportion as the dividend income of the estate. That is what the law has said.

This amendment merely continues this provision for the cases where the estate or trust derives income from another estate or trust. It goes back as many steps as you must take.

The CHAIRMAN: It goes back to the source, no matter if it has to go through a number of estates in the process.

Mr. IRWIN: That is correct.

Some SENATORS: Carried.

The CHAIRMAN: Section 17. What is the purpose of this section?

Mr. IRWIN: The purpose of this is to give the same beneficial rules to provincial life insurance companies that want to become mutual companies, as are already provided for companies under the Canadian-British Insurance Companies Act.

Senator BRUNT: It gives them the same tax benefits.

Mr. IRWIN: That is correct.

Senator PRATT: Are there many provincial life insurance companies? I thought they were mostly under federal authority.

Mr. IRWIN: I believe there are not many.

Senator PRATT: But there are some.

Mr. IRWIN: Apparently it was not anticipated that any of these would be turned into mutual companies at the time the legislation was provided under the Canadian-British Insurance Companies Act for federal companies.

The CHAIRMAN: Carried?

Some SENATORS: Carried.

The CHAIRMAN: Section 18.

Mr. IRWIN: This deals with non-resident owned investment corporations. The law at present provides that a corporation may not qualify as a non-resident owned investment corporation if more than 10 per cent of its gross revenue is derived from rents, but it was not absolutely clear that the term "rents" extended beyond rents from real estate. This amendment makes it clear that hire of chattles, or charterparty fees or remunerations are regarded the same way as rent.

Senator BRUNT: Would you interpret "remunerations"? What does it cover?

Mr. MCENTYRE: "Remunerations" I would suppose would be fees for services, such as perhaps a management service or something of that nature.

Senator LEONARD: Does it modify "charterparty fees"?

Mr. MCENTYRE: No.

The CHAIRMAN: Is it intended to be related to remuneration in connection with hire of chattles, or charterparty fees, or is it something completely independent.

Senator FARRIS: Surely it is confined to charterparty fees.

The CHAIRMAN: I would think so. That is why I was interested in an explanation.

Senator BRUNT: I don't think Mr. McEntyre will apply it that way.

The CHAIRMAN: I am a little fearful from what Mr. Irwin has said, that it was not his idea that it be limited in that fashion.

Senator DROUIN: The text would indicate it is so limited.

The CHAIRMAN: The *ejusdem generis* rule would apply there to "remuneration".

Senator FARRIS: I don't think we should discuss it, or they will amend it here.

Mr. MCENTYRE: In section 70 for B(iii) it reads:

> "Rents, hire of chattles, charterparty fees or remunerations, annuities, royalties, interest or dividends."

It seems quite clear that the remuneration must be related to charterparty fees.

The CHAIRMAN: What I am pointing out is that in the amending section you are dropping those words, "annuities, royalties, interest or dividends."

Mr. MCENTYRE: Yes. We have in mind this class of corporation would ordinarily receive the majority of its income from these other sources as annuities, royalties, interest and dividends; and those are not the items which have given rise to the doubt as to what is meant by "rentals".

Senator LEONARD: Mr. Chairman, I think this should be made clear by putting a comma after "chattles", in the same way as we have in B(iii). In that way we would make it clear that "charterparty fees or remunerations" are tied together.

The CHAIRMAN: And the "or" should come out.

Mr. MCENTYRE: I think that would change the sense of it, Mr. Chairman. We are dealing with three items: rents, hire of chattles, charterparty fees or remunerations. The first item should have a comma after it, the second item would not require a comma being before the last, and "charterparty fees or remuneration" is all one item.

Senator HUGESSEN: I suggest that we should insert the word "from" in two places: "From hire of chattles or from charter fees or remunerations".

Senator LEONARD: Yes. You have put the comma in the existing section.

The CHAIRMAN: Yes.

Mr. MCENTYRE: The existing section contains seven or eight items, of which "charterparty fees or remunerations" comes in the middle.

The CHAIRMAN: But it follows immediately "hire of chattles" with a comma. We are just trying to make sure that it means what it says and what it is intended to mean.

Senator HUGESSEN: I suggest that it be amended to read:

> "From rents, from hire of chattles, or from charterparty fees or remunerations."

That puts charterparty fees and remunerations together, which is what you want.

The CHAIRMAN: What does our law clerk have to say about that?

The LAW CLERK: I think that would be a permissible amendment, Mr. Chairman.

The CHAIRMAN: The section would then read:

> "(ba) Not more than 10 per cent of its gross revenue was derived from rents, from hire of chattles, or from charterparty fees or remunerations."

Does the committee approve of that?

Some SENATORS: Carried.

Senator ASELTINE: Have the officials of the department any objection to this amendment?

The CHAIRMAN: Senator Aseltine wants to know if the officials are opposing this suggestion for clarification.

Senator BRUNT: Have you any objection, Mr. McEntyre?

Mr. MCENTYRE: I have no further suggestion to make, Mr. Chairman.

Senator LEONARD: It will not make any difference so far as intent is concerned. What we are concerned with is the present wording.

The CHAIRMAN: What Mr. McEntyre has said is that the intent of what has been suggested now by way of the amendment would not change the intent which he said was the intent of this section, and it certainly clarifies it.

Senator FARRIS: This, in effect, clarifies it.

The CHAIRMAN: Yes.

Shall the section carry?

Carried.

Now, we come to section 19. Would you care to give an explanation of that, Mr. Irwin?

Senator ASELTINE: Have we time for that? I would move that that section stand and let us go on with the others.

Senator HUGESSEN: I second that motion.

The CHAIRMAN: Shall the motion carry?

Section 19 stands.

Now, we will deal with section 20.

Mr. IRWIN: This deals with registered retirement savings plan. Taxpayers have been allowed to deduct premiums paid within 60 days after the end of the year but the contract itself had to be entered into by the end of the year. This caused some confusion so the amendment is being made to permit the contract to be entered into within 60 days after the end of the year.

The CHAIRMAN: This is beneficial.

Shall the section carry?

Carried.

Subsection 2 of section 20.

There are certain changes in that.

Mr. IRWIN: Mr. Chairman, this deals with life insurance employees who are members of an employees' pension plan scheme but who also want to pay premiums under a registered retirement savings plan. The law provides that such an employee is subject to a limit of $1,500 a year for both of them, or 10 per cent of his earned income, but it was not clear that that ceiling applied to employees of life insurance companies.

Senator ASELTINE: Why?

Mr. IRWIN: Because of the fact that life insurance companies determine their income by special rules. They do not follow the same rules for determining taxable income as other corporations follow. This amendment will merely make it clear that life insurance company employees are treated the same way as employees of other companies.

The CHAIRMAN: How could they do it differently? That is what bothers me. If the XYZ Company has a plan, and if it is a life insurance company certain rates are set and these are the contributions.

Mr. IRWIN: This does not flow from the placing of the registered retirement savings plan. It comes from the wording in section 79 (b) which defines the limit deductible, and the wording used describes an employee who is a member of a plan under which the employer claims a deduction. Those are

the words used to describe an employee's pension plan. Now, life insurance companies do not claim a deduction in computing taxable income for amounts they put into an employees' pension fund because their calculation of taxable income is under another section.

Senator HUGESSEN: Their taxable income is what they put aside for their shareholders each year?

Mr. IRWIN: The taxable income is the amount of money transferred to shareholders' account.

Senator HUGESSEN: So this amount would not come into the computation so far as income tax is concerned.

The CHAIRMAN: This is to prevent them from making an unlimited contribution.

Mr. IRWIN: It is to prevent them from taking up to $2,500 the way self-employed persons can do.

The CHAIRMAN: Shall the section carry?

Carried.

Section 21.

Mr. IRWIN: This deals with Crown corporations. The honourable senators will recall that Crown corporations which are listed in Schedule D of the Financial Administration Act are subject to federal corporation income tax. The law also provides that the corporations carrying on operations in Ontario and Quebec receive a credit or abatement of nine percentage points, but a good many of these Crown corporations, since they are agencies of Her Majesty, may not be taxed by the provinces. Therefore there seems to be no reason to provide a tax abatement when they were not paying a provincial tax, and this withdraws a tax abatement of nine percentage points for those Crown corporations.

The CHAIRMAN: They were not attempting to take that benefit, were they?

Mr. IRWIN: I think the Auditor General may have suggested that these corporations should not be setting aside reserves for taxes which they did not have to pay.

Senator BRUNT: Do you know if Crown corporations pay over their annual profit into the Consolidated Revenue Fund?

Mr. IRWIN: I suspect this varies from corporation to corporation, but I think they do, their annual profit is to be turned over to the Consolidated Revenue Fund.

Senator BRUNT: So if they do that, it does not make any difference because if you lose it one way you make it up another.

Mr. IRWIN: Yes.

The CHAIRMAN: Shall section 21 carry?

Carried.

Section 22.

The CHAIRMAN: This is bringing up the tax rate 2 per cent in relation to that special category of public utility companies that we brought into the statutes some years ago, who paid 2 per cent under the going corporate rate. So now that corporate rate goes up 2 per cent, their rate goes up 2 per cent.

Senator BRUNT: Do all utility companies enjoy that 2 per cent advantage?

Mr. IRWIN: Those described in section 85.

The CHAIRMAN: Electric, gas and steam utilities.

Senator BRUNT: That should be amended to include nuclear companies.

The CHAIRMAN: We can throw out that suggestion and I am sure Mr. Irwin will communicate it to the minister.

Shall the section carry?

Carried.

Section 23.

Mr. IRWIN: This is the amendment that we referred to earlier dealing with reserves set up where payment has not been received in full until more than two years have elapsed. I understand it has been the practice in the past to allow reserve in these circumstances to cover all the anticipated profit, but a court decision threw some doubt on this procedure and might have had the result that the reserve could only cover that part of the profit attributable to the proceeds of sale received after the expiration of two years. This amendment will permit the continuation of past procedure.

The CHAIRMAN: Shall subparagraph 1 carry?

Carried.

Now subparagraph 2.

Mr. IRWIN: The amendment to subclause 2 is a technical one. I find it easiest to explain by an example. First of all, I might point out that the general plan in connection with these reserve provisions is that amounts deducted as reserve one year must be brought back into income the next year; but it also permits a taxpayer who is in business in one year, but in the second year was not in business, to deduct a reserve in respect of the amounts included in computing his business in the first year. Now, if in the third year he was not in business the wording of the present law might not require him to bring back into income that reserve, and this amendment is intended to correct that defect to insure that amounts deducted as reserves in computing income must be brought back into income.

The CHAIRMAN: In other words, if I once set up a reserve which I am entitled to for income tax purposes, then I must carry through annually my accounting for the income which is in that reserve until such time as I am able to write it off as a bad debt.

Mr. IRWIN: I think you would have only to bring it back into income in the year. If you are no longer in business you would not be entitled to deduct it again and it would stop at that point.

The CHAIRMAN: But it might be converted into a bad debt in that year. After all, a reserve is in respect of something owing to me, not something that I have.

Senator BRUNT: Take a reserve set up for inventory.

The CHAIRMAN: Yes. If I have to bring it into my income I should certainly have the right to write it off as a bad debt.

Mr. IRWIN: That is right.

The CHAIRMAN: Even If I am not carrying on business. But what would your practice be if I have to bring my reserve into income, would you permit me to write it off as a bad debt? Would I be permitted to write it off as a bad debt?

Senator BRUNT: Is that right, Mr. McEntyre?

Mr. MCENTYRE: I would have to look at all the sections of the act.

The CHAIRMAN: It is an important question, because if we are going to agree that you can bring a reserve into income that refers to a previous year's income, I want to know if it is a bad debt, are you going to let me write it off. It seems logical that I should be able to do so.

Mr. MCENTYRE: Mr. Chairman, it has been pointed out to me that the allowance for bad debt comes under section 11 (1) (*e*), which simply says that certain deductions can be made and these deductions are not tied to the business. The amendment that is before you now has to do with the income

from a business, which is sort of a little different context, so that we have to have a provision specifically to bring these reserves back where we are dealing with a business. On the other hand, to allow a bad debt we are simply referring to the income in that case, and there is no restriction whether the person is in business or not.

The CHAIRMAN: Oh, yes, but, Mr. McEntyre, here I am as a taxpayer, and I may have some income from various sources and loan some money to somebody as a personal thing, and it goes bad. Do you suggest in those circumstances I can write off the amount of the loan?

Mr. MCENTYRE: Mr. Chairman, the allowance for bad debts under section 11 (1) (*f*) has a particular condition that the amount written off has been included in computing the income of that year or the previous year, so that unless the item was of a type that had been brought into income either previously, in the same year or a preceding year, then the question of writing off a bad debt does not arise.

The CHAIRMAN: If you compelled me by statute to bring a reserve into income, then if I brought it into income and it goes bad, I am entitled to write it off?

Mr. MCENTYRE: That is right, sir.

Section 23 carried.

The CHAIRMAN: Section 24. Here we are into depreciable property again.

Mr. IRWIN: Section 24 follows from the new section that was added to the income tax last year dealing with amalgamations—section 85 I of the Income Tax Act. This section provides a number of rules for dealing with various items of the new company that has been created by the merging of two or more predecessor companies. It was pointed out that the rule enacted last year dealing with the computation of undepreciated capital cost to the new corporation of depreciable property was defective, in that it might require the deduction of the depreciation taken in respect of assets of the predecessor corporations that had been sold or scrapped, and so the old section might act to reduce the undepreciated capital cost of the assets of the new corporation to nil. This amendment is designed to correct that defect in the rule enacted last year.

Senator HUGESSEN: It is beneficial, is it?

Mr. IRWIN: We think so.

The CHAIRMAN: Well, let us assume that the sum total of the capital cost of the depreciable property that is going forward by reason of the amalgamation is, say, $1 million from all the companies. Let us assume that there is a combined depreciation that has accumulated there of maybe $250 thousand, and the capital cost would go forward. In the event of subsequent sale of those properties the recapture would be preserved, too, would it not? I mean, the Crown does not lose the right to recapture because an amalgamation has taken place and the depreciable property of all these companies goes into a new company?

Mr. IRWIN: That is correct.

The CHAIRMAN: Well, now, that is not the point you are trying to cover in this amendment, is it?

Mr. IRWIN: No, the defect was that the old rule said that you had to deduct all the amounts that the predecessor corporation had deducted.

The CHAIRMAN: The only way we could justify that would be if the properties came forward at the original capital cost.

Mr. MCENTYRE: If those particular properties came forward.

The CHAIRMAN: Yes.

Mr. McENTYRE: But there might be some properties which had been scrapped or disposed of.

The CHAIRMAN: So, this is correcting.

Mr. McENTYRE: Yes.

The CHAIRMAN: Carried.

Senator BRUNT: Mr. Chairman, it is now 12.30. I suggest this is a good stopping place.

Senator METHOT: Mr. Chairman, would I be allowed to return for a moment to clause 18, which it was proposed to amend by the insertion of the word "from"?

The CHAIRMAN: Yes. Until the committee concludes its work, any section that has been dealt with can be re-dealt with.

Senator METHOT: I am afraid that the insertion of the word "from" may mean that 10 per cent may be allowed from rents, from hire of chattles and from charterparty fees, which would mean a total of 30 per cent.

The CHAIRMAN: No. It is 10 per cent of the gross revenue.

Senator METHOT: It may mean 10 per cent of each item.

The CHAIRMAN: No; it is 10 per cent of the gross revenue, which I take it would be all the income received by the corporation.

Senator METHOT: It may be.

The CHAIRMAN: It is not 10 per cent of the rent and 10 per cent of the hire of chattles. It is 10 per cent of the gross revenue of the corporation. Is that what is intended, Mr. McEntyre?

Mr. McENTYRE: Yes.

Senator BRUNT: If you have three different companies, one for rent, another for hire of chattles, and a third for charter fees and remuneration, you could take 10 per cent of each one.

The CHAIRMAN: No. If you have a gross revenue of $1 million, 10 per cent of that would be $100,000. You would have income from rents, hire of chattles, charterparties and remuneration up to $100,000.

Senator MACDONALD: You could have 90 per cent of one of those categories.

Senator WALL: Since this section is up again for consideration, does that mean that we are in effect making it easier for these non-resident corporations to quality for the 15 per cent rate?

The CHAIRMAN: No. It must be remembered that there are a lot of deductions that companies of this kind do not get. Mr. McEntyre, do you think there is any likely to be any confusion here?

Senator POWER: Would Mr. McEntyre please translate into French the proposed amendment with the "froms" in it?

The CHAIRMAN: Is it not true that you are providing 10 per cent of the gross, overall revenue of such a company?

Mr. McENTYRE: You mean the overall revenue before any expenses?

The CHAIRMAN: Suppose 10 per cent amounts to $100,000; then, if the sum total of revenue received from rents, from hire of chattles and from charterparties and remuneration amounts to $90,000, the company would qualify as an n.r.o. company. If it amounted to $101,000, you would not qualify.

Mr. McENTYRE: I think the suggestion that has been made by the honourable senator is that a company would still qualify if it had $90,000 from rentals, and another $90,000 from hire of chattles, and another $90,000 from charter parties.

The CHAIRMAN: I don't know how it can do that, because it is 10 per cent of the gross revenue, which would be less than the combination of those figures.

Senator ASELTINE: You couldn't collect more than $100,000.

The CHAIRMAN: To start out with it is fixed at 10 per cent of the gross revenue; and as soon as it becomes more than that, you lose your badge.

If we are going to have any discussion on this section—and we should be interested in clarifying it—let us delay it until later. Is it the wish of the committee that we resume tonight at 8 o'clock?

Some SENATORS: Carried.

—At 12.45 the committee adjourned until 8 p.m. this day.

The hearing resumed at 8 p.m.

Honourable Mr. Hayden in the Chair.

The CHAIRMAN: Call the meeting to order. We have got as far as Section 25.

Senator ASELTINE: Were we not dealing with 18?

The CHAIRMAN: Well, we will come back to it. We are going to come back to 19, so we might as well go through and then come back and do those two.

Senator ASELTINE: What section are we at now?

The CHAIRMAN: Section 25. I think, the last one we dealt with before we adjourned was Section 24.

Mr. Irwin, would you tell us the whys and wherefores of this section?

Mr. IRWIN: I will start out on this one. This is a relieving provision.

Senator FARRIS: Relieving to the taxpayer, I think.

The CHAIRMAN: In what sense do you use the word "relieving", Mr. Irwin, do you mean "ameliorating"?

Mr. IRWIN: The amendment deals with the right of the corporation to pay a 15 per cent tax on undistributed income accumulated since 1949 that has been matched by the payment of dividends. This particular amendment deals with the rather unusual circumstance of a corporation that is now a subsidiary controlled corporation, subsidiary to a personal corporation, but which at some previous time was not a subsidiary controlled corporation.

Perhaps I had better point out that the general rule in the Act is that a subsidiary controlled corporation may not take advantage of this matching provision, but if it is subsidiary to a personal corporation it may.

Senator MACDONALD: 100 per cent?

Mr. IRWIN: No, just a subsidiary, a controlled subsidiary. This amendment extends the right of such a corporation to make its election with respect to dividends paid when it was not a subsidiary controlled corporation.

Senator BRUNT: What about prior to 1949?

Mr. IRWIN: A corporation in order to take advantage of the right to pay a 15 per cent tax under Section 105 must deal with all its undistributed income up to the end of its 1949 taxation year.

Senator BRUNT: But do these companies have that privilege up to 1949?

The CHAIRMAN: Every company has that privilege. This is dealing with the period subsequent to 1949.

Senator BRUNT: In other words, these subsidiary companies now have that privilege back to 1949, is that right? You see, 1949 is the break-off point and you use one getting up to 1949 and another one afterwards.

Mr. IRWIN: This particular amendment deals with post-1949 accumulations, and that part of this undistributed income which is matched by ordinary dividends.

The CHAIRMAN: Can we take an illustration of that, just to work it out. Suppose you had a company that became a subsidiary in, say, 1954, and let us assume that it had had $50,000 of undistributed income at that time, and then subsequent thereto it accumulated, say, another $50,000. Now, how would that work out under this amendment?

Mr. IRWIN: If it were a subsidiary corporation or became a subsidiary corporation in 1954, it could not—

The CHAIRMAN: This $50,000 that it had accumulated for that length of time would be locked in, and become a designated surplus, would it not?

Mr. IRWIN: Yes. The general rule is that a subsidiary corporation may not take advantage of this matching provision. So in your example—

The CHAIRMAN: In my example up to 1954 it was just an ordinary corporation and it had accumulated some undistributed income. In 1954 it became a subsidiary of some company, and therefore whatever undistributed income it had at that time became locked in as a designated surplus?

Mr. IRWIN: Yes, that is right.

The CHAIRMAN: Will this section carry you on from there in that case, and give you any relief?

Mr. IRWIN: I do not think this section affects that situation.

Senator BRUNT: I am just wondering, Mr. Chairman, is this going to help the Ford Motor Company?

Senator DAVIES: Wait until they get it through the Commons and we will know.

The CHAIRMAN: Make their cars move faster?

Mr. Pook, I think, may undertake an explanation of this. Would you like to try it, Mr. Pook?

Mr. POOK: Mr. Chairman, I think your example assumes that no dividends were paid out from the year 1950 up until the time it became a subsidiary controlled company?

The CHAIRMAN: That is right.

Mr. POOK: In which case the $50,000 would be locked in. There could not be any matching.

The CHAIRMAN: Then supposing we assume that $50,000 had been paid in dividends and there was $50,000 of undistributed income which had not been availed of under the 15 per cent rule?

Mr. POOK: Well, the general provision for subsidiary controlled corporations is that they could pay 15 per cent tax on the amount that they could have paid on the day before they became subsidiary controlled. They still have a right to match dividends that were paid before control was acquired.

The CHAIRMAN: If you have a company that was not a subsidiary until 1954 and had paid a dividend out representing not more than half of its earnings, and it had accumulated the other half which it could have taken out on a 15 per cent payment but did not, and then 1954 comes along and it becomes a subsidiary company, in the ordinary way the undistributed income it had would be locked in?

Mr. POOK: Yes.

The CHAIRMAN: But this section then steps in and says with respect to that accumulation which could have been paid out on the basis of 15 per cent at any time, it may be paid out notwithstanding the fact that it has become a controlled subsidiary?

Mr. POOK: That is right.

Senator BRUNT: And that is the effect of the amendment, or is that not the act as it now stands?

Mr. POOK: That is under the Act as it now stands in sub-section 2(b). This section only deals with the provision when it is subsidiary to a personal corporation, and we are not concerned with this designated surplus that is locked in when the company is controlled by a personal corporation because anything the personal corporation receives is not taxed in the hands of the personal corporation, it is taxed in the hands of its shareholders.

The CHAIRMAN: Under the Act as it stands at the present time, a subsidiary controlled corporation, that is, a subsidiary personal corporation is not bound by that. Its undistributed income is not locked in in the same sense as a subsidiary controlled company. I am trying to get at what this does that is not already in the law. What more does this do? It says here in the note:

> This amendment extends the right of such a corporation . . .

That is a subsidiary controlled corporation—

> . . . to make such an election with respect to dividends paid when it was not a subsidiary controlled corporation.

Well, as I understand it under the law as it stands without this amendment there is the right to make such an election. Now, what more does this do?

Mr. POOK: Using your illustration you are assuming that it became subsidiary to a personal corporation in 1954?

The CHAIRMAN: Yes.

Mr. POOK: Without this section being amended it would not have this right to match the dividends that were paid prior to 1954.

The CHAIRMAN: And is that all this does?

Mr. POOK: That is all this does. It is to extend that right to it, the same right that is given to the corporation that is subsidiary to the ordinary corporation.

Senator BRUNT: Then this makes all subsidiary corporations of the same class and they all get benefits whether they are subsidiary to family corporations or private companies or anything else?

Mr. POOK: It gives both companies the right to match those dividends. The corporation already has the right to match the dividends that are paid while it is subsidiary to a personal corporation.

The CHAIRMAN: Yes, I see the difference.

Mr. BRUNT: Now, all subsidiary corporations will have the same right with respect to that 15 per cent, is that right?

The CHAIRMAN: Well, Mr. Pook was being exact, and what he says is that the subsidiary controlled company which is controlled by a company which is not a personal corporation and a subsidiary controlled company which is controlled by a personal corporation, both of them may, when this becomes law, deal on this 15 per cent basis with respect to dividends, to the matching pair of dividends accumulated before they became subsidiary. That is correct, is it not?

Mr. POOK: That is it.

The CHAIRMAN: Now, with those concluding very clear words which I added—I hope I did not confuse it too much—is there anything more in this section, Mr. Irwin, than what we have finally worked out of it?

Mr. IRWIN: I think not, sir.

The CHAIRMAN: Shall the section carry?

Some SENATORS: Carried.

The CHAIRMAN: Now, Section 26 deals with something that we brought into the statute last year in connection with amalgamations and mergers. What is this intended to cover, this particular section, Mr. Irwin?

Mr. IRWIN: This section is in addition to the other provisions in the Act imposing special taxes when corporations take certain actions to have their undistributed income pass to the shareholders in a tax free form. As you have said, this is necessary because of the section added last year dealing with amalgamations.

This section added last year permits a subsidiary controlled corporation to merge with its parent corporation and what would be regarded as designated surplus before amalgamation loses that quality after amalgamation.

The CHAIRMAN: Yes.

Mr. IRWIN: And this amendment is designed to impose a tax only in those cases where this has been done, and where the net assets of the new corporation are less than the undistributed income of the predecessor corporation.

The CHAIRMAN: See if I can understand it. If you had a vertical merger including several subsidiaries and the parent company and you merge them all so that you have one resulting corporation and the assets do not die, if you take the sum total of the undistributed income of each of those corporations before such merger and it came to the figure of $1 million and if when you have a new corporation after the merger, its undistributed income still equals $1 million, then there is no question of tax, is that right, so far as this section is concerned?

Mr. IRWIN: If the assets less liabilities, excluding goodwill, after the amalgamation are $1 million, there would be no tax.

The CHAIRMAN: This is intended to cover the situation, a plan of amalgamation may have some features added to it as a result of which the shareholders somewhere en route drain off something and which might be a tax-free operation unless you brought in this section, is that right?

Mr. IRWIN: That is it, yes.

The CHAIRMAN: Is that all this section is designed to do?

Mr. IRWIN: Yes.

The CHAIRMAN: And it is assets, it is not a case of combining the undistributed income. We are talking about future assets of the resulting corporation equalling the assets of the corporations that went into that amalgamation, when no tax is attracted by this section.

Senator BRUNT: Less the liabilities in each case.

The CHAIRMAN: Well, I meant net assets.

Senator DAVIES: I am wondering how the ordinary layman is supposed to interpret this act and make out his own income tax return.

Senator BRUNT: You get a lawyer and an accountant.

Senator DAVIES: Do you not think that the income tax—

The CHAIRMAN: Senator, I was waiting for an answer to the question I put.

Senator DAVIES: If they do not know what it is all about, how do you expect anybody else to know?

The CHAIRMAN: I do not want to pass something I do not understand.

Mr. IRWIN: What the section tries to say, sir, is that the net assets of the new corporation must be at least equal to the undistributed income of the predecessor corporation.

The CHAIRMAN: Then it is not a matching of assets: it is a case that the net assets of the resulting corporation must be at least equal to the sum total of the undistributed income in the corporations that went into the amalgamation?

Mr. IRWIN: That is right.

Senator LEONARD: As you said, Mr. Chairman, no tax is attracted if those net assets are equal or more?

The CHAIRMAN: That is right, it is only if the net assets are less than the sum total of the undistributed net income in each of the companies going into the amalgamation that tax is attracted, and the tax is on the difference, is that right?

Mr. IRWIN: That is right.

Senator MACDONALD: That is where the draining off occurs.

The CHAIRMAN: Yes, and, of course, that could occur and your net assets would be less if in fact some of your undistributed income was drained off.

Any further questions you want to ask on this? Senator Davies, you had a question?

Senator DAVIES: I was wondering whether the Income Tax Department could not add on their staff a corps of advisors to straighten these things out for ordinary people who go to make out their income tax.

The CHAIRMAN: Well, I suppose they do not want to compete with private enterprise.

Any other questions on this section? Shall the section pass?

Some SENATORS: Carried.

The CHAIRMAN: When does that section come into force?

Senator BRUNT: After May 13, 1959. I do not know why that date was picked.

Mr. IRWIN: That was the date of first reading of the Income Tax Bill.

The CHAIRMAN: And I suppose they picked that date because I do not think this amending section was set out in the budget resolution, was it?

Mr. IRWIN: That is so.

The CHAIRMAN: So you picked the date on which it was first presented?

Mr. IRWIN: Yes.

The CHAIRMAN: Well, that is fair.

Section 27.

Mr. IRWIN: This subsection concerns notices of assessment and it deletes the requirement that these particular notices of assessment must be sent by registered mail. The ordinary notices of assessment are not sent by registered mail, and it seemed reasonable that these particular notices should be treated in the same way. These are notices of assessment that are sent to employers in respect of taxes withheld from their employee's remuneration and that are sent to the payers of income to non-residents.

Senator BRUNT: Now, wait a minute, are you saying the ordinary assessment notices go out in the ordinary mail? Well, they are all based on returns filed. There is no return filed for this, is there?

The CHAIRMAN: Well, there is this kind of return, that the employer has to file a return and also account and remit the amount he has withheld from the pay of each employee. He is required to do that under the statute, is that not right?

Mr. IRWIN: Yes.

The CHAIRMAN: I take it these assessments relate to the situation where all of the information has gone to the department and the department may then issue an assessment. The one thing that is not clear to me is whether they issue the assessment against the employee from whom the money has been withheld, or whether they issue it against the employer in relation to the amount of money that has been withheld?

Mr. McENTYRE: There is a little more to it than that. It may be at the end of the year when the employer files his returns showing his deductions made from his employees, he might be short of his remittance, in which case we would have to send him an assessment to collect the difference. It also happens that during the currency of the year it comes to our attention that remittances are not being sent in to us in which case we would send a man to check up and if he found the employer or employee was behind in his remittances we would immediately assess the underpayment and attempt to collect it.

The CHAIRMAN: You would assess those underpayments against the employer?

Mr. McENTYRE: Oh yes, this is the responsibility of the employer who is withholding from the salary and wages that he pays to his employees but has not sent in the money he has withheld from those wages.

The CHAIRMAN: Would you say withheld or should have withheld?

Mr. McENTYRE: Well, of course, if he has not withheld then he is subject to certain penalties.

The CHAIRMAN: Would that be assessed as well?

Mr. McENTYRE: No, if he has not withheld he is subject to the penalties, but if he has withheld and failed to remit, then he must send in the money which he withheld and he is also subject to penalties if the remittances are late.

Senator BRUNT: Would this section get rid of criminal prosecutions for the employer that just keeps the money?

Mr. McENTYRE: No, our responsibility is, naturally, to collect the money that has been withheld on account of taxes by employers and then there are penalties and offences under the act.

Senator BOUFFARD: The only thing you want is to be relieved from sending the assessment by registered mail?

Mr. McENTYRE: Actually they have not been sent by registered mail for some time, and it suddenly came to the attention of one of the officials of one of the department that contrary to the provisions dealing with regular assessments for taxes, this section requires these assessments to be sent by registered mail, and it then became a question of whether we would incur the additional expense of sending these out by registered mail or whether we would ask the Minister of Finance to recommend this amendment, and in the interests of economy we felt as most employers who had been receiving these copies had not objected to the fact they were not going by registered mail, that perhaps they would continue to accept them when the requirement had been removed from the act.

The CHAIRMAN: I think I remember when this was passed. I think the only reason for putting in "registered" in this was so as to try to get an acknowledgment, if possible, from the employer himself which would mean that you certainly had an absolute foundation to proceed upon then.

Senator BRUNT: Have any difficulties been created within the last year or so by sending them ordinary mail?

Mr. McENTYRE: No, no difficulties.

The CHAIRMAN: Any questions? Carried?

Some SENATORS: Carried.

The CHAIRMAN: Now, Section 28. This is said to be beneficial. You will notice in some cases it may work out that way and I think in some cases it will not. I do not know how they would plan it. Mr. Irwin, would you state very briefly what the purpose is?

Mr. IRWIN: All this clause does is amend the definition of death benefit. Death benefits are defined in the act to mean payments made by an employer upon the death of an employee in recognition of his service. Since these payments are in recognition of service, they are in a sense additional remuneration and so have been made subject to income tax. However, the law has contained an exemption for an amount equal to 90 days remuneration of the employee. This amendment will change that exemption to read an amount equal to the employee's remuneration for a year, or $10,000, whichever is the lesser.

Senator BRUNT: His last year in office?

Mr. IRWIN: Yes. It increases the exemption unless 90 days remuneration is greater than $10,000.

The CHAIRMAN: Any questions? Carried?

Some SENATORS: Carried.

The CHAIRMAN: Now, we dealt with Section 18 this morning, but there has been a request from Mr. Irwin that we have another look at it. You will recall that was the section where we added several words at the suggestion of the committee so that as amended it reads in this fashion:

> Not more than 10 per cent of its gross revenue was derived from rents, from hire of chattels or from charterparty fees or remunerations.

In other words, we inserted the word "from" two times in the section so as to make it clear as to the sources of the revenue and to limit the meaning of "remunerations" if that were necessary.

Now, Mr. Irwin, have you something to say as to why we may have piled confusion upon confusion by what we did?

Mr. IRWIN: No sir, I have not. I thought perhaps the draftsman would be able to be here. I think he can be here at nine o'clock and he may have some words on it.

The CHAIRMAN: I will say Mr. Thorson who was the draftsman called me and when he called me he opened up quite a discussion on the section and the distortion of the meaning it had on the basis that we had only inserted the word "from" once and not twice. When I explained to him that we had inserted it twice he said: "There is no use my continuing this line, but it certainly makes it inelegant so far as English is concerned." I said: "I am not that much of a purist as long as the meaning is clear it can be inelegant, so what."

Whether there is the same feeling that arises out of what Senator Methot raised this morning I do not know. You will remember Senator Methot raised the question as to whether or not as amended you could have 10 per cent of your gross revenue of rents and you could have another 10 per cent from hire of chattels, another 10 per cent from charter party fees or remuneration.

Senator DAVIES: What does charter party fees mean?

The CHAIRMAN: For a vessel, boats.

Now, what I pointed out at that time, just to complete the explanation and then we can argue the point, was this, that I said the words of limitation I see in the section are these: "that not more than 10 per cent of its gross revenue." What you have to determine first is what is the gross revenue of this company. If it is $1 million, then 10 per cent is $100,000. Well, on the interpretation that I put on this section, I have only got $100,000 I can deal with, and the source could be any or all of these things and if I exceed $100,000 then I lose my standing. If I come up to $100,000 I will keep my standing. That was the interpretation I thought it bore and I thought we were through with that, Senator Methot.

Senator METHOT: I have not changed my mind because it is an exception and we say: "Not more than 10 per cent of this gross revenue is derived from rents, and 10 per cent of its revenue was derived from hire of chattels and 10 per cent from others. Even if we take the 10 per cent as it is it is three times we take it.

The CHAIRMAN: The simple answer is this: what revenue are you talking about if you are not talking about rent from these sources? Either the rent is from those sources and you say so, or if you are going to interpret it you have to work it out that way.

Senator LEONARD: Mr. Chairman, may I throw out another suggestion. What we are concerned about is simply to tie in remunerations with charterparty fees and we could do it in another way by saying, "Gross revenue was derived from rents, charterparty fees or remuneration or hire of chattels". It is reversing the order a little different from what it is in the other subsection; that subsection has a lot of things in it, and it accomplishes the same thing by the comma in it.

The CHAIRMAN: It makes it a more thorough enumeration.

Senator LEONARD: And we could do it in the same way by putting that in between rents and hire of chattels.

The CHAIRMAN: You could start off by charterparty fees or remunerations, rents or hire of chattels. Our only concern was that we wanted to be sure that remuneration was related to charterparty fees.

Senator BRUNT: Just read it again, Mr. Chairman.

The CHAIRMAN: The way it would now read is this:

> "18 (ba) not more than 10 per cent of its gross revenue was derived from charterparty fees, or remunerations, rents or hire of chattels."

Senator BRUNT: Will that suit you, Mr. McEntyre?

Mr. MCENTYRE: I have no further suggestions to make, Mr. Chairman.

Senator BRUNT: Would you go along with that one?

Senator MACDONALD: Mr. Chairman, are you not putting a comma after rents?

The CHAIRMAN: We say from charterparty fees or remunerations, rents no comma or hire of chattels.

Senator MACDONALD: This has yet to go to the House of Commons. We will have to explain why we are doing this.

The CHAIRMAN: Well, let us put it on the record: The reason we have done it was because a number of senators were concerned that the word "remunerations" at the end of this list was riding free there and might have a meaning other than tied into charterparty fees or charterparty remunerations.

Senator THORVALDSON: Could anyone suggest what other meaning it could possibly have?

Senator LEONARD: It might mean remunerations by itself.

Senator THORVALDSON: Remunerations is a very very general word and surely it is limited by the words just ahead of it.

The CHAIRMAN: I don't know. There were some doubts in the minds of some of the senators and if this change satisfies them and does not disturb the intent of the bill let us put it in.

Senator KINLEY: Remunerations is a general term. It is remunerations from chaterparty.

The CHAIRMAN: It may be a general term here.

Senator THORVALDSON: I don't think it matters a great deal.

Senator BRUNT: If we can do anything to clear up the meaning of the section let us do so.

Senator WALL: Mr. Chairman, in this section as it reads now do we not mean gross revenue from rents, hire of chattels and charterparty fees or remunerations?

Senator ASELTINE: I would leave it the way it is, Mr. Chairman.

The CHAIRMAN: Have we reached any finality on this? I have repeated the change to the committee.

Senator FARRIS: I move that we leave it the way it is.

Senator BRUNT: What is your last suggested change, Mr. Chairman?

The CHAIRMAN: The last suggested change was that we reverse the order and say, ". . .was derived from charterparty fees or remunerations, rents or hire of chattels." That was the last suggestion.

Senator BRUNT: That makes it much clearer.

Senator MONETTE: Why is it necessary to change this, Mr. Chairman?

The CHAIRMAN: Only 10 per cent of the gross revenue may come from one item or all of these. It was the concern of the committee that the word "remunerations", being a general word, might take on a general meaning instead of being limited to charterparty remunerations. That was the real question.

Senator MONETTE: Will the word "either" be sufficient or the word "and" as suggested.

The CHAIRMAN: What Mr. McEntyre is concerned about now is that if we shift the position of rents whether we are not putting it so close to hire of chattels that rents would take on the nature of hire of chattels.

Senator MACDONALD: The fact that you are relating charterparty fees to remunerations by the word "or" you can do the same thing by relating rents or hire of chattels, because in your suggestion of charterparty fees or remunerations you have no comma after the word "or". Similarly, in rents or hire of chattels, you have no comma after "or", which seems to me would be to relate rents and hire of chattels. That is the seult of putting charterparty fees or remunerations without a comma.

The CHAIRMAN: I think you could accomplish the same result by putting the word "charterparty" before remunerations.

Senator MACDONALD: I would leave it the way it is.

Senator BRUNT: There has been a suggestion made that if we leave the section the way it is and add after the word "or" before remunerations, add two words so that it will read, "other charterparty remunerations."

The CHAIRMAN: I had suggested repeating the word "charterparty" before remunerations.

Senator BRUNT: That makes it a lot clearer. Or add the words, "or charterparty". That would leave no doubt about it.

Senator FARRIS: Mr. Chairman, a lot of people would like to vote on it the way it is. How would you arrive at an opportunity to do that? I am asking that question respectfully.

The CHAIRMAN: I think I did say I will put the section in a moment and those who want it in its present form will vote for it. If we make a change in the language of this section 18 we have to remember that earlier in the section, as it is now, similar language occurs.

Senator LEONARD: But there is no confusion in the other section, because of the commas. It is put in clearly by itself as a phrase, separate from "chattels, charterparty fees or remunerations, annuities, royalties, interest or dividends." So that there is no confusion whatever in the other section.

The CHAIRMAN: No; in section 70(4)(b)(iii), it says this is income from "rents, hire of chattels, charterparty fees or remunerations."

Senator LEONARD: That is right, and that is a phrase by itself as distinct from all the other phrases, so it is perfectly clear that that "remuneration" ties in with "charterparty".

The CHAIRMAN: Well, the only way would be to repeat "charterparty" before "remuneration". Let us settle this. First of all, I have been brought to task from the senior senator from Vancouver saying that some people want to vote on the section as it is.

Senator LEONARD: At the moment the committee has voted for a change in it.

The CHAIRMAN: The committee has made several attempts at recasting this, and which one is the latest I am not sure at the moment; I would have to study Hansard after the record is complete. Surely we can make a short-cut. As a suggestion, how many members of the committee feel the word "charterparty" should be repeated in front of "remuneration"? That suggestion has been made. You have "charterparty fees", and then the suggestion is that you say "or charterparty remunerations".

Senator LEONARD: That is what it is intended to be, is it not?

The CHAIRMAN: Yes. Those who feel that clarification should be made, please indicate by raising your hands? In favour, 13. Now, those who feel that it should not be made? Opposed, 8. Well, the majority of the committee feel that that clarification should be made.

Senator MCKEEN: Is that a big enough majority?

Senator KINLEY: Did the chairman vote?

The CHAIRMAN: No, I did not. Under our rules in the Senate the chairman does not have a vote as chairman except as a member of the committee. In a tie vote, whatever you are voting for is lost.

Senator MACDONALD: That did not prevent you from voting.

The CHAIRMAN: No, that is right. I had a very strong view.

Now, so far as this section is concerned, is it the wish of the committee that we amend section 18 so that it read in the manner now expressed?

Some SENATORS: Carried.

The CHAIRMAN: Now we come to section 19, which we passed over this morning. This is a section about which you will recall your chairman, and Senator Hugessen, had some things to say, when the matter was before us on second reading. The purport of section 19 is to render inapplicable section 71 of the bill so far as any company from April 10 being able to qualify as a foreign business corporation. It preserves the ones who have been qualified up to that moment; but if they make a false step so that they cease at any time to be a foreign corporation they can never thereafter recapture their position. That is the effect. Is there any discussion on this section? Would you care to give us one good reason why we should pass this section, Mr. Irwin?

Senator THORVALDSON: Before Mr. Irwin answers, may I ask if you are correct, Mr. Chairman, in using the term "false step".

The CHAIRMAN: What I mean by that is this, that if at the beginning of January I was and had been for some years before that a foreign business corporation, and if in a year from now I did business in such a way that I ceased to qualify, I could never in a subsequent year requalify.

Senator THORVALDSON: I think that is a more accurate way to put it.

The CHAIRMAN: I did not realize I was going to be subjected to this purism this evening.

Senator POULIOT: Mr. Chairman, I wonder if the department has figured out approximately the revenue to be derived from each one of these corporations?

The CHAIRMAN: We still have this one section to deal with. Could I get the answer to your question after we have dealt with this section?

Senator POULIOT: Certainly.

The CHAIRMAN: Now, will you give us a reason, Mr. Irwin, why we should pass section 19?

Mr. IRWIN: I will not attempt, Mr. Chairman, to state Government policy or argue the case for or against this, but perhaps I could point out that the Minister of Finance pointed out in the house that since all corporations that qualified for the 1958 taxation year or were carrying on business as foreign business corporations before the budget announcement may continue to qualify, the amendment takes nothing away from existing corporations. The point at issue, therefore, is whether the formation of new foreign business corporations would benefit Canada or whether such new corporations would merely be taking advantage of a loophole and creating an inequitable feature in the tax structure. The Minister stated that the right to qualify as a foreign corporation under the act in its present form can be used as a means of maintaining in Canada a tax haven or as a means of avoidance of tax.

Perhaps, Mr. Chairman, you would permit me to quote directly from what the minister said, as appears at page 3304 of the Commons Hansard, on May 4:

> We are asking the committee for that reason to close the door at that point because there is a very serious question as to whether any more foreign business corporations are going to be of any advantage to Canada anyway.

He went on to say, a little farther down the page:

> We therefore think this situation is one that calls for some review and we propose that no more corporations not yet entitled to qualify as foreign business corporations should be in a position to do so hereafter until at least this whole situation has been carefully reviewed.

The CHAIRMAN: Well, now let us start the questioning. The minister also mentioned, when he was pressed in the Commons, two what he called "loopholes". Is that not correct, Mr. Irwin?

Mr. IRWIN: He gave one.

The CHAIRMAN: He gave two examples, I think. In both illustrations he gave, the companies which he started off by describing as foreign business corporations were not foreign business corporations. They could not be.

Senator THORVALDSON: You are just giving an opinion, Mr. Chairman.

The CHAIRMAN: All I can say, Senator Thorvaldson, unless I misunderstood you in the Senate, is that when I expressed that opinion in regard to those two illustrations you agreed with my opinion in law. That is in Hansard.

Senator THORVALDSON: I do not think I did. I think we are here to discuss the merits without coming to conclusions too early. As I have said time after time, I think the minister or the department should have an opportunity of justifying their stand on this thing, if they can do so, and then this committee might see fit to accept that position. If they are not able to justify it then we may well decide to disagree with the section, but I do not think that these

gentlemen should have an opportunity of beginning afresh and justifying the section. That is the position I have taken...

The CHAIRMAN: I just want to clarify the situation. Mr. Irwin, if I said anything that indicated to you that I was attempting to cut off any further explanation that you wished to make then I will say I did not so intend. You have the floor to give the fullest possible explanation of this section, and Mr. McEntyre has it also, and if there are any other witnesses from the department we want to hear from them as well if they have anything to say.

Senator MACDONALD: I would not think anybody else is under the impression that you were trying to cut off any explanation that the departmental officials would give. I agree fully with the view that the departmental officials should be given an opportunity of justifying their position, but I think Senator Thorvaldson misunderstood. They should have an opportunity to explain their position to us, and I do not think the chairman attempted to stop that in any way.

Senator BRUNT: Mr. Irwin, would you read that part of Mr. Fleming's speech in the other place where he referred to a tax haven and loopholes?

Mr. IRWIN: Yes. These references occur in a number of places, but at page 3303 of Hansard of May 4, Mr. Fleming is reported as saying:

> I say that under the terms of the present act there is a possibility that it can be used as a tax haven with no benefit to Canada, and it may also be used for tax avoidance.

Senator BRUNT: Yes. Can you give us some examples?

Mr. IRWIN: Perhaps Mr. McEntyre, or one of the people from the department who are accustomed to seeing these cases, can. I would not undertake to give examples. I do not see tax returns.

Senator MACDONALD: Mr. Chairman, for the benefit, I am sure, of a number of members of the committee, could this section be explained? Just what is the arrangement in the setting up of these companies, and what benefits do they get from it? It seems to me we are starting right in the middle of this problem instead of starting at the beginning so that we all have a clear picture of it.

The CHAIRMAN: The witnesses have the floor.

Mr. MCENTYRE: Mr. Chairman, this section, which is Section 71 of the present act and which was originally Section 4(k) of the Income War Tax Act, I understand was added to the Income War Tax Act in the very early days. At that time there were certain Canadian corporations, particularly Brazilian Traction, Mexican Light, Heat and Power and Barcelona Light and Power, which had been incorporated and were doing business before there was income tax in Canada. Although the record of the passage of the original Section 4(k) into the act is rather hazy by a reference to Hansard it can only be presumed that as these companies were carrying on their business entirely outside of Canada it seemed reasonable to the Minister of Finance of the day that, perhaps, they should not be subject to income tax. So Section 4(k) provided very much the same as the present Section 71 does, that where the business operations of the taxpayer were of an industrial, mining, commercial, public utility or public service nature and were carried on entirely outside Canada, it would then qualify as a foreign business corporation, and on filing a return and the payment of a nominal filing fee it would be exempt from tax.

Now, in the course of the administration of this section in 1955 it was discovered that non-resident persons could take advantage of the Canadian tax treaties with foreign countries in connection with shipping, and an amend-

ment was added to the foreign business corporation section at that time, which is paragraph (d) of Subsection (2) which said that a foreign business corporation could not derive more than 10 per cent of its gross revenue from the leasing or operation by it of a ship or aircraft.

What was happening was that foreign owners of ships would incorporate a Canadian corporation, would transfer the ownership of the ship to this Canadian corporation, would qualify the corporation as a foreign business corporation exempt from Canadian tax, and then sail the ship in such a way that it never came to Canada so that it could never be said to carry on its activities in Canada, and yet when it called at foreign ports in countries which had tax agreements with Canada which said that the country of residence would have the sole right of assessing tax, they would escape tax in those countries as well. So, in effect, they were carrying on a shipping company exempt from income tax either in Canada or in any of the countries with which Canada had tax conventions.

Senator BRUNT: But that was blocked in 1955.

Mr. MCENTYRE: Yes.

Senator KINLEY: Where would they register the ship? In a foreign port?

Mr. MCENTYRE: Under the tax convention the place of registration is not important. It is the place of residence of the owner or operator.

Now, Canada has also other provisions in its tax conventions, namely, that a salesman from Canada can be sent to these countries and as long as an office is not set up and as long as the salesman does not have a stock of goods, or the power to contract, he can call on the customers in those countries and offer goods for sale without rendering his employer subject to tax in those countries.

Similarly, Canadian corporations which want a source of raw materials can send buyers to these foreign countries, and as long as they do not open up an office their buyers can go around and look for the materials they need—perhaps they are supplies they need for their department stores, or raw materials that they need for their manufacturing—and the fact that these buyers are in these countries does not render the employer subject to income tax.

Now, the Case that Mr. Fleming mentioned was the case of a foreign business corporation that was going to purchase the products of a Canadian producer and sell them in a foreign country where there was a large demand for this particular product. Naturally, once a foreign business corporation, or a Canadian corporation, had been set up it had to be very careful that these goods were not purchased in Canada. But whether it was arranged or it just happened it was possible, because the Canadian producer had an office outside of Canada, the purchase of the Canadian Company's goods could be negotiated at its office outside of Canada, delivery of the goods could be taken outside of Canada, and payment for the goods could be made outside of Canada, and then these goods could be sold in the foreign country and the profit made from that transaction would escape tax in Canada, and because of these various tax conventions tax would also be evaded in those foreign countries, so that the whole profit from this transaction would escape corporation income tax.

The CHAIRMAN: Can we interject something there, Mr. McEntyre? If you had a foreign business corporation that was purchasing Canadian goods, say, in the United States from a Canadian seller and then was using those goods somewhere else outside of Canada, the situation would be exactly the same as that of any company incorporated anywhere outside of Canada making a purchase of those Canadian goods abroad. So far as the seller of those goods was

concerned Canada got a tax on the profit. On any profit from the sale of these goods to this buyer outside of Canada, if it resulted in a profit to the Canadian company, Canada got a tax.

Mr. McENTYRE: That's right.

Senator BRUNT: They tax the producer of the goods.

The CHAIRMAN: What I am trying to get at is if you can have a Canadian foreign business corporation that did no business in Canada but bought Canadian goods in the United States, well, you could have an American company that would do the same thing or a Brazilian or English company. The question of whether or not that Canadian company was doing business in the United States depends upon the terms of the tax convention between Canada and the United States. If it was able to do business without having a permanent establishment and without accepting orders in the United States, and they had to be sent somewhere else to be accepted, then it wasn't subject to tax in the United States. But it is rather novel for me that we are concerned about taxes in the United States as well as taxes in Canada. Obviously such a company not doing business in Canada would qualify for a foreign business corporation and would not be taxed in Canada.

Senator THORVALDSON: May I reply to that, Mr. Chairman? I think Mr. McEntyre's point in this whole thing is that in the example you gave just now the person who is buying these goods in the United States or any other country, except for the fact he could do business here as a foreign business corporation, he would be paying taxes in the United States or such other country. Is that not your point, Mr. McEntyre?

Mr. McENTYRE: That is right.

Senator THORVALDSON: That is the whole thing. As I understand Mr. McEntyre, you can have your sales agency in the United States but because you are dealing out of this foreign company in Canada you pay tax nowhere, and isn't that the very problem you are trying to solve?

The CHAIRMAN: The Canadian company, in order to avoid tax in the United States under this convention must not have a permanent establishment or must not have a salesman or buyers in the United States who can accept orders; in other words, who can make contracts. Now, if they do those things in the United States they are subject to tax in the United States.

Senator THORVALDSON: I suggest that we hear Mr. McEntyre on that.

Mr. McENTYRE: The tax conventions provide that a resident or resident company of one country can send buyers into another country for the purpose of buying goods and, as long as there is no office established for that purpose, then the fact of buying the goods does not render the company subject to tax in that other country.

The CHAIRMAN: That is correct.

Mr. McENTYRE: It is a little bit different on the other side when it comes to selling goods in a foreign country. You can have a salesman call on customers as long as he has no office and there is no permanent establishment to which the profit would attach on which there would be a tax. Also, this salesman must not have a stock of goods from which he can deliver to the customers he calls on, and he must not have power to contract. In other words, he cannot make a firm sale to a customer on whom he calls. However, he may offer goods for sale and if he gets an order he can say, "Well, I will refer that back to my head office in Canada and if they are satisfied with the price of the credit terms, and so on, and accept it, that is all right." In that case the salesman does not have power to contract.

The CHAIRMAN: Mr. McEntyre, interrupting there just for a moment, in all these business operations which are done in Canada, the company is deemed to be carrying on business in Canada.

Mr. MCENTYRE: Obviously this company, if it wants to remain qualified as a foreign business corporation, would take care of that.

The CHAIRMAN: That is right.

Mr. MCENTYRE: Under the terms of the section the company has the right to have its management in Canada, and there is some question as to just how far management goes.

Whether "management" means simply that you have a director's meeting, and nothing more, or have your executive offices in Canada, and perhaps do your bookkeeping in Canada, collect your accounts, instruct subordinates in foreign countries from Canada, the word is not easy of definition. In my experience I have had a great number of suggestions made to me as to just what was the meaning of "management", and I must admit that I have not been able to form a firm opinion myself.

The CHAIRMAN: Mr. McEntyre, I think I am one who has discussed the section with you at times, and the meaning of the word "management". The instructions we got were along this line: if you did your housekeeping, as it is called, in Canada, you were carrying on business. "Housekeeping" means the collecting of accounts, banking in Canada, processing individual transactions, carrying books of account and so on. If you did those things in Canada, you were doing business, and those directions have been followed for fear of losing the status. "Management" was held to be a director's meeting. But if you actually participated from Canada in giving directions in connection with the conduct of business, other thon the directors settling policy, then you were doing business in Canada. That is the way foreign business corporations that I have been identified with have been carrying on. After discussing the matter in the department, that was the interpretation of it, and I am not quarrelling with it. I think it is good law; I don't think "management" should have the wider meaning.

Senator FARRIS: What is your objection to the section, Mr. Chairman?

The CHAIRMAN: My objection is that the law should stay as it is. I think there is a very useful place for foreign business corporations. I have seen them over practically all the years I have been practising law. In my experience I have seen funds coming into Canada and deposited here in substantial amounts where they remain for a while until disbursed in dividends, and when disbursed in dividends the Government gets 10 or 15 per cent tax, depending on the shareholders.

I gave an incident the other day in the Senate about a mining company which carried on its mining operations entirely outside Canada. I do not want to identify the company, but I may say it happened to be in a territory where there was prestige attaching to Canadian incorporation, that was not available to a local incorporation. There were some benefits to Canada in having that operation, because money did come back here.

We have had since the war many discussions with people from various countries of the world who wanted to set up manufacturing operations in certain countries, but they did not want to leave their money there. They wanted to bring their money home to Canada, as a safe place.

Senator FARRIS: What would this section do to your illustration?

The CHAIRMAN: Well it did this: a couple of days after I spoke in the Senate I got a bundle of literature from Bermuda saying that they were available for these companies if Canada did not want them any longer. They think there is some advantage in having that type of company operation. These companies

do spend money in the country; they do their banking in the country, and the lawyers and accountants get some business.

Senator THORVALDSON: Mr. Chairman, may I say this, since you are arguing the case against the section, that I agree with everything you have said in favour of these companies. I think probably they have been a good thing for the country, and a lot of companies have been incorporated under the 4(k) section, such as Brazilian Traction and Barcelona. But I don't think that is the issue these gentlemen are discussing, whether these companies have been a good or bad thing. I think the whole issue is they are trying to indicate that if there has been tax avoidance or evasion resulting from the present section, then that should be fully investigated by the Government of Canada; and until that is fully investigated, there should be no more of these companies allowed to become incorporated.

Senator FARRIS: Does this section say anything about such an investigation?

Senator THORVALDSON: No, but that is what the Minister said in the house, and these men are able to show there was tax evasion. I think that is the whole issue on this section.

The CHAIRMAN: The Minister himself in the House of Commons, when asked what about foreign corporations incorporated in Canada, said this:

> I am not suggesting for a minute any Canadian corporation that has qualified as a foreign business corporation has abused the law in any respect whatever . . .

Senator HUGESSEN: I must say I am not very much impressed. We have had this section in the Income Tax Act for a number of years, and we are told that as yet there has been no tax evasion, but it is possible there might be in the future. I don't think that is a basis for changing the act at this time. If we find that there is later on an actual tax evasion, then we can deal with it by changing the act.

The Chairman gave an example of the sort of case in which a foreign business corporation can be set up. I would like to give another example from my own experience.

Two gentlemen, mining engineers, one an American and the other a Canadian, men of considerable wealth, owned a mine in central America. They wanted to carry on that operation in corporate form, and they chose a Canadian company, and incorporated that Canadian company to carry on this mining operation which, I think, was in the State of Salvador. The reason they wanted a Canadian corporation was very simple: they were accustomed to the Canadian form of corporate organization; they knew the Canadian Companies Act; they knew if they confined their business operations to the State of Salvador they would have only a minimum income tax to pay in Canada, and of course, on the other hand, in the place where the operation was carried on, Salvador, they were subject to every tax which that State saw fit to impose upon them.

Now that is an example where it is rather general. It has been rather general in the use of this section where parties for some reason or other want to use a Canadian corporate form for a Canadian company and carry on their business elsewhere. I cannot see where there is any question of an evasion or tax avoidance in that.

Senator FARRIS: What is your complaint?

Senator HUGESSEN: The only complaint I have at the present time is that in the future that cannot be done, that sort of company cannot be set up.

Senator LEONARD: Mr. McEntyre, what is the amount, approximately, that is collected from these companies through the 5 per cent or the 15 per cent tax—those would be the more important items. I have another question: Have

any representations been received from other jurisdictions suggesting that this section is used as a tax haven as against their interest?

Mr. McENTYRE: I do not think we have a breakdown, as far as I know, of the non-resident withholding tax that applies to foreign business corporations as against that which applies to all corporations paying dividends to non-residents, but we have made a study of 68 corporations that we knew about that had been incorporated in the four years 1952, 1953, 1954, 1955, and we have found that none of those had paid dividends on which the withholding tax applied up to the end of 1956. Now we found 68 corporations and there may have been some that we missed so that it is hard to say categorically that none of the foreign business corporations incorporated in that way have paid dividends on which withholding tax applied up to the end of 1956. Now, of this same group that was analysed those that paid foreign income tax other than withholding tax on investment income and those who paid income tax anywhere is as follows:

In 1952 we have a record of 14 business corporations incorporated of which 6 paid a corporation income tax in the place where they did business and 4 of them paid no income tax either in the place where they did their business or, naturally, in Canada, because here they qualified as a foreign business corporation.

The CHAIRMAN: Can you say to what extent any of these companies may have enjoyed a tax holiday in the countries in which they were operating?

Mr. McENTYRE: Several of those in the group I mentioned which reported no income tax paid are new foreign mining ventures which perhaps in the country in which they do business may be entitled to an exemption such as we have in our own act.

The CHAIRMAN: In some of those countries they get holidays ranging from five to ten years.

Senator HUGESSEN: You are not suggesting that any of these companies are evading or avoiding payment of income tax in the countries in which they do business?

Mr. McENTYRE: I think that evading and avoiding the payment of tax is something of a moral issue. I always look on the evading of payment as being fraudulent. I do not think these companies make any bones about what they are doing. They see the provision in the act and if they take advantage of it I won't be the one to throw stones.

Senator FARRIS: Is the fact that they do not pay taxes a reason that you should get them here?

Mr. McENTYRE: If they avoid paying taxes somewhere else because of tax treaties we have made with foreign countries on the basis we will tax our own and they will tax their own and there will be reciprocal exemption, it does not seem right that these people who are not paying Canadian taxes should avoid paying a tax in the foreign countries.

Senator FARRIS: Perhaps the omission is in the other country.

The CHAIRMAN: We have been told that there has been no abuse to date.

Senator THORVALDSON: Mr. McEntyre, would you like to say something about the other 68 companies. You mentioned 14 out of 68.

Mr. McENTYRE: In 1953 we found 16 companies, of which one paid income tax in the country in which it carried on business and 8 paid no income tax.

In 1954 there were 23, of which 7 had paid taxes abroad and 7 paid no income tax.

In 1955 there were 15 and only one paid an income tax in the country in which it carried on business, and 9 paid no income tax.

That left 14 companies which had no income tax and 11 companies on which we were not able to get any up-to-date information.

Senator BRUNT: Have you any breakdown on the classification of companies, whether mining, railway, manufacturing?

Mr. MCENTYRE: We do know that of the 68, 10 are purchasing goods in the United States and selling it in foreign countries. Naturally, as I explained, because of the treaties, they are able to escape the tax in some of the countries in which they do business. In three of these companies there is an accumulation of surplus of about $40 million at the end of 1956 and as I said no dividends have been paid which would be subject to the withholding tax on Canadian dividends.

Senator DAVIES: Is that money in Canada?

Mr. MCENTYRE: That money need not necessarily be in Canada because these companies can keep their bank accounts where they like. It may be in Canada or in a foreign bank.

Senator BRUNT: But if they paid a dividend then they would become liable.

Senator LEONARD: Do I gather that the amount now received by way of 5 per cent or 15 per cent tax on dividends from foreign corporations is a negligible amount?

Mr. MCENTYRE: I do not think we could say it is a negligible amount.

Senator LEONARD: Have you any figures on it?

Senator BRUNT: I have some figures here on Brazilian Traction. When they paid a dividend of $1 a share, they paid on 8 million shares that were owned outside of Canada, and each year they paid a dividend of $1 a year they paid to the Department of National Revenue $1,200,000.

Mr. MCENTYRE: I note what Senator Hugessen said about the company he incorporated for these two mining people. But in the majority of foreign countries when people go out to do business they like to incorporate a local company at least to do the activities of those companies, and under those circumstances the dividends that are brought back from subsidiaries which are 25 per cent controlled by the parent company are not taken into account in establishing the profits of the company for Canadian taxes. That will cover most of the existing situations where the foreign business corporation vehicle is used. There is still that vacant spot where it does not suit the people who are going to carry on this business to incorporate a local company for that purpose.

Senator PRATT: If they were applying to set up now, would they be able to do so under present conditions? You could not have a duplication of the situation if this act was passed, could you?

Senator BRUNT: That is right.

Senator PRATT: Unless there is some actual revision of taxes in Canada, this thing as we have it today is a menace and is costing Canada something. I don't see for the life of me why we should bring in an enactment which is going to prevent an operation of this kind. There is a tremendous interlocking of interest. As it is, right now Brazilian Traction is bringing in these dividends.

The CHAIRMAN: In addition to that there was an amendment put into the section some years ago so that Brazilian Traction may buy their supplies in Canada for use in their operations outside of Canada, and they don't lose their status. So that amendment, of course, is a direct benefit. I would suggest that if the section remained in it would permit such companies to do their housekeeping in Canada, and it would mean the spending of more money in Canada, and they would have an accounting staff set up here.

Senator BRUNT: Brazilian Traction now have approximately 300 employees in this country.

Senator WALL: May I ask a question arising out of the number of companies who pay no tax here and no tax someplace else? Is this annual license fee of $100 incorporated in our tax agreements as a tax?

Mr. MCENTYRE: The provision in our tax agreements is not that these companies should pay tax to Canada in order to get the benefit of the tax agreement. It is simply that they are resident in Canada, and the test of residence under the common law rule is management and control, so that once there is management and control of a company in Canada that company is considered to be resident and a taxpayer in Canada, and gets the benefit of the tax treaties which Canada has negotiated with these foreign countries. So we have the situation where you have a company incorporated in Canada, managed and controlled in Canada, but all its business activities with the exception of management are carried on outside of Canada, getting the advantage of these tax treaties.

Senator BRUNT: There is one word I would like to add, and I hope I am finished. I cannot understand why the policy of this country is to restrict these foreign corporations when in other countries you find this policy being expanded. Two years ago the United Kingdom introduced the overseas trade corporation into the Old Country's tax law which enabled British companies to operate abroad tax free. Now, the country to the south this year has introduced a bill known as the Fox Bill to establish a special category of corporation called foreign business corporation which may operate abroad on a tax free basis until foreign gleanings are brought home. Now, here we have two great countries extending this principle.

Mr. IRWIN: The U.K. does not have a provision, to the best of my knowledge, similar to our section 28 (1) (*d*), which permits dividends to be brought home tax free from subsidiaries abroad where there is 25 per cent ownership. Therefore to that extent the U.K. is, if you like, catching up to what Canada has had for a number of years, although they have followed a course in doing so somewhat different from our section 28 (1) (*d*).

The CHAIRMAN: May I point out that the difference in the U.K. is that up until this recent statute was brought in, if you had a parent company in England and an operating subesidiary abroad, and management and direction was given to the operating subsidiary abroad by the company in the U.K., then whether the profits were brought home to England or not physically as a dividend, the English company was taxed on the profits, because management was given in England. They found that a great many parent companies with large operations outside of the U.K. decided it was too great a penalty and they started moving out; and then you had this section brought in. It is not as good as the provision we have.

Senator BRUNT: But it is an extension.

The CHAIRMAN: It is an extension and a recognition to encourage the head office, at whatever expense is involved, to stay in England instead of moving out, and saying that those profits are not brought home for purposes of tax until they physically come home by way of dividends. It does not go as far as ours, but they are starting to recognize the principle.

Mr. IRWIN: The proposal in the United States, as I understand it, amounts to no more than a tax postponement. In the United States a company that is incorporated in the United States may not move out of the United States without doing certain things that gives the tax collector a chance to examine its affairs. This is not so in Canada where the basis is residence which can be changed. The United States proposal is no more than a tax postponement. I might also

point out that the United States does not have the tax freedom for dividends brough from subsidiaries abroad which we find in Canada.

The CHAIRMAN: They have a system of tax credits which runs very well, where they can select the year, and at the least cost bring home dividends from operations abroad. How it works, I do not know, except that they say it is very good.

Mr. IRWIN: But unlike that system we have in Canada complete freedom for these dividends brought home from subsidiaries abroad in which the parent has 25 per cent ownership. I make the suggestion that this provision goes a long way towards enabling new companies, with which we are concerned, to continue to come to Canada and set up in canada and carry on operations abroad instead of relying upon the foreign business corporation provision.

The CHAIRMAN: Except that it forces two companies. There are a lot of operations where they prefer to have just the one company.

Senator THORVALDSON: Mr. Chairman, may I ask Mr. Irwin a question about Brazilian Traction? Supposing Brazilian Traction did not for some reason or other qualify as a foreign business corporation, would there be any change in its status in Canada, considering the fact that they can bring in dividends now, as we know they can? Would there be any difference to Brazilian Traction or similar corporations?

The CHAIRMAN: There would be no difference under the change in the law. You are not proposing—

Senator THORVALDSON: No. Even though they were disqualified as foreign business corporations, which no one has suggested, I am asking either Mr. Irwin or Mr. McEntyre whether there would be any prejudice to Brazilian Traction.

Senator BRUNT: In other words, if Brazilian Traction was a Canadian corporation with its head office in Canada?

Senator METHOT: We all understand there is a change in the law and a tax cannot be collected under the new law that cannot be collected under the old. There is no question about that. The question is whether we should collect it, or not. Mr. McEntyre said we should collect it because those companies benefit from the fact that we have a treaty with another country where they are exempt. So they are exempt by treaty in the other country, and they are exempt in Canada as a result of the law as it is.

The CHAIRMAN: Senator, I do not think Mr. McEntyre's evidence went so far as to say these companies are escaping tax abroad.

Senator METHOT: He did not state it—

The CHAIRMAN: Some of them may benefit. There may be some American companies which benefit in Canada. That is a question I was coming to.

Senator FARRIS: Is the fact that the company does not pay tax elsewhere a reason why we should soak them here?

Senator BRUNT: That is a very simple question.

The CHAIRMAN: Gentlemen, do you think we have exhausted it now so that we may give consideration to the section?

Senator ASELTINE: Have the witnesses any other examples or reasons to give?

Mr. MCENTYRE: Perhaps I might say, Mr. Chairman, there has been some suggestion that Canada received by way of the withholding tax some revenue when dividends are declared by these foreign business corporations, and it might be interesting to note that if before declaring dividends and distributing the accumulated surplus of these foreign business corporations they move the management and control out of Canada so that they no longer are residents of Canada at the time the dividends are declared then the liability for this non-

resident withholding tax disappears. In the last few years there have been sevral companies that have moved out of Canada with an accumulated srplus on hand which, in the ordinary course of things, it might have been anticipated would yield withholding tax, and because of the movement of the management and control out of Canada that accumulated surplus never became subject to the withholding tax.

Senator BRUNT: Surely that is not very inequitable, is it? The money was all made out of Canada, they stored it here for a little while, and then took it out of Canada.

Senator THORVALDSON: Can you give any figures of the amounts that have been moved out of Canada in that way?

Mr. MCENTYRE: Since 1955 there have been four corporations which moved out of Canada, and at the time of the move they had over $400 million of accumulated surplus.

Senator MCKEEN: Does this act prevent them from moving out of Canada?

The CHAIRMAN: No.

Senator DAVIES: Under this act would Canada benefit at all if this amendment had been in the act at the time that money was moved out?

The CHAIRMAN: No.

Senator BOUFFARD: If it was forbidden to incorporate these companies then Canada will not have any benefit.

Mr. MCENTYRE: Mr. Chairman, the management and control of a company is something separate and apart from the incorporation of a company. A company can be incorporated in one jurisdiction and have its management and control in another jurisdiction. We had an example of that in the case of B. C. Electric which was incorporated in the United Kingdom and in regard to which, I think, the Supreme Court of Canada or the Privy Council decided it was resident in Canada because its management and control was in Canada. So, the fact that these companies are incorporated in Canada does not necessarily mean they are resident in Canada, because if the management and control are elsewhere than in Canada then they are no longer Canadian.

Senator BOUFFARD: If the corporation is incorporated in Canada then you do not lose anything because you will not have any more of these companies.

Senator WALL: There is only one thing I want to clarify for myself. Up to the present in regard to these 4 (k) companies, as we call them, there has been no evidence that they have been misusing or abusing their privileges, and we are anticipating in the future that they might be, and, therefore, in a sense we are taking the extreme case and saying: "From now on there are no more to get this benefit".

Senator ASELTINE: What about these 4 (k) corporations that moved out of Canada with $400 million with them? Can anything be taxed of that amount, or should they have paid a tax on that amount?

Senator BRUNT: The first question is easy to answer; the second is difficult.

Mr. MCENTYRE: Of course, during the period when these companies qualified as foreign business corporations they paid their filing fee, and during the time they were resident in Canada, Canada would have got a withholding tax on any dividends that they paid at that time, so it does not mean that all the earnings of these companies during the whole of their lifetime were never subject to the withholding tax, but at the time when they moved out there was a residue of $400 million which, because of the movement, became free of withholding tax.

The CHAIRMAN: Senator Aseltine, you do not have to be a foreign business corporation to move out. Any company with a surplus of that kind could move out.

Senator ASELTINE: Without paying any tax?

The CHAIRMAN: Yes.

Mr. IRWIN: May I add one point, sir? As the law stands at present they can move out and do what they wish with the accumulation, and then come back to Canada and start all over again. If this amendment is put through it would stop this parade.

The CHAIRMAN: Well, it is not a parade.

MR. IRWIN: Well, it is a possibility.

The CHAIRMAN: I was checked a moment ago for not being a purist in language. Are you ready for the question? We have had a full discussion. I think the simple way of dealing with it is to say that the section is a section which withdraws the privilege of qualifying as a foreign business corporation, and ask those who are in favour of it to raise their hands.

Senator ASELTINE: What is the question, again?

The CHAIRMAN: Those in favour of clause 19 will raise their hands.

Senator DAVIES: That is, are we in favour of the Government's amendment?

The CHAIRMAN: Yes. Those who are in favour of clause 19 please raise your hands.

The CLERK OF THE COMMITTEE: Five.

The CHAIRMAN: Will those who are not in favour of clause 19 please raise your hands.

The CLERK OF THE COMMITTEE: Twelve.

The CHAIRMAN: The section is lost. Shall I report the bill as amended?

Senator DAVIES: Could I ask one question? Are we going to adjourn?

The CHAIRMAN: Just a moment. I promised to get an answer for Senator Pouliot. He has gone, but if I do not get the answer for him I will have broken my word. What is the amount of the increase in tax revenue as the result of all the changes in the Income Tax Act this year?

Mr. IRWIN: In 1959-60 the estimated increase in revenue is $60 million, and for the full year, $110 million.

The CHAIRMAN: That is the effect of all the changes, pro and con?

Mr. IRWIN: That is correct.

Senator DAVIES: May I ask a question, Mr. Chairman? Is this the act under which you collect taxes?

The CHAIRMAN: Yes.

Senator DAVIES: Is it under this act you get the power to walk into a business premises or the office of a professional man and take charge of his books?

The CHAIRMAN: Yes, that is right.

Senator DAVIES: It seems to me you go a long way sometimes.

The CHAIRMAN: Well, we passed that section some years ago.

Senator DAVIES: It is the only country you can do it in.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-27, intituled:
"An Act to amend the National Defence Act"

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MARCH 10th, 1959

WITNESS:

Brigadier W. J. Lawson, Judge Advocate General,
National Defence Department.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20813-2—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

MONDAY, March 9, 1959.

"Pursuant to the Order of the Day, the Honourable Senator White moved, seconded by the Honourable Senator Brunt, that the Bill C-27, intituled: "An Act to amend the National Defence Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20813-2—1½

REPORT OF THE COMMITTEE

TUESDAY, March 10, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-27), intituled: "An Act to amend the National Defence Act", have in obedience to the order of reference of March 9, 1959, examined the said Bill and now report the same with the following amendments—

1. *Page 1:* After subclause (1) of clause 3, insert the following:

"(2) No regulation made under this section is effective until it has been published in the *Canada Gazette* and every such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session."

2. *Page 4:* Strike out lines 5 to 9 both inclusive.

3. *Page 4, line 13:* After "belongs" strike out "and a Military Adviser is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence."

4. *Page 7, lines 32 and 33:* Strike out clause 7.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 10, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Golding, Haig, Isnor, Lambert, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Pratt, Reid, Robertson, Taylor (*Norfolk*), Turgeon, Wall, White, Wilson and Woodrow.—28.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-27, An Act to amend the National Defence Act, was read and considered clause by clause.

Heard in explanation of the Bill: Brigadier W. J. Lawson, Judge Advocate General, National Defence Department.

On MOTION of the Honourable Senator McKeen, seconded by the Honourable Senator McDonald, it was RESOLVED to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

On MOTION of the Honourable Senator Crerar, seconded by the Honourable Senator White it was RESOLVED that the Bill be amended as follows:—

1. "That clause 3 be amended by re-numbering subclause (2) as subclause (3) and by inserting a new subclause (2) which reads as follows:

> "(2) No regulation made under this section is effective until it has been published in the *Canada Gazette* and every such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session."

2. On MOTION of the Honourable Senator Power it was RESOLVED to strike out subclause (11) of clause 6 on page 4 of the Bill.

3. It was also RESOLVED that the Bill be amended as follows:—

> *Page 4, line 13:* After "belongs" strike out "and a Military Adviser is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence."

4. The Honourable Senator Power moved, seconded by the Honourable Senator Bois, that clause 7 of the Bill be struck out.

The question being put on the said MOTION, it was declared carried in the affirmative.

It was RESOLVED to report the Bill as amended.

At 11.00 a.m. the Committee proceeded to the consideration of other Bills.

Attest.

GERARD LEMIRE,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 10, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill C-27, to amend the National Defence Act, met this day at 10.30.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, will you come to order please. We have three bills before us. I suggest that we first deal with the National Defence bill, which was sponsored by Senator White. We have with us representatives from the department: Brigadier W. J. Lawson, the Judge Advocate General and Group Captain H. A. McLearn and Colonel W. M. W. Shaw, the Deputy Judge Advocates General.

Have you anything to suggest, Senator White, as to whether we should or should not follow the usual procedure of getting a general explanation from the officers of the department?

Senator WHITE: I suggest that we have a general explanation, and then proceed in the usual way section by section.

The CHAIRMAN: We are having a record taken by the Hansard reporters of the proceedings. May we have a motion for authority to print the proceedings?

Senator McKEEN: Mr. Chairman, I move that we be authorized to print 600 copies in English and 200 copies in French of the proceedings.

Senator McDONALD (*Kings*): Seconded.

The CHAIRMAN: Carried.

May we now call Brigadier Lawson?

Brigadier W. J. Lawson (Judge Advocate General): Mr. Chairman and gentlemen. This bill contains several unrelated amendments to the National Defence Act. It would perhaps be easier to explain each amendment as we come to the clause, rather than to go over it all now.

The CHAIRMAN: Let us do it that way. Deal with section 1 of the bill first.

Brig. LAWSON: The purpose of clause 1, Mr. Chairman, is to provide for the integration of certain functions of the three services. The National Defence Act as it stands now makes no specific provision for integrated organizations. This clause will insert in the act such a specific provision. Under it the minister will be able to set up organizations to which officers, men, and units of all or any one of the services can be attached.

The CHAIRMAN: Would you illustrate that?

Brig. LAWSON: As it stands at present, the minister can under the general powers given him by the act, set up these tri-service organizations, and in fact has done so. We have the new tri-service medical organization and the new tri-service chaplain organization; but as I say, these organizations are not specifically provided for in the Act. There are sections of the act relating to

attachment, and so on, which require that you must attach to some organization recognized by the Act. This clause will enable the minister to set up these recognized organizations.

Senator REID: Does that mean in the future doctors and ministers in the service will be under one organization instead of three?

Brig. LAWSON: That is right.

The CHAIRMAN: This does not go so far as to provide for the integration of the various arms of the service.

Brig. LAWSON: No. It makes it possible to integrate where it is desirable to do so.

The CHAIRMAN: That indicates discretion. We are giving an authority.

Brig. LAWSON: That is right.

The CHAIRMAN: Is the authority broad enough that you could have integration of the various services? I am wondering what is the significance of the word "organizations".

Brig. LAWSON: It is the broadest possible word: you could integrate any aspect of the services under this clause.

Senator WALL: It could mean a technological organization, in a military sense.

Brig. LAWSON: It could, Mr. Chairman, yes.

The CHAIRMAN: That is, if the minister thought that a portion of the air force, army and navy should be grouped in one organization, this would give him the authority.

Brig. LAWSON: This would.

The CHAIRMAN: It is a matter of discretion in the hands of the minister now; if he wanted to do it he could do it.

Brig. LAWSON: Of course it has been done many times during the last war; there were technological groupings of army-navy and army-air force, and so on.

The CHAIRMAN: While we are giving some statutory authority here, there is a broad discretion in the minister.

Brig. LAWSON: That is quite true sir.

Senator ISNOR: Does this include Civil Defence and reserves?

Brig. LAWSON: Civil Defence does not come under National Defence at the present time.

Senator ISNOR: I was wondering if it was broad enough to include it.

Brig. LAWSON: It would be broad enough if Civil Defence were put under National Defence, yes. And it does include reserves.

Senator WALL: This certainly is not just a generalization of a hazy notion that there may be some kind of integration; but would it be apropos to ask whether there is now a more or less definite notion as to what may be envisaged in the future by way of integration?

Brig. LAWSON: That, Mr. Chairman, if of course a question of policy. We have recently integrated the medical services and the chaplain services. The legal services have always been integrated. The dental services are integrated in the sense that there is only one dental corps. The postal services are integrated in the sense that there is only one postal corps. We have certain aspects of procurement that are done for the three services by one service. These are all steps towards integration; and the whole matter is being constantly studied to see if it would not be possible to effect economies and improve efficiency, by either setting up a tri-service organization such as the new medical organization, or having one service act for the three in certain fields.

Senator WALL: From the point of view of the fact that it was possible to institute these integrations under the present act, could you explain to me again why this particular amendment is needed, if it were possible to do the integration so far? We ran into some trouble in understanding the drift of your argument.

Brig. LAWSON: The amendment is purely technical. As I said, the minister has the authority to set up these integrated organizations, and of course he has already done so without this amendment being made. This amendment merely provides that these organizations will be entities to which officers and men of the services may be attached.

Senator WALL: It is not possible to have these entities —?

Brig. LAWSON: To which attachments may be made.

The CHAIRMAN: This achieves integration. At the present time you merge representatives of the various forces, and they still retain their attachments.

Brig. LAWSON: You set up lists of officers and men, but they still remain attached to their own services.

Senator MACDONALD: Last night, in the Senate—it must have been well after 11 o'clock—the honourable Senator Power was discussing this bill, and he raised the question as to whether it would be advisable to have the chaplains not hold rank. He is not here this morning.

Senator POWER: He is. You can do the preaching for me if you like.

Senator MACDONALD: I was going to hold the line for him. Well, then, I will leave whatever remarks I was going to make. However, I was not going to speak for Senator Power.

The CHAIRMAN: If there are no other questions on this section, shall the first section carry? Carried.

Section 1 agreed to.

On section 2—subsection 3 of section 121 repealed.

The CHAIRMAN: Section 2 of the bill repeals a section of the statute. Would you just explain why?

Brig. LAWSON: This is simply a matter of rearrangement. The substance of this clause is re-enacted in section 162 of the National Defence Act, which will be found in clause 4 of the bill. No change is made here.

Section agreed to.

On section 3—Rules of evidence.

The CHAIRMAN: Section 3 deals with a question which was discussed last night, the rules of evidence. Would you just explain the background which seems to make this necessary, Brigadier?

Brig. LAWSON: Mr. Chairman, clause 3 provides that the Governor in Council may establish rules of evidence to be used at courts martial. At the present time at courts martial we apply the law of evidence of the province from which the accused comes. Now, the laws of evidence of the various provinces of Canada differ. The differences are not great. Basically they are the same right across Canada, but there are differences. In many instances courts are held outside of Canada where it is not convenient to get law books to look up the law. This has caused difficulties. A court may be sitting outside of Canada and perhaps applying the law of evidence of Prince Edward Island and there are no law books of Prince Edward Island readily available to the legal officers on the court. There is always some doubt as to whether they are applying the correct law. Furthermore, the law of evidence, as those members who are lawyers will appreciate, is extremely complex. There are many aspects of it that are quite obscure. It is the feeling in the department that if we had a clear-cut code of evidence which would apply to the situations that normally come up before a court martial, we could effect more substantial justice in our

courts. The code, of course, could not possibly cover the whole field of evidence. It will cover only those situations that normally come up before courts martial. Unusual situations will still be dealt with, of course, under the ordinary law of evidence.

Senator POWER: Have you an illustration in mind that you could give us, some instance where there has been a contradiction or where a difficulty has arisen because of a conflict in the laws of evidence as between the provinces? It is a little difficult to understand how there would really be an injustice done to anybody, or to the Crown itself, on account of some point raised in connection with evidence.

The CHAIRMAN: I can see that an appeal could succeed because they had misapplied the rules of evidence.

Senator BRUNT: What concerns me is this. We have heard about the provincial law of evidence but what about the Canada Evidence Act? Do you not use that at all?

Brig. LAWSON: Oh, yes. The Canada Evidence Act applies throughout Canada but there are also provincial evidence acts which also apply, and the courts of the provinces have perhaps interpreted the rules of evidence differently on various points. A point may not have been taken to the Supreme Court, so they may apply one rule in one province and another rule in another province because their courts have happened to decide in that way.

The CHAIRMAN: I can see this difficulty, Bridgadier Lawson. You say that the Canada Evidence Act would apply.

Brig. LAWSON: Yes.

The CHAIRMAN: Section 3 establishes rules of evidence by regulation, by order made by the Governor in Council. I would assume when you enact that in a federal statute, saying this is the code of evidence, you have written into the statute a code of evidence that will be built up by regulation and no other regulations will apply.

Brig. LAWSON: When I spoke of the Canada Evidence Act I meant it applies throughout Canada now. You are quite right. If we enact this section the Canada Evidence Act would not per se any longer apply.

The CHAIRMAN: And neither would any of the provincial evidence acts.

Brig. LAWSON: That is quite right.

The CHAIRMAN: All the rules of evidence would be found in the regulation no matter whether the court martial was taking place in Canada or out of Canada.

Senator WHITE: Is that correct with respect to murder, and so on, in Canada?

Brig. LAWSON: Murder, rape, and manslaughter, of course, cannot be tried by court martial in Canada but only by the civil courts.

The CHAIRMAN: Whether a court martial sits in Canada or out of Canada, when this becomes law and your regulations establish a code of evidence, then that code of evidence will govern all proceedings before the court martial.

Brig. LAWSON: That is quite right.

Senator CRERAR: And that code of evidence, Mr. Chairman, may conceivably be wholly different from the rules of evidence of the federal authority or the rules of evidence of any provincial authority.

The CHAIRMAN: Oh, yes, and it may go very far in the field, as Senator Leonard says, of admitting hearsay evidence, for instance.

Senator BRUNT: Any benefit the accused has under the Canada Evidence Act is gone.

The CHAIRMAN: When the original statute was before us, I was the chairman of the committee that considered it, and there are several things I still remember about the attitude and the feeling of the committee at that time. We were interested all the time from the point of view of the offender, the soldier who gets into trouble; and two things we said all the way through was, first, that the procedures must be as simple as it is possible to make them, and, secondly, we must get as much humanity into the administration as we possibly can and get away as much as we can from the legalistics. Those are still my views.

Senator BRUNT: The accused might do much better under these regulations that are going to be set up than now.

Senator CRERAR: He might do much worse.

The CHAIRMAN: Yes.

Senator BRUNT: Yes.

Senator POWER: I would be inclined rather to doubt the statement made by Senator Brunt. After all, the people who would draw up these rules are the people who administer court martials, and they want to make them plain from their side.

Senator BRUNT: I would think these rules of evidence would be drawn by the Department of Justice, surely?

Senator POWER: They are being studied at Dalhousie University. Am I right on that?

Brig. LAWSON: We have had these rules of evidence prepared by the Law Faculty of Dalhousie University. The Dean and two of the senior members of the Faculty did the original draft of this code of evidence. Of course, we have worked on it in the office and made amendments to bring it more in line with our military requirements. In perfect fairness, I can say that the code certainly takes away no protection that the accused has under the ordinary law of evidence, and furthermore it gives him, if anything, some added protection that he does not have under the ordinary law of evidence.

The CHAIRMAN: Of course, I can see some advantages of a single code.

Senator MACDONALD: Is that code still available?

Brig. LAWSON: We have a first draft. It has not been approved by Governor in Council, of course, because the section is not passed, but the minister undertook in the Commons to table the code when it is printed, and I am sure he will be pleased to have it tabled in the Senate when the section is passed.

Senator MACDONALD: Is the Governor in Council going to table this before it is approved?

Brig. LAWSON: No, I would not think so.

Senator POWER: We all know that in wartime the tendency is to endeavour to tighten things up, and these are regulations that can be changed by simple order in council.

The CHAIRMAN: That is right.

Senator POWER: In connection with other matters, my experience has been that counsel sometimes is in a hurry, and in wartime they are not so apt as in peacetime to care for the liberty of the subject, and difficulties arise in wartime. Regulations can be changed on the simple recommendations of the military authorities, who may probably be right, but they will not have the same care for the preservation of the rights of the accused as they would otherwise in peacetime. If they can do that by simple order in council nobody will know anything about it.

Senator BRUNT: They can do that whether there is a change in the rules of evidence or not.

The CHAIRMAN: I would say under the War Measures Act you have the full force of order in council in government, so if you are looking for wartime situation, whether you pass this or not you are going to be exposed to that situation.

Senator HAIG: It is better for the prisoner to have it expressed in this act. He will have a better chance of defence.

The CHAIRMAN: I feel so.

Senator HAIG: Certainly I have read where in several cases I thought the soldier got very much the worst of it because he did not get the right representation before the tribunal. Any practising lawyer in criminal matters knows that he has to have all those chances, because he is acting in a difficult situation; and the public generally draws a very clear line about court martial—they don't want to give the soldier the break, if they possibly can.

The CHAIRMAN: I would think this, that if and when the code of evidence is tabled, and we have a look at it, and the public have a look at it, if there is any taking away of any of the rights as far as evidence is concerned that the soldiers presently enjoy, I am sure, Brigadier, we are going to hear from a lot of people, and so are you.

Senator POWER: Isn't there another angle to this, perhaps it becomes a constitutional question—is this the continuation of the process of centralization which has been carried on to the detriment of provincial law and provincial autonomy, if I may use the word? Where is Senator Pouliot?

Senator BRUNT: Don't criminal matters come under jurisdiction of the dominion?

Senator POWER: Yes, I think they do.

Senator MACDONALD: Is there now a uniformity of punishments for misdemeanours to cover the three services?

Brig. LAWSON: Yes there are.

Senator CRERAR: Would the witness explain clearly to the committee why this change is sought?

Brig. LAWSON: There are several reasons why it is sought: the first one is to have a uniform law of evidence applying throughout instead of having the 10 provincial laws apply.

Senator CRERAR: Don't we have a uniform code of evidence now that you could apply to these cases?

Brig. LAWSON: There is no federal code as such, Senator Crerar. The Canada Evidence Act deals with only a very small part of the law of evidence. There is no federal code of evidence. If there was that would be the answer and we would adopt it.

The second reason why it is sought is simplification, because courts martial are not like ordinary courts. Ordinary courts sit in places where there is a library available whereas a court martial sits in the field where no library facilities are available, and the counsel and Judge Advocate cannot look up these technical points. If we have it spelled out in the code then they are there for the defence, the prosecution and the judge advocate. That is the real purpose, to get something that is simple. This code will simply be an expression, we hope, in fairly simple terms of what the law is now.

Senator ASELTINE: It seems to me that a person being tried under this proposed code would be in a better position because he would know where he stood and what his rights were.

Brig. LAWSON: Just as an example, Mr. Chairman, take the right to address the court last, which is an important right. Under the ordinary law of evidence there is a most complicated series of rules as to whether counsel for the prisoner or counsel for the crown has the right to make the last address to the court. Now, we have wiped all those rules away and said in all cases that counsel for the accused will have the right to address the court last. I think that is a simple and sensible amendment that no one can disagree with. It gets away from a whole series of technical rules.

Senator MACDONALD: This code of course will be tabled in the chamber when it comes into force.

Senator BRUNT: The Brigadier will make sure of that, will he?

Senator MACDONALD: Are you satisfied that you are able to secure properly qualified men for the judge advocate's staff? In other words are you able to attract a sufficiently high type of man to this department?

Brig. LAWSON: I assure you we are. We have, as you know, the Court Martial Appeal Board where all these cases in appeal are dealt with, and it has been in existence for some years. I have had studies made of appeals going to that board as compared to appeals from the ordinary civil or criminal courts going to courts of appeal and I find on the average courts martial stand up better than the ordinary civil and criminal cases stand up on appeal.

This I think illustrates that judge advocates have adequate knowledge of the law and apply it fairly.

Senator CRERAR: These regulations would be printed in the *Canada Gazette,* once you establish them?

The CHAIRMAN: Yes.

Brigadier LAWSON: They are not required to be printed in the *Gazette.*

The CHAIRMAN: Under the general law?

Brigadier LAWSON: No, the defence regulations are exempt from that law.

The CHAIRMAN: All the more reason for tabling them. I take it the Government Leader will undertake to table them when they are enacted?

Senator ASELTINE: Yes.

The CHAIRMAN: Shall this section pass?

Some SENATORS: Carried.

Senator BRUNT: Mr. Chairman, Senator Crerar raises a point. Would it be possible for Brigadier Lawson to arrange to have the rules and regulations with respect to evidence published in the *Gazette*? I know he is not compelled to do it, but if they were published in the *Gazette* they would receive some publicity.

Senator ASELTINE: Nobody reads the *Gazette* anyway.

The CHAIRMAN: Oh yes—a few read it. The Brigadier says he has no objection to doing so.

Senator BRUNT: Very well.

Senator CRERAR: Should we provide in the legislation that the regulations be printed in the *Gazette?*

The CHAIRMAN: As you wish.

Senator CRERAR: What strikes me is that these regulations will ultimately be agreed upon, they will be tabled in both the Senate and the House of Commons, but only a comparatively few people will see them. If they are printed in the *Gazette* they will get a wide distribution all over the country.

The CHAIRMAN: We have here a draft motion which would deal with that by adding a subsection to section 3, which reads as follows:

> That Clause 3 be amended by re-numbering subclause (2) as subclause (3) and by inserting a new subclause (2) which reads as follows:
>
> (2) No regulation made under this section is effective until it has been published in the *Canada Gazette* and every such regulation shall be laid before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session.

That is agreeable to the Department, Brigadier Lawson tells me.

Senator BRUNT: Mr. Chairman, do you wish the amendment moved?

The CHAIRMAN: It is moved by Senator Crerar, seconded by Senator White, and carried.

We are now at section 4 of the bill.

Brig. LAWSON: Mr. Chairman, the purpose of this clause is to provide that the death penalty shall not be imposed by court martial unless there is unanimity among the members of the court. This is consistent with civil practice where there must be a unanimous finding by a jury. It is consistent with the practice now adopted in both the United Kingdom and the United States, and I think it gives a desirable protection to the accused.

Senator MACDONALD: What is the provision at the present time?

Brig. LAWSON: At the present time provision is made that there must be a majority on the finding, and two-thirds on the sentence.

Senator MACDONALD: I see the marginal note still reads: "Majority vote".

The CHAIRMAN: No, the amended part is at the bottom.

Senator WALL: Subsection 5 of section 4, commencing at the bottom of page 2, reads:

> ...where there is no such concurrence and no finding is made, the president of the court martial shall so report to the convening authority and the court martial shall thereupon be deemed to be dissolved and the accused may be tried again.

Can he be tried any number of times? What is intended? I am just a layman, and I don't understand.

Brig. LAWSON: This is exactly the same as in civil practice: if an accused is tried for murder, and the jury disagrees, he can be tried any number of times. The practice, I believe, is that he not be tried more than three times.

Senator WALL: Where is the line?

The CHAIRMAN: Let us look at this. You have a court martial proceeding to try a soldier for murder; all the evidence is gathered and presented, but the court fails to reach a unanimous decision. What happens then? Do they make any decision?

Brig. LAWSON: No. they report the matter to the convening authority and he dissolves the court.

The CHAIRMAN: What do they report, that they are unable to agree?

Brig. LAWSON: That is right.

Senator HAIG: Just as in an ordinary trial.

The CHAIRMAN: Carried.

We now come to section 5 on page 2, which amends Part VIII of the act.

Brig. LAWSON: The purpose of section 5, Mr. Chairman, is to provide a manner of executing punishment of death, and also to provide for the holding of an accused in custody pending execution of the punishment. This again

is a matter of abundant caution. We have no specific provision for this in the act at the present time. A fairly recent amendment in the United Kingdom Army Act introduced an amendment of this nature, and we felt as a matter of abundant caution we should have it too.

Senator BRUNT: This is a new section?

Brig. LAWSON: A new section.

The CHAIRMAN: Carried.

Section 6 deals with a Court Martial Appeal Board.

Brig. LAWSON: Clause 6 is a very long clause, Mr. Chairman. Most of the amendments simply change the word "board" to "court" throughout a series of sections. The important amendment is that we are now setting up a Court Martial Appeal Court composed of judges of the Exchequer Court and of the superior courts of criminal jurisdiction in the provinces. This court will be a court with similar status to that of the provincial courts of appeal. There will be an appeal from a court martial to this court, and from this court in turn to the Supreme Court of Canada, in exactly the same way as an appeal is taken to a provincial appeal court and then to the Supreme Court of Canada.

Senator BRUNT: No rights are taken away from the accused under this section?

Brig. LAWSON: None at all.

Senator ASELTINE: He has an appeal as a matter of right.

Brig. LAWSON: As a matter of right.

Senator MACDONALD: In all cases?

Brig. LAWSON: In all cases involving questions of law. The appeal against sentence is not to the court, but to the Chief of Staff of the service concerned. That has always been the rule.

Senator MACDONALD: Does an accused person have the right of appeal no matter what the charge is?

Brig. LAWSON: There is no difference based on the nature of the charge; he has a right of appeal in every case which involves a question of legality.

The CHAIRMAN: Why are you moving in the direction of judges rather than a board, as presently constituted?

Brig. LAWSON: There are several reasons for the change, Mr. Chairman. First, the board as presently constituted is made up of practising barristers. They are very busy men, and in some cases there is a very considerable delay in getting judgment. They have other pressing work and are not able to write their judgments promptly. This in a criminal appeal is not a good thing. It is most unfair to the accused that he should have to wait months under a cloud and perhaps then be cleared; he should know quickly whether his appeal has been successful or not.

The second reason is that we feel the court will have a higher status if it is composed of trained judges who have experience in judicial matters. As there is an appeal to the Supreme Court of Canada, it seems only right because of the dignity of that court that the appeal to them should be from a court composed of superior court judges.

The CHAIRMAN: The board at the present time is selected from the Bar, but its members are not necessarily military men.

Brig. LAWSON: Oh, no. None of them are military men. They may have had experience in the sense of having served in the war, but they are not military men.

The CHAIRMAN: I think we have four judges in the Exchequer Court at the present time, so you are going to take up the whole panel of the court.

Brig. LAWSON: No, there are six.

Senator WALL: May I ask this quick question? By section 189, subsection 1, where an appeal relates to the severity of the sentence, it goes to the proper authority, who has power to remit, and so on. Supposing he dismisses the appeal, can the prisoner then appeal to the court?

Brig. LAWSON: No, the court has no power over sentence. It was considered when the act was first enacted that the sentence is a matter depending on military circumstances, military factors which a civilian court would not be cognizant of; therefore the matter of appeal against sentence is kept in military channels.

The CHAIRMAN: Except in so far as—

Brig. LAWSON:—illegality, yes.

The CHAIRMAN: Then it goes through you?

Brig. LAWSON: The appeals come through me, and are sent on to the proper authority.

The CHAIRMAN: You mean that an accused person could not appeal a sentence; he would have to appeal his conviction?

Brig. LAWSON: No, he can appeal his sentence, but the appeal does not go to the Court Martial Appeal Board, it goes to the service authority.

Senator BEAUBIEN: Suppose that a soldier is court martialled, and has the right to appeal to an appeal board. Then he has the right to appeal to the Supreme Court if he thinks he has not received justice. Does he have to pay all the costs of these appeals?

Brig. LAWSON: That depends on the circumstances, Mr. Chairman. To begin with, he does not have to pay anything like the cost that a civilian would have to pay, because we transcribe the evidence of every court martial; we even see that he is not faced with the cost of having the evidence transcribed; and members who are lawyers will appreciate that that is one of the largest costs in an appeal. There is also a provision, in proper cases, for the service to pay his lawyer. This does not apply in all cases, but it is felt that if he has a really valid ground for appeal we can pay his lawyer; and actually, if he wins the appeal, we practically always pay.

Senator BEAUBIEN: If he has not got any money to appeal the case, you come in and help him out?

Brig. LAWSON: Yes. We have that authority.

Senator POULIOT: Mr. Chairman, is it possible to have an idea of what are the offences and the crimes and what would be the punishment for each crime? We have no idea of the punishments that are to be inflicted in the army, by this section.

The CHAIRMAN: They are in the present statute. Possibly the brigadier could give an outline of them.

Brig. LAWSON: It is rather difficult to do, Mr. Chairman. As you see, each offence has a maximum penalty set out in the act at the present time. The offences are spelled out one by one, and the maximum punishment the court may impose for the offence is spelled out in the act.

Senator POULIOT: What would be the name of the prison in which the sentence is served?

Brig. LAWSON: In the service we use the ordinary civil prisons. If a man is sentenced to more than two years' imprisonment he goes to a normal civilian penitentiary. If it is less than two years he goes ordinarily to an ordinary civil prison, although there is provision for setting up service prisons. But of course the normal sentence is a short sentence, and in that case he will go to a service detention barracks.

Senator POULIOT: What is "C. B."?

Brig. LAWSON: "C. B." is simple confinement to barracks. That is a very minor punishment.

Senator POULIOT: Here there is nothing defined anywhere.

Senator MACDONALD: I am sure honourable members of the Senate know by experience what "C. B." is.

The CHAIRMAN: "C. B." means that you can take only a short walk!

Senator POULIOT: I wonder if that is the kind of punishment that is contemplated in this section. The crime of these men was so horrible—they were deserters—that they were handcuffed, handcuffed even when they were going to church, to Mass.

Brig. LAWSON: Well, Mr. Chairman, we have rules for detention barracks, and these rules set out in detail what can be done to a person who is in a detention barracks. These rules are not secret; they are available to anyone to see and read and to criticize, if they think they should be criticized. Actually I think our detention barracks are well run. I believe they do a good job. They are designed to reform more than to punish. Their whole objective is to reform the soldier or sailor or airman, and they have a very high degree of success in doing this.

Senator POULIOT: Then why do not you use the word "reformation", instead of "punishment"?

Brig. LAWSON: Well, there are elements of both, sir.

Senator POULIOT: Now, Mr. Chairman and honourable senators, will you please tell me what are the present rules concerning punishment to be inflicted on a deserter?

Brig. LAWSON: Well, it depends entirely on the sentence imposed, Mr. Chairman. Normally a deserter will be given a period of detention consistent with the nature and period of his desertion. In a detention barracks he will be treated in much the same way as he would be treated in any civil prison, except that he will be given military drill and be taught military skills in order to improve him as a soldier. But his treatment does not differ materially from the treatment any person receives in an ordinary prison.

Senator McKEEN: Are not these penalties in the main act, and not named in the amendment?

The CHAIRMAN: Yes.

Senator McKEEN: I think that is what the honourable senator is not aware of.

Senator POULIOT: Does the commanding officer have a certain discretion in giving the minimum or maximum of punishment?

Brig. LAWSON: Yes. A commanding officer has certain limited powers of punishment. He conducts an orderly room, and he is the man who imposes punishment for minor offences, without having the man go to court martial.

Senator POULIOT: He can do it alone?

Brig. LAWSON: Oh, yes, he does it alone.

Senator CRERAR: I would like to make an inquiry, Mr. Chairman. Let us say that someone in uniform, a soldier, commits an offence and he is tried by court martial and sent to penitentiary for two years. What happens to him when he is released? Does he go back into the army or is he automatically out?

Brig. LAWSON: In every case of that nature the soldier would be released from the army. He would be out as soon as the sentence was imposed.

Senator POWER: He would be discharged with ignominy, would he not?

Brig. LAWSON: Normally that would be part of the sentence.

Senator POWER: Have we in Canada any detention barracks which might be called punishment barracks, such as Wandsworth in Great Britain?

Brig. LAWSON: No, we have no special detention barracks of that nature.

Senator POWER: Those are what we properly call punishment barracks, I believe.

Brig. LAWSON: That is right.

Senator POWER: The drill and the exercises which the inmates were forced to perform were really in the nature of punishment rather than the aquisition of new skills in military arms.

Brig. LAWSON: All of our detention barracks in Canada are on the same basis now.

Senator POULIOT: Are there any black holes in these detention barracks?

Brig. LAWSON: It depends on what you mean.

Senator POULIOT: A place without any light.

Brig. LAWSON: No, that has been forbidden, I believe. We do have solitary confinement the same as in civil prisons.

The CHAIRMAN: I notice that at the bottom of page 3 it provides that a Court Martial Appeal Court may hear evidence including new evidence. Will your code of rules of evidence, when we see it, contain provisions as to the basis upon which new evidence could be submitted?

Brig. LAWSON: I think that is intended to be left as a very wide discretion of the court, to call for new evidence if they think it is desirable. The Court Martial Appeal Court has power to make its own rules, and that field will be covered in the rules made by the court itself.

The CHAIRMAN: I suppose they would have the power to decide whether they were going to sit in camera or in public?

Brig. LAWSON: Yes.

The CHAIRMAN: The accused could, of course, ask to adduce new evidence and they might refuse, depending on their rules?

Brig. LAWSON: That's right.

The CHAIRMAN: Are there any other questions?

Senator HAIG: I move the clause be passed.

The CHAIRMAN: It is a lengthy section and it extends into page 4 of the bill as well. Have you dealt with that feature which is covered on page 4?

Senator POWER: I did raise a question, although I am not going to insist upon an answer, with respect to subsection 11, military advisers. I feel that by the time a case gets to this Court Martial Appeal Court it has been pretty thoroughly discussed by the soldier's friend or the attorney for the accused, and also by the Judge Advocate General. Now, this Court will be composed of Exchequer Court judges, Superior Court judges, and so on, men who are in the habit of judging all kinds of cases. Now, can there be anything more complicated than the patent cases that go before the Exchequer Court? I wonder why they want a legal adviser to a judge? That is the way it strikes me. That may be an exaggerated way of putting it.

The CHAIRMAN: Before Brigadier Lawson answers you, I would like to add something to your statement. Ordinarily in our civil law the advisers are present to advise a trial judge in the course of evidence being adduced of a technical nature, but I have not heard of these advisers in connection with a court of appeal because the court has all the evidence before it, including the evidence of the experts.

Senator POWER: I don't know but I imagine they could call an expert if they wanted to?

The CHAIRMAN: No.

Senator POWER: No, you are right. The judgment would be based on law. I would like to have this business about a military adviser explained.

Brig. LAWSON: Mr. Chairman, this is essentially the same provision as we have in the Exchequer Court Act and in the various judicature acts for the appointment of assessors to assist the court in cases of technical difficulty.

The CHAIRMAN: That is in a trial court.

Brig. LAWSON: I agree, Mr. Chairman. You say these are expert judges who presumably would know about these matters, but we do have most difficult technical cases. For example, a number of courts martial deal with ship collisions and ship groundings, which call for the most technical type of evidence as to what a captain should have done, and so on. Similarly, we have a number of cases involving low flying, flying improperly and flying accidents, and so on, and these are very technical in their nature. You have a great deal of technical evidence given which a layman would not really be able to assess without some assistance. We do not intend to use this section all the time by any means, but we feel it wise to have it in there so that in these very difficult and unusual cases of a type that would not normally come before the judges that may comprise the court, the court can have the benefit of technical advice.

Senator POWER: Would the judges be bound to accept the technical adviser's advice?

Brig. LAWSON: No. He would be in the same position as an assessor in our ordinary courts.

Senator POWER: The assessor is in the court of first instance, as a rule.

The CHAIRMAN: That is right.

Senator POWER: I cannot conceive of any military circumstance or naval circumstance being such that a judge who is accustomed to dealing with patent cases cannot solve by himself without somebody advising him as to the technical matter.

Senator HAIG: They might want to ask the nature of the offence. They might want to call a brigadier or some other officer to tell them exactly what the offence was.

Senator CROLL: Arising from the questions asked by two of our members, are you not getting in a position where you have an expert advising the court and at the same time he is not subject to examination or cross-examination?

The CHAIRMAN: That is right.

Senator CROLL: Well, are you being as fair then as you appear to be under this act?

Brigadier LAWSON: There is something in what you say, sir, but after all this is nothing unusual. The assessor in a civil court is in exactly the same position as the technical expert will be in this court. He is not subject to examination or cross-examination.

Senator CROLL: No, but there is a difference.

The CHAIRMAN: In a civil action a judge may decide that the nature of the case is complicated by technicalities, and he has power to take unto himself an adviser or an assessor, but that is when the evidence is being adduced.

Senator CROLL: Yes, and that is an entirely different matter.

The CHAIRMAN: But this is in a court of appeal. They have the evidence. That is the thing that bothers me.

Senator BRUNT: I do not think it harms the accused in any way, does it?

The CHAIRMAN: Well, I don't know. The adviser sits in there and advises the court of appeal on the evidence that is already there, and the accused at that stage has no opportunity of answering what is said by the adviser.

Senator POWER: As I see it the harm may be done by the fact that the adviser cannot be questioned or cross-examined or anything else as to what he says. It brings into hand the hidden influence on judges who, by the nature of their appointments and experience, are considered to be quite competent.

The CHAIRMAN: It is at the stage of appeal that bothers us.

Senator POWER: Yes.

Brigadier LAWSON: These judges are not experts in military matters. So much in military life depends upon custom and usage, and so on. The court may need advice on this aspect of the case.

Senator MACDONALD: Are these military advisers to be permanent appointees?

Brigadier LAWSON: They could be, Mr. Chairman, but not necessarily. It is left open by the section.

Senator MACDONALD: Do they appear at every appeal hearing whether the court requests them or not?

Brigadier LAWSON: No, Mr. Chairman. That is not the way we envisage it. They would only be used if the court itself felt the assistance of an adviser would help. The court would have discretion to say whether it wanted an adviser or not.

The CHAIRMAN: Getting back to the question of evidence, when you have the evidence before you in the Court of Appeal that evidence is fully developed. The judges are supposed to weigh it. Now, why at that stage do they have the privilege of having someone interpret it for them, and the accused has not the chance of putting up his interpreter as well? At the stage of trial that is all right, and I can understand it, because the judge hears the evidence; these military matters come up, and it enables him to direct the inquiry and the evidence that is adduced more sensibly than he might otherwise be able to do. But in the Court of Appeal, I just can't follow it.

Brigadier LAWSON: The Court of Appeal has to weigh the weight of evidence, that is one of its functions, and it may be very difficult for the court to do so without a man of technical skill to assist them.

Senator POULIOT: I wonder if a superior officer has the right to revise the sentence?

Brig. LAWSON: Yes, Mr. Chairman, the superior officer has always the right to revise a sentence, but always downwards, never upwards. He can always reduce it.

Senator POULIOT: To be more tolerant?

Brig. LAWSON: That is right.

Senator LEONARD: What would Brigadier Lawson think of putting in such words as, "If the court requests such an adviser"?

Brig. LAWSON: No objection to that at all, Mr. Chairman.

Senator CROLL: But that does not help from the point of view of the prisoner. My point is that I have no objection to the court calling anyone they like any time provided that the man who is charged, or is responsible, has an equal opportunity to at least know what is going on.

The CHAIRMAN: At the stage of the court of appeal you would suggest that instead of having the usual function of an adviser he should be called as an expert witness?

Senator CROLL: That is exactly his position.

The CHAIRMAN: That would solve the problem. I do not know how important the department regards this provision. To me, it may not strike them as having any particular importance.

Brig. LAWSON: Mr. Chairman, I do not regard this as being a provision of great importance. My feeling is that it would be a good thing to have in the act so that we could use it when necessary. I say this because I have to review all of these cases, and when I get technical cases regarding ship collisions and aircraft collisions I know I have to go to other people and get them to tell me what it is all about. I can appreciate that, and I can see the court being in exactly the same position that I am in. That is why I suggested there be a provision like this in the bill; but as I say, I do not think it is of vital importance. If the committee feels it is better out, I am sure the minister will be glad to accept that.

Senator POWER: I move that it be struck out.

Senator BRUNT: To strike out subsections 11 and 12?

The CHAIRMAN: Not section 12, no, because we have to pay them. After the word "belongs" on line 13, of page 4, strike out the remainder of subsection 12. In other words, strike out subsection 11, and strike out the last three and a half lines of subsection 12. Is that your motion, Senator?

Senator POWER: Yes.

The CHAIRMAN: All in favour? Contrary? Carried.

—Subsection (11) deleted.

—Subsection (12) agreed to, as amended.

—On Section 191—Powers.

The CHAIRMAN: Now is there anything in section 191?

Brig. LAWSON: No—just change the word "Board" to "Court".

The CHAIRMAN: That takes us to section 192.

Brig. LAWSON: The same thing; and the same for sections 193, 194 and 194A.

The CHAIRMAN: Section 195?

Brig. LAWSON: Section 195, yes; nothing there.

—On section 196—Appeal by accused.

The CHAIRMAN: This is a new section 196, and it is simply a consequential change, is it not, because it says against the decision of the Court Martial Appeal Board.

Brig. LAWSON: No; this is giving the accused a much wider right than he now has.

Senator POWER: I would say it is really something to be commended.

—Section 196 agreed to.

—On Section 7—French name of R.C.A.F. changed.

The CHAIRMAN: This is clause 7 on page 7 of the bill?

Senator POWER: I will state my feelings, and say no. I have too much respect for the Royal Canadian Air Force to have this name even in jest to be spelled "F.A.R.C.", and by making the "C" a little softer, you get the word "farce". I would say that is not the proper thing for any government to impose on the air force at this moment of its great difficulty. I would leave the name as it is, or suggest some other name. I would say by the rule of semantics or philology this is the proper term, anyway. I am not going to enter into that, because there are scholars of the French language here that know more about it than I do; but I would say it is awkward. In the House of Commons it was brought up as an awkward way of saying it, anyway. By calling the Royal Canadian Air Force in French, Forces aeriennes royales du Canada, it does not sound any better.

Senator POULIOT: Is this name being changed, Senator Power?

Senator POWER: No, it is the Royal Canadian Air Force, in English—R.C.A.F., and now it will be "FARC", in French; and you may be darn sure within a very short time the people speaking the English language will be saying "farce", to represent F.A.R.C. It doesn't take long. The R.A.F. is always called the "RAF". Why wouldn't this institution be called the "FARC".

The CHAIRMAN: Maybe the Brigadier has something to say?

Brig. LAWSON: On that first point, Mr. Chairman, the abbreviation would not be F.A.R.C., but F.A.R. du C.

Senator POWER: Thank you very much.

Brig. LAWSON: The present name in French of the Royal Canadian Air Force is "Corps d'aviation royal canadien". This carries the implication that the air force is only a corps like the Royal Canadian Army Service Corps, or the Royal Canadian Infantry Corps, or the Royal Canadian Armoured Corps. The air force don't approve of this connotation. That is the wrong connotation. That is the reason for changing the French name.

Senator JOHN A. MCDONALD: To get rid of this word "corps"?

Brig. LAWSON: To get rid of this word "corps".

Senator WALL: Then you have changed it from the singular to the plural?

Brig. LAWSON: That is right, sir. The expression, "Forces aeriennes royales du Canada" complies with the usage at SHAPE, where all air forces are called, "Forces aeriennes", with the name of the country to which they belong attached. This is the accepted military usage. The other word that has been suggested, aviation, has no military connotation. It covers civilian aviation, all types of aviation. Forces aeriennes has a military connotation. Now, the best advice we have been able to get from various sources is that this is the correct name. The request for the change came from the Air Division in Europe where they felt this would be the understood French equivalent of Royal Canadian Air Force.

The CHAIRMAN: Would it not be possible to put the word "royales" after forces and possibly offend the rules of grammar, then we would have "Forces royales aeriennes du Canada".

Senator POWER: As far as the term Forces royales aeriennes du Canada is concerned, Senator Pouliot how does that stand with you?

Senator POULIOT: I think a lot of the Royal Canadian Air Force and Corps d'aviation royal canadien—C.A.R.C. because there is so much glory attached to the exploits of the R.C.A.F. and the C.A.R.C. that I do not see how you can dispose with those names and still have the same attraction to enlist boys in that body. The name strikes the imagination and reminds one of all that has been accomplished by that force. R.C.A.F. and C.A.R.C. are names well known throughout the world, and it is well represented throughout the world by the men who came to learn all about aviation here at Trenton. They belonged to that corps and they became famous throughout the world. I do not see how a translator can put all this aside, forget all the glory of the R.C.A.F., throw all that tradition in the wastepaper basket and come up with a new name that does not appeal to anyone. That is the view of Senator Pouliot.

Senator WALL: I wonder if the word corps in its definition, from its roots, has not a wider connotation than we are actually putting on it right now?

Brig. LAWSON: I agree with that, Mr. Chairman, but the word "corps" has a special military meaning. We know that when the Air Force was first established it was a corps of the army and that is perhaps where it got this name originally, but now it is a completely separate service. The Air Corps in a military sense is inappropriate.

Senator BRUNT: Did the present name cause any embarrassment during the Second World War?

Brig. LAWSON: I certainly could not say that it caused any embarrassment.

Senator POULIOT: We will ask the minister who was in charge at that time if there was any embarrassment.

Senator POWER: Not the slightest, and I am serious when I say that this new name, Forces aeriennes royales du Canada will cause some embarrassment. I am afraid of it. Things are not running as smoothly as they might, and I think that a change of name to this name would be detrimental to the R.C.A.F. I will admit that "corps" has a wider connotation than has been given to it, but when you speak of an army corps you speak of something that is important. Nobody is going to think less of the Air Force because it continues to call itself a corps.

Senator HAIG: Do you prefer this new name or do you prefer the old name?

Senator POWER: I prefer the old one, and that is the reason I have spoken. I do not like this name, it will make the Air Force a laughing stock and will insult pretty nearly everybody who served in the Air Force during the war to call it Farce.

Senator POULIOT: It will be a china wall between the force and the veterans.

Brig. LAWSON: There is another suggested name, and that is "Aviation royales du Canada".

Senator POWER: Why change it at all?

Brig. LAWSON: It is a matter of getting away from the word corps.

Senator POULIOT: Well, we are not making any inquest here, Mr. Chairman. We are all satisfied with the actual state of affairs and I wonder why we should make an inquest about changing the name or going to the trouble to change it for the satisfaction of one who has forgotten the exploits of the Corps d'aviation royal canadien just to show how important he thinks he is. How many people do we have under this roof who think they are important and they impose their views, sometimes for trifles and sometimes for important matters, but they impose their own views. They are the only ones who know about the semantics of this, and nobody here knows anything about linguistics. I say that we are satisfied with our state of things, a state of things that has a meaning, and are we going to drop all that and adopt the opinion of a gentleman who probably has never been in the R.C.A.F., or at least one who forgets the glory of the past.

The CHAIRMAN: Senator Power, have you any suggestion to make?

Senator POWER: Mr. Chairman, I am going to move that this clause be stricken from the bill.

The CHAIRMAN: Perhaps the Brigadier has something to say.

Brig. LAWSON: May I say this, Mr. Chairman, that the request for this amendment has come from the R.C.A.F. They have asked for this change.

Senator POULIOT: We will refuse it for their own good.

Senator POWER: I would not doubt what the Brigadier says but I would be very seriously concerned with an investigation into just who in the Royal Canadian Air Force made that request, whether it is somebody who had been overseas and noticed that other overseas nations liked to have this name or had it before, but I think the ones who were associated with the R.C.A.F. during the war do not want this name changed to Farce, and that is what it will be called, whether the Air Force likes it or not they will be known throughout Canada as the Farce, and for once Canada will become bilingual from British

Columbia to Newfoundland—"Oh, you belong to the Farce?" When that name was suggested they probably did not realize just what the initials would spell out.

Senator MACDONALD: I think that if the Royal Air Force requested this change they did not separate the initials of the words and did not realize what letters would be spelled out when used together. No doubt if they reconsidered this they would not want the name that is suggested here.

Senator HAIG: I have one thing to suggest Mr. Chairman and that is that we should ask the people whose mother tongue is French to vote on this amendment and if they want it I will vote for it to go out, and if they want it I will vote to leave it in.

Senator POWER: I move Mr. Chairman, to eliminate this clause.

Senator BOIS: I second that.

Senator POWER: I move that the whole clause be deleted and the name remain as it is.

The CHAIRMAN: There is a motion before the committee to strike out clause 7. Those in favour, please indicate.

The CLERK OF THE COMMITTEE: Twenty-one.

Senator POWER: May I call the attention of the committee to the fact, in line with Senator Haig's suggestion, that all the French-speaking members of this committee voted unanimously in favour of striking out the clause.

Senator HAIG: Then I vote for the amendment.

The CHAIRMAN: Contrary, if any?

Carried.

Shall I report the bill with this amendment?

Carried.

Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill C-28, intituled: An Act to amend the National Housing Act, 1954.

The Honourable SALTER A. HAYDEN, *Chairman*

THURSDAY, MARCH 5, 1959

WITNESSES:

Mr. Stewart Bates, President of the Central Mortgage and Housing Corporation;
Mr. A. D. Wilson, General Counsel of the Central Mortgage and Housing Corporation.

REPORT OF THE COMMITTEE

Appendix

Details of Dwellings built under the Small Homes Loans Programme—National Housing Act, 1958.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20795-1—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, March 4, 1959.

Pursuant to the Order of the Day, the Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill C-28, intituled: "An Act to amend the National Housing Act, 1954", be read the second time.

After debate—

The Honourable Senator Croll moved, seconded by the Honourable Senator Burchill, that further debate on the motion be adjourned until tomorrow.

The question being put on the motion, it was—

Resolved in the affirmative.

Later this day:

By unanimous consent,

The Senate reverted to this Order and the motion of the Honourable Senator Croll, seconded by the Honourable Senator Burchill, was rescinded.

The question was then put on the motion for the second reading of the Bill, and it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

20795-1—1½

REPORT OF THE COMMITTEE

THURSDAY, March 5, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-28), intituled: "An Act to amend the National Housing Act, 1954", have in obedience to the order of reference of March, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, March 5, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Dessureault, Golding, Gouin, Haig, Hardy, Horner, Isnor, Kinley, Lambert, Leonard, McDonald, McKeen, Power, Pratt, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vien and Wall—27.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-28, An Act to amend the National Housing Act, 1954, was read and considered.

Heard in explanation of the Bill: Mr. S. Bates, President of the Central Mortgage and Housing Corporation; Mr. A. D. Wilson, General Counsel of the Central Mortgage and Housing Corporation.

Also in attendance but not heard: Mr. P. S. Secord, Vice-President of the Central Mortgage and Housing Corporation; Mr. H. W. Hignett, Executive Director of the Central Mortgage and Housing Corporation and Mr. K. C. Joynes, Research Administrator of the Central Mortgage and Housing Corporation.

On Motion of the Honourable Senator Haig, seconded by the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

At the request of the Honourable Senator Wall, it was agreed that details of dwellings built under the small homes loans programme, National Housing Act, 1957-58, be printed as an appendix to today's proceedings.

On a Motion by the Honourable Senator McKeen, that in the Report of the Committee on the said Bill, it be incorporated, the following recommendation: "That the Government consider making the 100 per cent guarantee available to all insured mortgages under the National Housing Act, retroactively", the Committee divided as follows:

YEAS	NAYS
7	11

The Motion was declared passed in the negative.

On Motion of the Honourable Senator Burchill it was Resolved to report the Bill without any amendment.

At 12.45 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, THURSDAY, March 5, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill C-28, an Act to amend the National Housing Act, 1954 met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Ladies and gentlemen, we have a quorum and it is time we started. We have before us Bill C-28, an Act to amend the National Housing Act 1954, and in support of the bill we have Mr. Stewart Bates, who is the President of Central Mortgage and Housing Corporation, and Mr. P. S. Secord, who is Vice-President.

Shall we follow our usual practice and have a general explanation from Mr. Bates?

Agreed.

Mr. Stewart Bates (President, Central Mortgage and Housing Corporation):

Mr. Chairman and honourable senators, it is not so long since I had the privilege of being before another Senate Committee, indeed it is only some months ago when the Finance Committee devoted considerable time to the general housing situation, and at that stage you will recall there came from that committee a very comprehensive report on housing. It is the most comprehensive report on housing that we have available in Canada, and in the Corporation we have used it very widely. Its dissemination has been considerable not only in this country but abroad. There has been no other comprehensive review of housing since 1954 till the one made by your Finance Committee under the chairmanship of Senator Hawkins last summer.

I thought perhaps before you would like to look at the details of the present bill you might like to have some review of the activities that have followed from the report and the recommendations made by the Finance Committee last summer. I thought, ladies and gentlemen, that you would be glad to have a short review of what has happened on the activities which the Finance Committee had considered last summer.

We were only made aware last night that we might have to come before you this morning. So, although this presentation has been prepared rather hastily, I do think it contains the record of progress, or lack of progress, on the report you made last summer.

Mr. Chairman, with that short explanation I might proceed to read the prepared statement.

Honourable Senators, between June 5th and July 31st, 1958, the Senate Standing Committee on Finance considered the Annual Report of Central Mortgage and Housing Corporation for the fiscal year ending December 31st, 1957. Under the chairmanship of the late Senator C. G. Hawkins, this Committee issued its report on August 7th, last year.

This report contained a number of recommendations and, with your permission, Mr. Chairman, I should like to make a few observations on some of the work which has been done to implement the suggestions contained in this report.

The first recommendation contained a suggestion that an actuarial study be made of the Mortgage Insurance Fund, with a view to ascertaining the point at which a reduction in the mortgage insurance fee might be warranted.

As at the 31st December, 1958, the assets of the Mortgage Insurance Fund were $45,680,766 covering mortgage insurance in force of approximately $2,100,000,000 together with Corporation Direct insurable loans amounting to approximately $560,000,000. To date, the claims on the Mortgage Insurance Fund have only amounted to $99,082.30 involving ten properties. There are also three claims pending. That is since 1954.

Senator BRUNT: May I ask, has any loss been incurred?

Mr. BATES: No sir.

Senator LEONARD: In other words, the claims, which amounted to $99,000 have been realized out of the properties themselves? Is that the situation?

Mr. BATES: That is so. Except, of course, there is always a qualification: when we realize on a property we make another mortgage loan for a further 25 years. I do not know what will happen to those 10 particular properties in the next 25 years.

Senator BRUNT: But up to the present time there has been no loss?

Mr. BATES: No.

Senator WALL: The relationship of $45 million to $2,660,000,000 is about 1.7 per cent. How does that compare with similar situations with lending institutions and insurance companies? Is there any basis of comparison?

Mr. BATES: Well, gentlemen, some of you have had more experience in trust and insurance companies than I have. I think you will admit that in terms of reserve, this is a very small amount—$45 million against a liability of this magnitude.

After all, gentlemen, we have in the corporation some 7,000 loans outstanding in the area around Malton; in other words, there is a liability in the Malton area alone of some $70 million. I do not wish to mention the other word that goes with Malton—you appreciate the point I am trying to make. As another illustration, there is in the area known as Elliott Lake some 1,700 loans outstanding. That is a community, as you know, with very substantial contracts to the year 1962, and thereafter there is some uncertainty.

I do not think the mortgage fund was ever set up to meet peculiar local conditions of this kind. It would not take a very substantial reduction in the gross national product, with $2½ billion outstanding, to show that a total fund of $45 million represents a very small security.

Senator KINLEY: But after all, the loans are widely distributed.

Mr. BATES: Yes sir.

Senator HORNER: Have you any information on these mortgages that have to be financed, as to what type of house they are on, whether high priced or moderately priced?

Mr. BATES: You understand that that on the insured mortgages the loans have been made by approved lenders, and from time to time an approved lender and an individual borrower may have entered into an individual deal. The borrower may get into temporary difficulties—I would not know how many times this happens—and an adjustment is made between the borrower and the approved lender, of which we have no record. We only get a record when it comes to the final point of desperation when the approved lender has foreclosed on the property; then it comes to us. But these adjustments are going on as some of you hon. gentlemen know, continuously between borrowers and lenders.

Senator BARBOUR: Were most of these mortgages made in late years?

Mr. BATES: Yes; I think most of them have been made in the last eight years. I don't remember when we got into loans; would it be 1951? It is before my time.

Senator BARBOUR: Not too much has been paid on a lot of the mortgages?

Mr. BATES: No, sir.

Senator KINLEY: How, if at all, are you affected by the Avro situation?

Mr. BATES: Most of the mortgages are made by approved lenders, because in the area concerned we are looking at territories like Georgetown and approved communities in the Malton area, where the workers in this particular plant live; and many of them are approved loans made by borrowers from mortgage companies.

Senator LAMBERT: There are references to this and the next paragraph.

Mr. BATES: The insurance fees charged and the growing assets of the fund have been closely studied by the corporation's Management Consultants and corporation staff. It has been concluded that, notwithstanding the low level of claims to date, even a moderate change in economic circumstances could cause a serious and rapid deletion of the mortgage insurance fund. It is possible that the continued growth of the assets of the mortgage insurance fund may permit a reduction of the insurance fee at some future date.

In other words, gentlemen, our recommendation was that we should hold to the status quo until our experience became a little wider; and I think this was very much the sentiment which was expressed at the Senate committee last summer—that we should continue with our present experience until it had begun to give us some clear indication of the probabilities ahead. In short, we have followed the suggestions made here, and have made these recommendations to Government, that we continue the current situation as is.

The second recommendation contained in the report referred to the constant study of the possibility of mortgage insurance on existing residential real estate. The corporation has acquired considerable data on this subject and if, and when, the Government decides that it is appropriate to permit mortgage insurance on existing real estate, the corporation will be fully equipped to deal with this extension of its activities.

Senator REID: What do you mean by "existing" real estate?

Mr. BATES: Used houses, secondhand houses. You will recall that the recommendation of the Senate committee last year was that the time was not quite propitious, funds were not adequate to move into the existing real estate field, and you recommended that the corporation should continue a full study. In every city in the country we try to get a record of all existing real estate transactions that are going on from month to month, so that should the day arrive in which the Government wishes to move into existing real estate, we will have the basic information, and our appraisers and others will have familiarized themselves with the highly complex problem of appraising existing real estate, as distinguished from new buildings. In other words, we are trying to train appraisers to be prepared should a day come when the Government thinks it propitious and proper to move into the existing housing business.

The Senate Committee did not feel that a recommendation for an amendment to the National Housing Act permitting the use of federal funds for financing university students' dormitories was merited.

Senator BRUNT: Hear, hear.

Mr. BATES: This subject was again raised in the House of Commons last week when the present bill was being debated. The Minister of Public Works, expressing the view of the Government, stated that this matter does not come within the purposes for which the National Housing Act was passed. In other

words, the Government was accepting the recommendation of the committee last summer that for the present at least and so long as the University Grants Committee was making funds available for dormitories, the federal Government should stay out.

In its report, the Committee expressed the hope that the fullest possible resources of the Corporation would be directed towards the encouragement of the provision of low-cost homes, the expansion of low rental accommodation and the raising of standards of construction in the remote areas. These are three fields in which the Corporation is vitally interested.

In August of last year, the Corporation produced plans for a minimum house, suitable for construction in small communities and remote areas. This plan and an accompanying leaflet was given the widest publicity. Following this, in conjunction with Canadian architects, eight additional plans for small homes have been produced. These homes are suitable for construction in both rural and urban areas.

Senator PEARSON: What was the value of those small homes?

Mr. BATES: I believe the maximum was $9,000, and this was a figure which the honourable senators recommended to use last year.

Senator GOUIN: Would that include the land?

Mr. BATES: No.

Senator BAIRD: These were not finished houses, were they? They were sort of do-it-yourself houses?

Mr. BATES: No, these were all completed houses. You asked us to produce some low-priced houses and we have done so, and there is a booklet available now to the Canadian public showing these small houses.

Senator PRATT: You said the maximum was $9,000. What was the range of value down?

Mr. BATES: Some went as low as $5,000, the value of the houses themselves.

Senator PRATT: That was the range of value, from $9,000 to $5,000?

Mr. BATES: Yes. They were all small houses, all under 900 square feet.

Senator PEARSON: Those were approved plans?

Mr. BATES: Yes, some designed by architects. Some were very attractive, but small. The booklets with the whole group will be available for the public very shortly. I just wanted to let you know we had followed up your recommendation on small houses, and will continue to do so.

Senator McDONALD: What kind of a reception are you getting with these?

Mr. BATES: We have had applications for specifications on these, I would think for some 200; that is, people sending in ten dollars for the detailed plans. This is very satisfactory considering that we only got these booklets out in the very late fall, just before the winter; I think this is quite a satisfactory result.

Senator KINLEY: Does that price include the land?

Mr. BATES: No, sir. It depends where you are building. Land is very expensive in some places, and not so in others.

Secondly, to acquaint mayors and reeves of small municipalities—this was your second recommendation here—with the facilities available under the National Housing Act, the corporation's branch managers throughout the country have visited the majority of municipalities with populations down to 1,500. It is our intention to extend this work to even smaller communities.

In other words, our staff have fairly well covered the territory, talking to mayors and others, outlining the facilities under the National Housing Act,

and of course bringing to their attention particularly the small home loans. We have also worked with the weekly editors, Quebec and elsewhere; and I think if any of you gentlemen have looked at weekly newspapers you will have noticed in the last six months the increase in the number of small houses being described in the local weeklies.

Senator PRATT: You say you have visited the majority of municipalities with populations down to 1,500. Have you confined it only to municipal government?

Mr. BATES: No, we have tried to go in anywhere where there is any kind of an organization we could speak to, even if it was a weekly newspaper editor.

Senator PRATT: But if 1,000 or 2,000 people had no municipal government, they would not have the same opportunity of reaching out for these services, would they?

Mr. BATES: No, but there may have been a local banker who would talk about what he would do locally about encouraging N.H.A. housing.

Senator FERGUSSON: When the visits are made do they also point out services for older citizens? They do not limit the approach to the minimum houses?

Mr. BATES: Yes. As we explained to the senators last year we brought in every branch manager here to Ottawa for six weeks trying to make him the Government representative in his locality, able to talk of the National Housing Act in all its aspects, whether it was old age, federal-provincial, or anything else.

Senator FERGUSSON: Yes, I know they may be able to do it, but do they do it ? Do they acquaint people with these possibilities?

Mr. BATES: Well, as I say, when we got the recommendation here last August we started them out on the road. Now, there have not been so many out on the road in the past two months. We will repeat this performance when the roads open again. We will have them right across the country. For example, we have two all down the Quebec peninsula talking. I don't know if there are any results, but they are talking to them about the National Housing Act. No one ever talked the National Housing Act in the Gaspé peninsula before. We have had two representatives since we met you last. This is the kind of thing you wanted to do, and that we wanted to do.

The main efforts of the corporation, during 1958, were directed toward implementing the Government Small Homes Loan programme to provide lower-cost housing for home-ownership and low-rental accommodation for low-income families. During the course of 1958 the corporation made loans on 28,669 small homes for a total amount in excess of $304,000,000. Almost one in every four of these small homes was built in a smaller centre or a rural area.

I think this is a little better than we expected, because they are not really growing areas.

In addition, a further 3,271 direct loans were made totalling $35,000,000 to individual home-owner applicants in smaller centres.

With the full support of the Corporation, the National House Builders Association is also continuing work on the production of a low cost house. Demonstration houses of this type have already been built in several cities.

During 1958, loans totalling $50,000,000 were made to limited dividend housing corporations for 6,679 low rental dwelling units for low income families, of which 1,450 units were specifically designed for elderly persons. In addition, the corporation entered into agreements with provincial Governments and municipalities to provide 1,815 low rental units.

Senator CRERAR: What kind of a mortgage do you have on that type of housing?

Mr. Bates: These are primarily 90 per cent loans made at a low interest rate, 4⅝ per cent.

Senator CRERAR: Do you figure that is sufficient protection for the Corporation?

Mr. BATES: Yes, because limited dividend companies are fairly stringently controlled. Their books are reviewed by us, and their costs are reviewed during construction, and their tenants also are reviewed by us. And then, Senator Crerar, their return is limited to a 5 per cent dividend.

Senator CRERAR: You keep a pretty close inspection of these limited dividend companies?

Mr. BATES: That is so.

Senator KINLEY: And are they allowed to provide for a 10 per cent depreciation?

Mr. BATES: It depends. They get a loan extending over 40 years. To ensure that the benefits of this low rental accommodation accrued to families of low income, the Corporation adapted a more restrictive formula, during 1958, toward the incomes eligible for entry into these projects. Previously, rentals had been calculated in relation to the 'lower half' income level of the community. In July, 1958, this formula was changed to the 'lower third' income level. The Finance Committee recommended to us during discussions last year that we should go down to the lower one-third rather than the lower-half. In other words since then we have followed your recommendations with Government approval. May I say that if the project is so designed that those people in the lower third cannot qualify to become tenants of these apartments we do not approve of the scheme, and so the contractors have to take their plans back, and get it down to the size and cost suitable to the lower third income group.

Senator CRERAR: Do these limited dividend companies set up any reserve against a possible loss?

Mr. BATES: Yes they do.

Senator CRERAR: Perhaps I fail to make myself clear. A limited dividend corporation is limited to a return of 5 per cent on the money invested. Does that corporation set up any reserves against possible losses in the future?

Mr. BATES: Against a normal depreciation and wear and tear and so forth, yes. There is no secret reserve for profit.

Senator CRERAR: Suppose that a serious unemployment situation was to arise, as might happen in the case of a serious recession in business, and the tenants would be unable to continue payment of their rent and losses might accrue to the owners. What I am trying to find out is, do these limited dividend corporations set up any independent reserves against that possibility?

Mr. BATES: I think you understand, Senator Crerar that limited dividend corporations operate rental accommodation. It is not home-ownership. It is low income rental people who are in there. But to my knowledge there is no particular fund set aside to take care of loss of revenue through vacancies or other income losses.

Senator BRUNT: Is it not a fact that this relates to apartment houses that are built and rented and not sold so that if you run into a recession and the tenant does not pay there comes a point when he is moved out and the owner endeavours to get a tenant who can pay the rent. This does not apply to houses that are sold but rather to apartment buildings that are rented. Possibly

what Senator Crerar means is the owner of the apartment house allowed to set up a reserve that would protect him for loss of rentals.

Mr. BATES: No, he is not. He is allowed a normal reserve for wear and tear and depreciation.

Senator KINLEY: And the Corporation owns the house because the contractor borrowed 90 per cent of the cost to build it.

Mr. BATES: No, we do not own the house, but if anything goes wrong we can take it over.

Senator HAIG: These limited dividend houses are usually built by a group of people, let us say for instance 25 Scotsmen get together to build one of these. A few of their countrymen may have considerable amounts of money and they decide to go into this and provide accommodation for their compatriots. They say we will build a block and rent them to our countrymen at low rentals, and 5 per cent return on our money will be a fair return, and into the bargain we will be doing a good thing for our own people. That type of housing is scattered all over Winnipeg. There are houses tenanted by Jewish people, and by other nationalities who have gotten together and built this type of accommodation. Perhaps a few men of that nationality will supply the necessary money. Now, I do not think the Corporation takes any risk at all in the type of housing. Where the Corporation takes risks is in the construction of a whole street of houses that are selling at $14,000 to $15,000 a piece and somebody buys those. To my mind those are the ones you take the risk on.

Senator CRERAR: You may be quite right, but what I have in mind is this: if conditions arose, say an extremely bad recession like the 1930's, and you had a block of low rental houses and the tenants were unable to pay their rent. First I want to know does the limited dividend corporation establish any reserve against that contingency so that if the Housing Corporation has to take it over, as Mr. Bates said they could do, and they cannot rent those apartments have they a general reserve to fall back on? Am I right in that?

Mr. BATES: Yes. There is no reserve permitted to them to take care of this kind of risk. On the other hand these houses are very low rental houses and if someone cannot pay the rent no doubt there comes a point when he gets put out and in any community there are thousands of people ready to go into these $60, $70 a month apartments, so they will be fully occupied when many others are not should there be a downturn in business, and for this reason we have not felt it necessary to set up any reserves.

Senator LAMBERT: Does the Corporation recognize the possibility of advancing rates of rentals because of inflation? Senator Crerar is talking about a deflation period similar to the 1930's. I think the problem would be to keep rentals at the level they are at now.

Mr. BATES: Yes. This is one of the difficulties that we meet up with. If there is a limited dividend project in some area which let us say was built in 1951 at the costs of that day, and the same proprietor comes along today to build an identical unit his rentals are going to be very much higher, and he does not like, as an owner, to be in the situation of owning two adjacent properties with perhaps a $10 a month differential in rentals and he is inclined to come to us and say let us split the difference. This is a very sensible sort of suggestion, and we have to look at each individual case according to its good sense or otherwise.

Senator BEAUBIEN: Do you mean split the difference with the tenant, so that he can keep the tenant there?

Mr. BATES: If you have two properties, one with a rent of $75 and the one next door with a rent of $65, because it was built a few years earlier, and

the two projects are identical, the entrepreneur who is administering both does not like this differential. He makes the recommendation that we raise one $2 or $3 and lower the other a little bit. This is not a very easy proposition for us to accept, because we have in each case an agreement setting out the amount payable per month for 40 years.

Senator BRUNT: If you raised the rental on the older building, would not that throw out your 5 per cent figure?

Mr. BATES: Yes, it would.

The CHAIRMAN: And if you lower the other one it would interfere with the percentage?

Mr. BATES: Yes—to put one down and the other up.

Senator BEAUBIEN: Do you find, Mr. Bates, that the people who build these units are very often willing to lower their rents?

Mr. BATES: Since I came to Canada 23 years ago there has never been any question of lowering of rents anywhere; it has been a progressive and continuous rise.

Senator BEAUBIEN: My point is, you say they want to compromise by lowering this rent and increasing that one. I want to know where you find the owners of these units who are willing to raise their rents. I have not found any of them in Winnipeg.

Mr. BATES: You won't find them.

Senator MCKEEN: Is it not so in the case of the man who builds a new building, that he does not lower the rent; he starts out with a lower rate to get his 5 per cent. He makes an agreement, and raises the rent on one unit, but he does not raise it to get more money. In other words, he starts out with a lower rent on one unit, which gives him an equal amount over the two units.

Mr. BATES: We in the corporation have not had much sympathy for this man, because we made contracts in 1951 for a certain rate of interest and rental on the property for so many years. If something happens, and costs go higher, this is not our fault, nor is it his. There may be some juggling he can do with tenants, but we are not very sympathetic towards a suggestion of altering these basic contracts.

In the case of our own property, whether old or new, we have made adjustments because it is our own. But with respect to the outside limited dividend companies, we have been inclined to say to them that they have to sit this one through, though we appreciate the difficulty they are in. When a tenant in the lower income gets up to $3,800, you may have to put him out and put him into the other building, and leave him there for 10 years.

Senator BARBOUR: That is provided you own both properties.

Mr. BATES: Yes.

The CHAIRMAN: Will you continue?

Mr. BATES: Increased interest in the replacement of sub-standard housing is evident among Canadian municipalities. This was another point referred to in the Senate committee last summer. Since then grants have been made to sixteen cities for urban renewal studies to determine the areas in need of renewal, rehabilitation and conservation and to establish priorities for a redevelopment program.

You will recall, gentlemen, that we cannot initiate these studies; the request must come from the cities themselves. But when we met last year we had only four or five of these studies going on across Canada; now there are 16 cities from St. John's to Victoria who are doing urban renewal studies.

These studies led to urban renewal projects in Halifax, Montreal and Windsor during 1958.

The principal recommendation made in the Senate Report referred to the need for increasing the flow of mortgage funds and stimulating the sale of insured mortgages. Following the recommendation of the Senate Committee on Finance, discussions took place which were attended by officials of the Corporation, the Department of Finance and the Bank of Canada. Discussions were also held with the approved lenders to ascertain their lending intentions for the year 1959.

These discussions resulted in a recommendation being made to the government to amend the National Housing Act in accordance with the Bill which you are considering today.

The intention of the present Bill is to create a greater fluidity in the mortgage market, thereby creating a much greater incentive for private sources to invest their funds in the development of residential construction.

It is Government's firm intention that the position of Central Mortgage and Housing Corporation must essentially continue to remain that of a residual lender. Indeed, it is hoped that the lending position of the Corporation will, if the objectives of this Bill are achieved, diminish in importance.

It has been necessary, of course, for the Government to invest very large sums in house construction during the last two years. This necessity has been brought about by the inability of private lenders to provide the funds necessary to keep residential construction at a sufficiently high level to satisfy demand and, at the same time, ensure adequate work opportunities for those employed in the house-building industry.

Senator CRERAR: Mr. Bates, have you any comment to make as to why private lenders have not been able to provide money for this purpose?

Mr. BATES: You will recall, gentlemen, when we were discussing this aspect last July and August we were forecasting that the private lenders would put out substantially more money in 1958 than they did in 1957. This proved to be right; they put out about twice as much in 1958 as they did in 1957.

So, Senator Crerar, your question really reverts back to the year 1957, which was a year of some stringencies in terms of the flow of funds into mortgages. This was, as you recall, a boom year in other outlets for the approved lenders. It was a major year in investment opportunities in all lines; they were under severe pressure from industrial and commercial borrowers for funds for expansion and development. The rate of interest was substantial in 1957. The interest rate on N.H.A. mortgages was raised in February, 1957 to 6 per cent, at which figure it has stood since. But 6 per cent interest in the spring of 1957 was not sufficiently attractive to the approved lenders for all the other calls that were being made upon them by their regular customers in the midst of a major boom which continued throughout that year. The pressure on the approved lenders went off in the spring of 1958. That is why we thought in this room last fall that the approved lenders should provide substantially more sums for housing than they did in the previous year. And they did; they provided twice as much as they did in 1957.

Senator CRERAR: Would a fixed interest rate operate against people investing in these mortgages?

Mr. BATES: That is something outside my field, senator, but if I were a banker in the year 1958 and I had felt that the fixed interest securities were not a desirable thing, I would not have doubled my investment in mortgages, as these approved lenders did in 1958. So I do not think that they would have been too fearful in 1958 of the fixed interest securities in the long run, because mortgages are a long-term investment.

Senator LEONARD: Liabilities of life insurance companies are payable in the same dollars, whether they go up or down.

Senator LAMBERT: I think the correctness of the attitude the witness has taken is borne out by the returns of the portfolios of most insurance company investments. Returns on real estate investment have been better than any others.

SENATOR MCDONALD: You speak of satisfying a demand. Are there places today where perhaps they have gone a little too far and too many houses are being built, where they have gone beyond the demand?

Mr. BATES: I think that if you are thinking in terms of individual housing we have no evidence anywhere in the country that the increased volume is not being taken up. After all, we completed about 20,000 more houses in 1958 than in 1957, and at the end of the year the number of completed unsold houses had not risen. So, so far as individual units are concerned, that is single houses, there is no evidence anywhere in the country that we are in trouble. Even at the end of January we have got fewer unsold houses than we had in January last year, despite the fact that we completed 20,000 more. But if you are thinking of apartment houses in one or two centres, perhaps in some districts in Toronto and other areas, there has been a very substantial increase in apartment house building in the year 1958, as there was in 1954-1955. There seems to be some sort of cycle of housebuilding—I don't know whether it is related to the pig cycle, but it comes about every three years, up and down, and in the year 1958 there was a very large volume of apartment house units provided in some of our major centres,—Toronto and Montreal; and these may take some months to gestate probably to the point of having some of the insurance companies go a little easy on the amount of money they will put into apartment buildings in these centres in the first six months of 1959.

Senator MCDONALD: In these centres you are worried about outside of Toronto, are these self-contained houses largely apartment houses?

Mr. BATES: You mean the new development areas?

Senator MCDONALD: No, Malton.

Mr. BATES: No, those are primarily self-contained houses.

Senator BRUNT: As a matter of fact where you find vacant houses that have not been sold, they are in the class of $20,000 up; and this does not apply to these houses?

Mr. BATES: No. I confess that when I am talking about housing I can't think of any mortgages beyond the N.H.A. mortgage, which is $12,800. Anything above $16,000 or something of that order I can't speak of, and if there are vacant houses they will be taken up later.

For the time being, it is envisaged that federal activity in this field will continue but, in so doing, it is most necessary to provide greater encouragement to increased private investment.

By increasing the amount of federal funds available to C.M.H.C. to one billion dollars, direct federal investment in N.H.A. mortgages can continue for some time. But we believe the time has come when we should utilize all sources of private investment to the full in the housing field. The initial source of housing investment should be private enterprise—although the federal Government has indicated that it will always be ready to act in its role of residual lender in time of need.

One of the aims of this amendment is to make N.H.A. mortgages as attractive as possible to private investors. Some lenders whose powers of investment extend to securities guaranteed by the Government of Canada have felt that N.H.A. insured loans did not fall into this category since the

insurance fund guaranteed 98 per cent and not 100 per cent of the face value of the mortgage. It is believed that by eliminating the two per cent reduction, the National Housing Act will permit trustees of pension funds, executors, trust companies and other private sources of investment to contribute to capital investment in housing.

When a private investor decides on the form of his investment, he has to consider two elements, each depending in part on the other. He first looks to the return and security of his investment. Then he looks to his ability to trade or hold the investment.

The 1954 act recognized the importance of liquidity of housing mortgages in encouraging investment in this field. The act permits the sale and purchase of insured loans, not only between approved lenders, but also to other corporate investors and to private individuals.

Senator CRERAR: That means that the risk is completely eliminated.

The CHAIRMAN: That is what a guarantee is supposed to do.

Senator CRERAR: What is the time usually required for foreclosure?

Mr. BATES: We have a legal expert here. I don't think you can foreclose in anything less than six months.

Senator HAIG: Three months.

Mr. BATES: They vary between provinces. I would not like to make a generalization, would you, Mr. Wilson?

Mr. A. D. WILSON: Alberta seems to be very slow at the moment; Ontario is very quick. Six months on a national average would probably be a short average. I think foreclosure would take longer than that on the average.

Senator HORNER: What about Saskatchewan? How long would it take there?

Mr. WILSON: Quite frankly we do not know at the moment about Saskatchewan. There have not been enough foreclosures of late to establish a period.

Senator HAIG: A lot depends on what kind of foreclosure you want. If you want to sell a house at a public auction you give 30 days' notice and you advertise for 30 days. If you want to get foreclosure, if the sale is abortive, you apply, in Manitoba anyway, to the registrar, and you have to wait for whatever period he tells you. It varies but generally it is about two months.

Senator ASELTINE: That is not the law in Saskatchewan.

Senator HAIG: Well, it is in Manitoba. You can take foreclosure in the courts at once, if you like. You generally give them six months to redeem but you can take foreclosure proceedings. In the case of an ordinary mortgage sale you give one month's notice and you advertise for one month and then the sale takes place about two weeks after that. If the sale is abortive the mortgagee can apply then to the registrar for an order making him the owner of the property. He submits all the evidence and the registrar says that the borrower must be informed again and he decides how much notice must be given. It is generally two months.

Mr. BATES: You appreciate, gentlemen, that the situation varies between provinces. In our experience we have had them as brief as a month and a half in Ontario and we have seen them go as long as two years. Of course, we do not enter the picture at all so far as an insured loan operation is concerned.

Senator BRUNT: Would you mind answering this question? It is probably set out in the act but you would have the answer at your finger tips. Supposing a borrower goes into default on his mortgage and goes to the approved lender and says there is no chance of catching his payments up. Supposing he says, "I would like to give you a quit claim deed and convey the property over to

you." In such circumstances would the guarantee still apply or do you have to have foreclosure in order to make use of the guarantee?

Mr. BATES: We have to have foreclosure before we appear in the picture at all. These relations may be going on all the time between borrowers and lenders.

Senator BRUNT: The quit claim deed will put the property back in the name of the lender, and you have exactly the same position as if you have foreclosure.

Mr. WILSON: I can say that the answer to Senator Brunt's question is yes.

Mr. BATES: You will appreciate that there is no use having a dog here and barking myself.

Senator BRUNT: I wanted to save a lot of study and I knew you would have the answer somewhere.

Mr. BATES: Senator Crerar, in reply to your last question about the insurance fund providing 100 per cent insurance so that this becomes almost the equivalent of a mortgage bond, there are some other costs, as one honourable senator from Ontario mentioned. But this is a fairly secure instrument. It begins to approximate a guaranteed federal mortgage bond.

Senator CRERAR: Quite. I have one other question. You guarantee by 100 per cent the payments. Do you keep supervision over this?

Mr. BATES: You mean the administration over the mortgage?

Senator CRERAR: Yes.

Mr. BATES: Under this amendment we in the C.M.H.C. would be given power to administer. At the present time when a loan is sold by an approved lender to a pension fund that approved lender invariably keeps the administration, and from our point of view administration is permissible only by an approved lender. In other words, it could not be administered by the pension fund itself. If we are going to guarantee 100 per cent we must be sure that the people who are administering these are proficient and know their business. In the 1954 act I think it came in originally that only approved lenders could administer these. Under this amendment the Government is asking on our behalf that we be given the same powers.

Senator CRERAR: What I had in mind is this. You have a loan guaranteed 100 per cent and the householder defaults on his taxes and they run into arrears and the property may be put for tax sale. Whose responsibility is it to see that that does not happen?

Mr. BATES: The administrator of the loan. You see, the current situation is that a demand is made by every approved lender, including ourselves, to bring in each month the tax payment as well as the principal and interest payments.

Senator GOUIN: One-twelfth.

Mr. BATES: This is so. In other words, a total parcel is brought forward each month. We are not in the same situation as in the thirties when it might have been six months before a principal and interest payment was made and twelve months before a tax payment was made. The whole thing is on a monthly basis now, so that both the tax and principal and interest payments are sought each month. If somebody falls behind in payment he falls behind in everything and you have to go after him for the total package. So the question of tax is not what it was twenty years ago.

Senator CRERAR: I was thinking what my position would be if I bought one of those houses.

The CHAIRMAN: Oh, you would be perfectly safe.

Mr. BATES: We would give you a loan.

Senator CRERAR: I would forget about it and if things got behind I would call upon Central Mortgage and Housing Corporation to make good their guarantee.

The CHAIRMAN: Don't answer that question, Mr. Bates.

Senator CRERAR: What I want to know is that as far as public interest is concerned, who is supposed to look after this?

Mr. BATES: This is the task of the approved lenders, the administrators. Judging from the history of the past few years—of course, these have been buoyant years—this problem has not been nearly so acute as it was before. We have had substantial unemployment in some territories in Canada but nevertheless foreclosures by the approved lenders in these years have been infinitesimal. To help keep the borrower going the approved lender will meet any borrower who gets into difficulty and try to work out some payment to carry him through his, say, three months of unemployment or what have you. But the monthly package deal has made it very much easier to live through the mortgage operation than was formerly the case, that is, both as to mortgage and tax payments.

Senator GOUIN: Do you have a certain maximum period of default, say, of three monthly instalments?

Mr. BATES: The pattern varies between the approved lenders and ourselves. We try at the end of the first month, if some one has fallen behind, to give him so many days, and then a letter goes to him, a reminder, that he has fallen behind. This is fairly general practice with all approved lenders. If at the end of the second month he has not come across, the pressure begins to increase; there is another reminder, but there is also a telephone call; because it is fairly generally accepted, I think, among all approved lenders that if your arrears begin to go beyond two months with many individuals, you are getting into trouble. In fact, you try as best you can to do something in the second month.

Senator HAIG: Hear, hear.

Mr. BATES: You try to bring him in the office and see what has happened, whether he has a sick wife or sick children, or is unemployed. We try some means of trying to get some token out of him in the third month. Last year, although we had in our operations some increase in arrears, we were able to keep them down to about a two month period. The third month begins to become critical, and you must get a grip, but you won't get a grip in three months if you have been slack in the second month, or you won't get a grip in the second month if you have been too slack in the first month. So it is a matter of trying to bring them forward to your offices some time in the second month to explain the problem and find out what it is, and see if some token system cannot be worked out. No approved lender I have met anywhere in Canada wants ever to foreclose. This is the very last thing they want to do.

Senator GOUIN: It is very unpleasant.

Mr. BATES: It is a very unpleasant activity.

Senator GOUIN: In Montreal the corporation follows very, very closely, but lately things have become a little more critical, Mr. Chairman. I cannot find an explanation.

Mr. BATES: A little more difficult; and a little more sympathy needed.

Senator GOUIN: To some extent.

Mr. BATES: If I may continue on page 4:

When a private investor decides on the form of his investment, he has to consider two elements, each depending in part on the other. He first looks

to the return and security of his investment. Then he looks to his ability to trade or hold the investment.

The 1954 Act recognized the importance of liquidity of housing mortgages in encouraging investment in this field. The Act permits the sale and purchase of insured loans, not only between approved lenders, but also to other corporate investors and to private individuals.

In the past few years a market in insured loans has grown up. Last year alone, some $42 million of insured loans were sold. Since the 1954 Act was passed, mortgage transactions have amounted to nearly $172 million. But until now, the source of insured mortgages for sale has been limited by the Act to approved lenders. A private investor wishing to buy an insured loan has only been able to get one if an approved lender was willing to sell. But experience has shown that some approved lenders have acquired their mortgage portfolios primarily for the purpose of holding them to maturity, rather than selling them.

This is true mainly of the life insurance and trust companies; they buy them primarily to hold them to maturity.

Other approved lenders have sold mortgages, but only infrequently. The Government feels, therefore, that more investors might be attracted to insured loans if there was a readily-available market for them, in which they might be bought and sold at frequent or regular intervals.

It also seems likely that the national growth—together with the accompanying development of Canadian investment sources—have created conditions which promise the establishment of a regular mortgage market. The existing and prospective portfolios—both of the approved lenders and of CMHC itself—have created a potential source of sellers. A source of buyers has been created in the development of substantial investment funds by pension funds, trade unions, loans associations and private individuals. Their investments in insured mortgages will augment those of the present approved lenders.

Senator BRUNT: May I ask a simple question here? Where a person purchases a mortgage from your organization and you continue to manage it, what do you charge for managing?

Mr. BATES: We have never sold one yet, senator. We are looking for some of the powers in here to give us the ease of selling. The only mortgage our corporation has sold has been to its own pension fund. In order to sell it to our own pension fund we had to sell it first to an approved lender, who in turn sold it back to the pension fund, and the approved lender became the administrator. The approved lenders have been charging fairly generally a rate of administration around one-half of one per cent. I suppose if we got into the field, the price is something that we would not want to initiate. We would rather want to follow the approved lenders in that operation.

Senator HORNER: On that point, in the case of a guaranteed mortgage, I presume the regulation would continue as to the management of the property, that the purchaser would still be under the National Housing regulation?

Mr. BATES: Whoever buys the mortgage is the man who holds the mortgage; he is not managing a property.

Senator HORNER: He is not managing the property, I see.

Mr. BATES: There is still an owner somewhere, presumably, managing the property. Where he is holding the mortgage on the property there is still an owner somewhere.

There is also the possibility that new institutions will come into being, institutions that will borrow money from the public—perhaps by debentures—and invest in insured mortgage loans. They would be able to buy mortgages

from either the approved lenders or the corporation without having to build up a staff to make or administer loans.

In other words, it is not impossible to envisage an institutional form in which, on the one side, a bond house in Canada sells debentures to the public, and a trust company allied with it, buys mortgages; the trust company administering the mortgage on the one side, the bond house selling debentures to the public, and the difference between the two rates of interest, the rate that one is getting on the insured mortgages, and the debenture rate on the other, yielding a profit for the two institutions. This is not the only kind of new institution. I am just mentioning in passing, gentlemen, that within our Canadian structure there is quite a variety of combinations of existing institutions that could come together to create this kind of institution that would lend to the public on debentures and would be backed by insured mortgages which are really 100 per cent Government guaranteed bonds going at the present day at 6 per cent.

Senator BRUNT: In trust?

Mr. BATES: This kind of institution, yes, sir.

Senator LAMBERT: Have you in mind any other countries where institutions of such a character as you speak are in existence today and operating?

Mr. BATES: Well, I think in Canada we will find a unique Canadian model growing, because we have a unique Canadian system I mean in the sense of having a set of commercial banks that are national in scope and with branch banks all across the country that are building up substantial portfolios of mortgages, and they want to see them liquid. We have a unique system of trust companies, we have a unique system of bond houses. There is nothing quite like this in the United States or in England, and the legislation we are asking for here is simply trying to provide enough flexibility for any of these groups to create any kind of institution they want. They can do it on their own in Canada, or with American counterparts, or with the banking system, with the trust companies, with the bond houses. There is enough flexibility in here for anyone to allow the purely Canadian structure to emerge, and we so far as Central Mortgage and Housing Corporation is concerned have been standing back, outside, to permit private entreprise through some of the agencies to create this institution. We have never recommended to the Government that we do what the Americans did. They set up a F.N.M.A. organization, although within our existing legislation there was some powers for CMHC to do that. We have recommended to the Government persistently that we stay out of that. We in Canada have a unique system and it won't take long for some of the instruments of private entreprise to emerge and create this market, and in this legislation we are recommending that the Government or the approved lenders could be available to help this market in the buying and selling of mortgages.

Senator LAMBERT: Such institutions have been developed in other countries as a result of the private enterprise you speak about.

Mr. BATES: There may be. The F.N.M.A. institution in the States buys and sells insured mortgages, and it is the closest to what we are considering, but it is a governmental agency and we are hopeful here that our financial structure will create its own agencies. We know the financial structure has been for some months past and is now very carefully considering what it might do from several points of view to create a secondary market for mortgages.

Senator LEONARD: What surprises me is in developing this secondary mortgage market that you have not extended the 100 per cent insurance to the existing mortgages. A person who is desirous of buying a mortgage, or an

institution that is looking for mortgages from you, will naturally want to wait, if they can, until they are able to buy a mortgage that is insured up to 100 per cent and that kind of mortgage will not be available until this legislation has been put through and some months will elaspe before they are on the market, and if that 100 per cent insurance could be made available to existing mortgages that block of mortgages would be available for sale immediately, and furthermore there is inequity if a loss occurs on a 100 per cent insured mortgage it will be paid out of the insurance fund to which the existing mortgages have all paid their premium, that is to say the existing mortgages have all paid premiums that will apply to 100 per cent insured mortgages. I think it would be desirable from every standpoint, particularly from the point of view of getting new money into the mortgage market to make that 100 per cent insurance provision applicable to existing mortgages.

Mr. BATES: Well sir, outstanding today there is something like $2.5 billion of insured mortgages. These loans were made by approved lenders with a 98 per cent guarantee. Why should anyone now give them 100 per cent guarantee. They have already put out the money, and a 100 per cent guarantee is not going to bring in any more money. The $2.5 billion is there. What justification is there to give them a gift of 2 per cent.

Senator BRUNT: Just so that the approved lending institutions will sell more.

Mr. BATES: Let us be clear on this point. Of this $2.5 billion of mortgages now outstanding a very substantial portion of them carry an interest rate of 5 per cent. Others carry a rate of 5.5 per cent, while others carry an interest rate of 6 per cent. Now, anyone who is going to sell a mortgage whether it is under the new system or under the existing one is not going to be able to sell a 5 per cent mortgage at the same price as a 6 per cent mortgage.

Senator BRUNT: I disagree with that. The term has a great deal to do with it. If the 5 per cent mortgage is for a short term it may appear very attractive to these new investors, it would be much more attractive than the 6 per cent loan having 25 years to run. I think the term is an important factor.

Mr. BATES: In Canada the commercial banks were issuing 5 per cent mortgages until three years ago. They cannot sell a 5 per cent mortgage at the same price as a 6 per cent one.

Senator BRUNT: How long ago is it since the insurance companies have been issuing 5 per cent mortgages? How long is it since the first 5 per cent mortgages were issued?

Mr. BATES: The act came into force in 1954. My recollection was that the rate of interest was 5.5 per cent, it fell down to 5 per cent and then it went back to 5.5 per cent and later went to 6 per cent. That has been the history of the interest rate. Insured mortgages have a maximum rate of 6 per cent.

Senator THORVALDSON: Is not the purpose of increasing the insurance on mortgages from 98 per cent to 100 per cent to give you more fluidity in the mortgage market, and so would you not get that fluidity to a greater extent if you applied the 100 per cent coverage to all your insured mortgages.

Mr. BATES: I am trying to make a point and I do not think it should be too difficult before the honourable senators, that if you sell a 6 per cent bond and a 5 per cent bond you are not going to get the same price for these if you sell them on the market.

Senator KINLEY: Under similar conditions, of course.

Mr. BATES: If you are going to sell them on the same day you cannot get the same price for the 5 per cent bond as you will for the 6 per cent bond.

Now, the variation in the price of a bond between 5 per cent and 6 per cent is not very much greater than the variation in price between a 98 per cent guarantee and a 100 per cent guarantee. That variation in price is built in. It is there. There are insured mortgages ranging all the way from 5 per cent to 6 per cent, and any holder of these who want to sell them has to sell them in the market and he will sell them at the going price and the final yields won't be very different—there will be discounts and premiums when this market is established. These variations are already present. The difference between a 5 per cent and a 6 per cent return is 20 per cent of a variation. The variation in yield is very much greater than that.

Senator LEONARD: My point is, if you are really interested in developing fluidity in the sale of mortgages, whether I have a 5 per cent mortgage or a 6 per cent mortgage is immaterial and you can realize that I may have to sell my 5 per cent mortgage at a price less than the 6 per cent mortgage.

But my premium has gone into the mortgage fund, and is there to pay the 100 per cent losses on mortgages that will be made from now on. I think in equity the same fund should protect the two mortgages on the same basis; plus the fact, as Senator Thorvaldson has said, you really want to increase the fluidity of mortages by this legislation; you really have to wait six months or more until new mortgages come into the market under the 100 per cent insurance scheme.

Senator HAIG: May I ask one question? If there is now 2½ million out in guaranteed mortgage, and we want to allow an additional 2 per cent, does that mean we would have to put up another $50 million?

Mr. BATES: Yes.

Senator LEONARD: Nothing more would have to be put up.

Senator HAIG: We would have to put up $50 million.

Mr. BATES: In the event of foreclosures.

Senator HAIG: Yes, in the event of foreclosures. If we raise this guarantee we will have to put up $50 million.

Mr. BATES: The only point I am making is that the difference between the 98 per cent and the 100 per cent is a very small difference between the price as it exists in the market, as between 5 per cent and 6 per cent. It is a price differential, and it will exist.

Senator BRUNT: Mr. Bates, is it not so that you want the 100 per cent guarantee because mortgages will see more readily; that is to say, these institutions that have the mortgages, or will be taking the mortgages, will be able to sell them more readily? Every mortgage that sell means that you will have that much more money to put out into mortgages. Why not make it apply to the whole thing, and make them all more readily saleable?

The CHAIRMAN: By leaving some at 98 per cent and some at 100 per cent, with various prices and various maturities, you have different kinds of merchandise on your shelves for different customers.

Mr. BATES: Presumably we will have lots of new merchandise. The banks and insurance companies are lending up to $500 or $600 million a year; by the end of the year there will be a substantial volume of this 100 per cent guaranteed stuff.

However, this is a matter of Government policy, and I don't think I should be trying to defend the 98 per cent against the 100 per cent. It did not require a special gift—it was already there.

The CHAIRMAN: If you run into the problem of developing fluidity, you can meet that situation when it comes.

Senator THORVALDSON: Perhaps the Government has not considered the point . . .

Mr. BATES: The point was very carefully considered. It was not a blind spot—a decision was made.

Returning to page 5 of my prepared presentation: This would permit small investors to contribute funds to the housing industry, which is something they have been unable to do in the past. You will recall that earlier I said that if $500 debentures were sold with assets being insured mortgages, people with small amounts of money could thereby buy into insured mortgages, which they cannot do today. If you want to buy an insured mortgage today you would have to go to a bank, and they would probably offer you a $8,000 or $10,000 proposition. The new machinery which we have been discussing would provide bonds of $500 so that the small investor would be able to get into insured mortgages. In this way, the small investors would be able to play a more important role in upholding the general economy of the country. You will see I am prejudiced: I believe if the housing economy is good the general economy of the country is good.

C.M.H.C., because of its extensive direct lending operations during the last 18 months, is developing a substantial mortgage portfolio. These mortgages would be made available for sale to investors who are willing to invest in the housing field, but who are unable to make loans themselves. The amendment proposed to the Act will permit C.M.H.C. to sell its loans to such private investors. If the investor is not an approved lender equipped to administer the loan, the amendment will permit the Corporation to administer the loan for the investor in the same way as if it had kept the loan in its own portfolio.

In short, the amendment to the Act will give the Corporation the same powers as the approved lenders have. If Canada develops a secondary mortgage market it seems likely that C.M.H.C. may be required both to buy and sell mortgages as the need arises. Probably it would also assist in transferring mortgages from one type of lender to another should economic or other factors adversely affect fluidity within the mortgage market. For this reason it is proposed to remove the $25 million limit on the Corporation's power to purchase mortgages.

Senator GOUIN: There is no limit?

Mr. BATES: No limit.

I would like honourable senators to appreciate that by the amendment as such, C.M.H.C. has power to buy and sell mortgages. If there is any illusion in your minds that C.M.H.C. is proposing to engage in open market operations, let me say this is not so—it cannot be done under the legislation. We have a statutory vote, not a revolving vote. At this moment it is $750 million, of which we have already committed, up to last Friday, $681 million. This legislation is asking for an additional $250 million, to bring the statutory vote up to $1 billion.

With the statutory vote the moment we sell a mortgage in our possession, we have to pay that sum back to the Receiver General; we cannot bring it into the total vote and use it for making new loans. Each time we sell a mortgage—if we get into the selling of mortgages—it simply reduces our statutory vote by that amount. So, we cannot engage in open market operations. If this were not done by a statutory vote, then C.M.H.C. would be in danger of becoming the leading mortgage house in the Canadian market. But by the statutory vote we cannot bring back into the fund and re-lend; each time we make a loan or each time we sell a mortgage we cut down what is available to us for further activity. This does not means that we should not make sales; presumably, if sales can be made, we should make them.

If this pulls down our statutory vote where we can no longer operate, we go back to Parliament next year and say that our statutory vote no longer permits us to carry on; we have $500 million-worth of mortgages, and we have only $50 million to keep us going for another six months. Do you want to keep us going for six months or not. Then, the decision is up to Parliament.

I have heard from some of my colleagues in trust and loan companies, when they look at this section of the act which gives C.M.H.C. power to buy and sell, the thought that it puts us into the business of engaging in open market operations. This I hope never to have to deal with in my life, namely, dealing in substantial open market operations from a central Crown corporation. This would be a most difficult and undesirable situation to be put in.

Senator THORVALDSON: Mr. Bates, I was coming to a question on that point, which I think might be clarified now. I did not know this to be the situation, and I was wondering if honourable senators are aware of the fact with respect to re-payment of principal. Do you not think you should explain the fact that when principal is paid on a mortgage, or on your overall portfolio, that that principal does not go to you, but goes through you back to the Receiver General?

Mr. BATES: I think honourable senators are probably aware of how we draw down funds. We have, as you know, a statutory fund which a few years ago was only $250 million. We draw down funds from the treasury in debenture units of $500,000 each. Twice a year the Treasury tells us what rate of interest we have to pay for the next six months. They do that on the first of October and the first of April; according to broad Government powers in bond interest we are given the rate of interest for six months, and we draw down on debentures $500,000 units. We are making loans for given periods; it may be 40, 50 years; we have a pretty good idea of how this is going to come back to us in principal and interest. If it is a loan to a home owner it is probably 25 years. It may be less; a home owner may twist out of it in five years, through a lower rate of interest, if he can get it, or repay it in 15 years. But we have worked out with the Treasury a system of repayment on each loan so that each of us knows precisely what we have to pay back to the Treasury month by month from now to the year 1975. This is set out in the arrangement between us. If during this time funds come in to us faster than we expected, if people pay off loans, then the Treasury will permit us to pay off our loans just as fast as they come in to us. So we are tied tightly by the neck in this whole operation. We have a statutory vote for a determined period of time during which these loans must be paid on a monthly basis, these $500,000 debentures. If funds come in faster we can repay faster. So that we have no freedom to engage in open market operations—no freedom whatever. At this moment we have committed $681 million out of our present vote of $750 million. This means we have got about $60 million left. There is nothing we can do with that $681 million. If we were to sell $100 million worth of mortgages the funds would go back automatically into the Treasury. We could not relend. All we can lend at this moment is the difference between the $681 million we have already committed and our $750 million. That is the extent of our future. The moment that that $750 million is committed we are out of business. There is nothing else we can do about it. This is one reason, of course, why this present legislation is asking for another $250 million, to keep us going for another period. I agree that it is a little frightening to look at the vote of a billion dollars in C.H.M.C., but it is not nearly so frightening when you realize that this is a statutory vote being repaid, which we have no power to manipulate except with respect to the uncommitted balance, and indeed, none in respect of that because, as you know, in everything we do we have to follow Government policy.

Senator McKEEN: Will you tell us how much has been repaid of the total amount?

Mr. BATES: You will understand that in so far as the 1954 act goes the amounts of repayment are still quite small. We repaid in all—and this includes some of the earlier acts we had loans on—something like $45 million. But we set out, in 1956 I think it was, with the Treasury monthly repayment procedures that we should use in the future. I confess that when I came to the corporation I found that some of the incoming funds were being re-lent. This seemed to me undesirable; and this is when we worked out with the Treasury a system in which there would be no relending on the part of the corporation; everything that came in would move back automatically, and there would be a clear statutory vote approved by Parliament, and when we began to run out of the vote we might have to go through the exercise I have been going through; that is, I appear at the Senate or the House of Commons every six months looking for more money. This is, I think, the proper way.

Senator McKEEN: Is that not against the act, as you explained it, if this money is used to relend?

Mr. BATES: This was not too clear. It was 20-year debentures, and there was worked out an agreement between the Treasury and ourselves as to how these debentures would be repaid, and when.

Senator BAIRD: Since 1956.

Mr. BATES: Since 1956.

The addition of subsection 8 (a) to the first section of the bill permits C.M.H.C. to administer an insured loan. This will most likely happen where the corporation sells mortgages to approved lenders who do not want to expand their mortgage departments, or to other investors who do not handle mortgage portfolios. The approved lenders already are permitted to administer the loans which they have sold. But since, before this amendment, only the approved lenders could administer insured loans, some slight changes in wording are necessary to permit the corporation to administer its growing volume of mortgages. Subsection (1) of clause 2 of the bill, the change in subsection (3) of clause 11 and clause 5 of the bill are all examples of this type of change.

You will appreciate that, because of the heavy Government investment in housing, in the last 18 months, C.M.H.C.'s portfolio of loans has been growing rapidly. At the end of December last we had something like $150 million worth of these papers. By June there will be another $160 million worth; by the end of the year, another $70 million. In other words, by the end of this calendar year C.M.H.C. may have $400 million or $450 million of mortgage paper. We don't know just how much we are going to get, because you will recall that in the first $150 million we used the banks and insurance companies as our agents, and we gave them the right to buy the mortgages for 13 months afterwards if they wanted to. That right began in January, so actually for the next 13 months we are not sure how many of the original mortgages we put out a year and a half ago will come to us, or how many the banks and insurance companies will hold, but there will be something over $400 million worth in our portfolio; and this increases the desirability of our being able to sell and administer. If we always have to sell through an approved lender it means another payment to be made by the pension fund or the buyer or whoever it is. That is the reason for this clause,—to give us the same rights with respect to these mortgages as approved lenders have.

Subclause (2) of clause 2 of the bill increases to $150 from $125 the amount allowed in calculating the payment to an approved lender who has made a claim on the insurance fund. The basic purpse of the insurance feature of the act is to protect the lenders against loss in such a case, and experience has shown that the legal costs generally exceed the $125 previously allowed. These

are the legal costs allowed. $125 is very modest and $150 is not exorbitant by any means.

Senator GOUIN: This is just the legal fee?

Mr. BATES: Yes.

Senator GOUIN: What about out-of-pocket disbursements?

Mr. WILSON: Out-of-pocket disbursements would be allowed over and above this fee.

Senator HORNER: Is there any competition amongst the legal men?

Senator BRUNT: We have never been investigated under the Combines Act.

Mr. BATES: We have run into quite a variety of costs with respect to foreclosures under the act. We ran into one case that cost $1,353. I will let you guess what province that was in. I have the average costs if you are interested in them.

Senator LEONARD: Do these include disbursements?

Mr. BATES: No, just the fees. They are $203, $117, $109, $202, $225, $526, $1,353, $108, $290, $165, $219, and $200.

Senator HAIG: Are those foreclosures?

Mr. BATES: These are the legal acquisition costs. So the raising of the fee from $125 to $150 certainly does not meet the request made by the approved lenders. They had a much higher figure in mind, as you might imagine, but this is perhaps a step in the right direction.

Clause 3 of the Bill amends the loss settlement provision of the insurance by eliminating the 2 per cent discount on loans which are made after this amendment comes into force. The amendment means that an investor will receive the full amount of the mortgage account—including interest—at the mortgage rate for six months after a default has occurred.

The change introduced by Clause 4 of the Bill to subsection (2) of Section 11 widens the potential field of purchasers of insured loans from the Corporation. Before this amendment CMHC could only sell insured loans to the approved lenders. With the change, however, we hope the Corporation will be able to expand its mortgage transaction business into new markets, and consequently increase—rather than divert—the private funds available for new housing.

Senator MCKEEN: May I ask a question at this point? It says here that the mortgage will be insured, including the interest. How long can a person let the interest go and still have it insured?

Mr. WILSON: The mortgage rate is six months and then there is a reduction in the interest allowance. Section 9 of the original act establishes the interest allowances. It is the full mortgage rate for the first six months and then the next 12 months it is the mortgage rate less 2 per cent.

Mr. BATES: The amendment in Clause 6 of the Bill increases the amount of money which may be loaned to CMHC out of the Consolidated Revenue Fund. CMHC will use this money to continue making direct loans for rental housing for low-income families, and also to home-owners where loans are not available from approved lenders.

The maximum amount allowed by the 1954 Act and subsequent amendments for this purpose was $750,000,000. By the end of 1958, CMHC had committed $662 million in loans out of these funds, so that, in effect, the amendment—by raising the limit to $1 billion—provides $338 million for the Corporation to carry out its operations.

This same clause also removes the previous limit of $25 million—included in the amount from the Consolidated Revenue Fund—which the Corporation might use to buy loans. This will permit CMHC to introduce Federal funds into the housing field whenever necessary, either by making direct loans or

by buying loans made by approved lenders. As I mentioned earlier purchase of loans by CMHC may also be used to induce fluidity in the mortgage market, and this would be an indirect influence on increasing new investment in housing.

From a general point of view, you can see the changes in the Bill are all designed to increase the volume and rate of flow of funds into new housing, for which the demand continues to be high. They assist not only in achieving the primary objective of the National Housing Act—to make home ownership possible for families of moderate incomes—but also, to a large extent, in stimulating capital investment.

Senator HORNER: Are you still optimistic about the housing need in Canada for the future?

Mr. BATES: Do you mean for the year 1959?

Senator HORNER: Yes. Last year you gave us a picture which showed that housing would be needed in this country for the next 10 years, and so on.

Mr. BATES: We had, as you know, a very large starting program in the year 1958. When I appeared before this committee last July I mentioned that the rate of starts running that month amounted to 180,000. Other people were forecasting 140,000 and we thought the truth might be somewhere in between. I did not realize we would forecast so accurately. We started 164,000 houses. I doubt that we will start so many housing units and apartment units in 1959. In the last few weeks we visited all the approved lenders, the banks and insurance companies, and they suggest that even with the present rates of interest they will do about the same amount of business as they did last year. So we should expect a very substantial program in 1959 although perhaps not so large a one as last year, which was by far a record. But we will have, I think, as good a year as we had the year before. Thirty-eight per cent of our total population is at school. This is a phenomenal proportion. I do not know of any other country in the world where children under 18 at school represent 38 per cent of the total population of the country. This is a fantastic proportion. Eventually those children will be coming out of school in substantial numbers, say, by 1960 or 1961, and we must house them. There are enough of them to double the housing stock by 1975. So we do not have to depend on immigrants. The people are here in the schools now, 6 million of them under 18 years of age.

Senator MCDONALD: Are there 30,000 unsold houses now?

Mr. BATES: Three thousand.

Senator REID: There has been considerable activity in the Vancouver and Fraser Valley area by interests who have formed themselves into huge private building companies. They have bought extensive pieces of land and are now selling homes at a down-payment price of $250. My question is this. Has this great activity of building by these companies resulted in a curtailed demand for C.M.H.C. houses?

Mr. BATES: I do not know of any local condition there that has affected us particularly. There has been a little more building in the Surrey area, perhaps, than can be digested in the next few months but I think our people on the coast do not feel in any way particularly pessimistic about it. But there is a little bit of indigestion in the Surrey area at this time.

Senator ISNOR: Mr. Chairman, I think all members of the Finance Committee should be exceptionally well pleased at the outcome of their report of last year. What I have in mind, after listening to the sponsor of the bill in the house yesterday and to Mr. Bates today, is whether the increased number of units started or the sales made is largely due to the recommendation made in the report of our committee to inaugurate a selling plan and send out C.M.H.C.

agents throughout the whole country to encourage the building of homes. Would that be a fair statement?

Mr. BATES: Yes, Senator Isnor. When I opened this statement today I was trying to carry forward from your activities last summer. I think the progress that we have made was to quite a large extent resulting from the review which you made. After all, you spent nine years on this, and it is a very useful thing for any public servant—I don't care which department it is—to have a group of senators like yourselves study some particular aspect of the public life with which that public servant is concerned, and to come up with a report of this kind. It was not perhaps very, very far away from some of our own thinking. We got additional ideas, and we have tried in some kind of way to carry them forward as you had suggested. I did start, Senator Isnor, by saying this was the most comprehensive report we have heard on housing, and we have used it in this way for the past eight months.

Senator ISNOR: My other point is, that on page 2 of your brief you state that during 1958, 28,669 units were started, and you give the amount of money; plus 3,271 units of the lower type. That means that there were 31,940 units started, largely due to your effort in sending out your selling agents?

Mr. BATES: Yes, that and the design of the small homes. In other words, we had in 1958 a greater concentration towards the lower end of the income scale than we had been having in the previous few years.

Senator ISNOR: And that was the first year you sent out selling agents?

Mr. BATES: That is so.

Senator WALL: Apropos this same point concerning 28,669 small homes, plus the 3,271 direct loans, I calculate that the average loan on these small homes is between $10,600 and $10,700. The differential between the small home loan made and the actual cost of a home is roughly $3,500—I would say $3,000—where these small homes by definition are averaging about $14,000. Have we a breakdown of these small homes into the price category, and the relationship between those and the incomes of the people who bought those homes? That would be interesting to me.

Mr. BATES: I haven't that here. I think honourable senators will recall that when you get into an area like Toronto, or the suburbs of Toronto, in which a large proportion of these small homes were built, you are building on land that cost $4,500, and this is what pushes you into a price that is high. For small homes, Senator Wall, the under $5,000 income group, the average cost $12,700. The ordinary NHA home for the same income group was $13,300. In other words, there is a difference of $600 in the average cost of the home—remembering again how you get this average distorted by a metropolitan area like Toronto, where nearly 40 per cent of the total building in Canada is going on.

Senator WALL: I appreciate the statistical difficulties of an average figure, but what I was trying to get at is, have we any tabulation of these 28,000 homes, for example, their various price ranges, and then the incomes of the people who picked up these homes?

Mr. BATES: We have all of that. I do not think we have it broken down.

Senator WALL: I would be very interested in getting that some time.

Mr. BATES: I would be very glad if you or any other senators would like to see it; it merely means getting the information.

The CHAIRMAN: I suggest that a statement of this information be prepared and appended to the report of the proceedings for today.

Senator ISNOR: Are you going to print them?

The CHAIRMAN: Yes. By the way, we need a motion to have printed the usual 800 copies in English, and 200 in French.

Senator HAIG: I so move.

Senator ASELTINE: I second the motion.

(Motion carried)

Senator CRERAR: I have two questions, and they will be the last, Mr. Chairman. Mr. Bates, I take it that we are nearing, in your judgment, the saturation point of building houses?

Mr. BATES: No. I think, senator, that all one can say is that we have 6 million children under 18 in this country out of 17 million people. They are beginning to leave school; employment has to be found for them, and housing has to be found for them.

Senator CRERAR: Not necessarily all new houses, though?

Mr. BATES: Not necessarily. Some of us will die, and some houses will be turned over; but the fact remains that we have quite a low marriage age group; the marriage age is continuing to fall, and is still falling. Even I, senator, will be a grandfather next month. So long as we have so substantial a proportion of our population under 18, means must be found, capital must be found, to put them into secondary industry, primary industry, and into houses. I said to one of your colleagues, sir, that I think the year 1959 will not see quite so many houses built as in the year 1958, but I would expect by 1961 it will change, because the substantial birth rate began to rise in 1941. Women are marrying at 21 now, so by 1961 this tremendous bulge that we have got will increase. It is a bigger bulge than the American or the British. The British have only 25 per cent of the population under 18, while the Americans have, I think, 32 or 33 per cent. We have 38 per cent, so we have to pay some kind of price, senator, for our fertility over the last 20 years.

Senator KINLEY: We have the baby bonus now.

The CHAIRMAN: Senator Crerar?

Senator CRERAR: I have been very patient, Mr. Chairman.

The CHAIRMAN: You are always patient.

Senator CRERAR: Is the rather extensive programme of building houses having any effect on the value of houses, say 20 or 25 years old that are still there?

Mr. BATES: Practically no evidence whatever yet in any city of Canada. I mean, you take as evidence some indication that rents or house prices will begin to fall among older houses. This will be a sign that you are beginning to saturate the market with new houses; but there is no evidence of rents sagging; some are holding, and various rentals have gone up in the last year. They may give you one rent free for a month if you take a contract for two years, but there is no suggestion of a sagging in rents or any decline in house values; and this would be an indicator, but this indicator has not yet shown itself, and with the 6 millions at schools, maybe it is not going to show itself.

Senator CRERAR: That depends a good deal on what economic conditions will be in the next ten years.

Mr. BATES: That is why I made the point substantially there had to be capital to put that into industry as well as into housing.

The CHAIRMAN: Shall we consider the bill section by section or is the committee satisfied to approve the bill in the form in which we have it?

Senator WALL: Mr. Chairman, I wonder if I could make a last minute plea for the idea of making some change in the act, or an amendment, or probably it can be done under the terms and conditions arrived at by the Governor in

Council, to still make it possible for some of this $250 million, and I suggested yesterday $25 million go into the building of university student dormitories.

Senator HAIG: Let us have a vote on that right now.

Senator CRERAR: Oh, forget about that.

Senator WALL: I cannot forget about it.

The CHAIRMAN: Is there a motion before the committee?

Senator WALL: Well, Mr. Chairman, I am prepared to make the suggestion into a motion but it is just a general suggestion that I am about to make.

The CHAIRMAN: As a general suggestion I am sure Mr. Bates will bring it to the attention of the Government.

Senator PRATT: Mr. Chairman, I would like to hear Mr. Bates's opinion on the implications of that as affecting the policies and the administration of Central Mortgage and Housing Corporation.

The CHAIRMAN: That point has already been covered in this brief which Mr. Bates read. It is on the top of the second page of the brief. We have already dealt with it.

Senator WALL: That is an expression of Government policy?

Senator MCKEEN: Mr. Chairman, the question was raised as to whether this 100 per cent guarantee should be made effective retroactively to those mortgages which are already in effect with the 98 per cent guarantee. If this were done a lot of money would be made available for new housing. Now I do not know whether this committee can make an amendment of that nature or not.

Senator HAIG: It cannot be done.

Senator ASELTINE: That would be for the Ways and Means Committee to consider.

Senator WALL: Mr. Chairman, in view of the statement on the top of page 2 of Mr. Bates's brief I do not think that he should be asked to give any expression of opinion on student dormitories.

The CHAIRMAN: Senator McKeen has raised a question. Mr. Bates, would the result of extending this 100 per cent guarantee retroactively to all mortgages outstanding with a 98 per cent guarantee have the effect of increasing or possibly increasing the charges on public funds that are made available for purposes of your corporation?

Mr. BATES: To make this retroactive increases the risk by about $45 million. In other words just by about the amount of the present fund. Now this risk may never occur, but that is what it means—it means taking on an additional risk of $45 million.

The CHAIRMAN: In other words you are putting additional funds at risk?

Senator KINLEY: What good would come out of it if you did so?

The CHAIRMAN: I am getting this information for the purpose of answering Senator McKeen's question. I would think in these circumstances we would not have the power to do other than recommend that, that we could not actually do it as a matter of law if we are putting at risk additional Government funds.

Senator MCKEEN: If that is right then there is no purpose of making such an amendment.

Senator POWER: It could be done by stating it as a recommendation of this committee.

Senator MCKEEN: Then, Mr. Chairman, I move that we make a recommendation to that effect.

Senator HAIG: Mr. Chairman, I think we should be very, very careful in this. The Government has stated where their stand is on certain questions, and I think that in the present state of public opinion that if we were to recommend a $45 million increase, because that is what it means, the people would not take to it. Already these mortgages are guaranteed up to a 98 per cent figure. Now, I would like to have somebody come forward and guarantee to par some of the bonds that I bought sometime ago and are below par. Personally I do not think we have the power at all to do it. We are making recommendations just to make trouble. And if we want to make trouble for the Government let us go ahead and do it, but the Government can take care of itself.

The CHAIRMAN: Senator Haig, if a member presents a motion to this committee to amend, and the motion is in order, I have to submit it to the committee. I am waiting for the motion.

Senator HAIG: I thought you had the motion.

Senator MCKEEN: Mr. Chairman, I understood Mr. Bates to say that $45 million is set aside for insurance against some $2.5 billion of mortgages. Well, I cannot see how 2 per cent more of an increase is going to raise it $45 million more. My motion is that we recommend that the Government consider making the 100 per cent guarantee available to all insured mortgages under the National Housing Act, retroactively. Now, that is not an amendment to this bill, it is just a suggestion that we incorporate that in our report.

Senator HORNER: Mr. Chairman, I am opposed to it. I think it is not appropriate and I do not want to be identified with it at all.

The CHAIRMAN: Those in favour of the motion?

Senator HAIG: Before you put the motion, Mr. Chairman, we have had three or four discussions about it, and some of us who are opposed to this motion have not had permission to say anything about it. I think we should have permission to do so before you put the vote.

The CHAIRMAN: Senator Haig have you anything more to say?

Senator HAIG: I thought you said I was out of order.

The CHAIRMAN: No, I thought you had finished. You made quite a speech a minute ago.

Senator HAIG: Yes, but you were the only one who was listening.

The CHAIRMAN: Well, it is in the printed record.

Is the committee ready for the question? Those in favour. Against.

I declare the motion lost.

Is it the wish of the committee that we do not consider the bill section by section but that a motion is in order to approve the bill as it is?

Senator BURCHILL: I so move, Mr. Chairman.

The CHAIRMAN: Those in favour that I report the bill without amendments.

Motion agreed to.

Senator HAIG: Mr. Chairman, I would like to move a vote of thanks to the President of the Central Mortgage and Housing Corporation, Mr. Stewart Bates, and I would like to thank his delegation for coming here and may I say that it was very kind of him to make such a fine expression of thanks to the Finance Committee for the report that was made at the last session.

The committee adjourned.

SMALL HOME LOANS PROGRAMME OF THE NATIONAL HOUSING ACT, 1958

Incomes of Purchasers

Applicants Income	Number of Purchasers	Per Cent
$		
Under 2,000	1	—
2,000–2,999	40	0.3
3,000–3,999	1,899	12.8
4,000–4,999	6,049	40.7
5,000–5,999	3,596	24.2
6,000–6,999	1,788	12.0
7,000–7,999	729	4.9
8,000–8,999	324	2.2
9,000–9,999	161	1.1
10,000 and Over	276	1.8
TOTAL	14,863	100.0

Prices of Dwellings

Price	Number of Dwellings	Per Cent
$		
Under 7,000	1	—
7,000– 7,999	2	—
8,000– 8,999	29	0.2
9,000– 9,999	237	1.6
10,000–10,999	819	5.5
11,000–11,999	1,920	12.9
12,000–12,999	3,610	24.3
13,000–13,999	3,018	20.3
14,000–14,999	2,688	18.1
15,000–15,999	1,666	11.2
16,000 and Over	873	5.9
TOTAL	14,863	100.0

Sizes of Dwellings

Floor Area—Square Feet	Number of Dwellings	Per Cent
Under 800	106	0.5
800– 849	186	0.9
850– 899	554	2.6
900– 949	1,753	8.1
950– 999	2,079	9.6
1,000–1,049	8,403	38.9
1,050–1,099	6,154	28.5
1,100 and Over	2,340	10.9
TOTAL	21,575	100.0

EXPLANATORY NOTE

"Of the 28,669 dwelling units for which loans were approved under the Small Home Loans programme, 26,000 were for single-family and duplex dwellings, the remainder being apartments. Data are presented in the tables above on the sizes of the single-family dwellings.

Prices and income data relate to sales of dwellings by builders in 1958 whether the loans were approved in 1957 or 1958. This is the main reason for the difference in the total of these tables as compared with the table on dwelling sizes."

(The foregoing statistics are tabled at the request of the Hon. Senator W. M. Wall.)

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-26, intituled:
"An Act to amend the Northwest Territories Act"

The Honourable SALTER A. HAYDEN, Chairman

No. 1

TUESDAY, MARCH 10th, 1959

WITNESS:

Mr. F. J. G. Cunningham, Assistant-Deputy-Minister, Department of Northern Affairs and National Resources.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20829-8—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*ex officio member.

(Quorum 9)

ORDER OF REFERENCE

MONDAY, March 9, 1959.

"Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Brunt, that the Bill C-26, intituled: "An Act to amend the Northwest Territories Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20829-8—1½

MINUTES OF PROCEEDINGS

TUESDAY, March 10, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce, after due consideration of other Bills met this day at 11.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Golding, Haig, Isnor, Lambert, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Pratt, Reid, Robertson, Taylor (*Norfolk*), Turgeon, Wall, White, Wilson and Woodrow. —28.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-26, An Act to amend the Northwest Territories Act, was considered clause by clause.

Heard in explanation of the Bill: Mr. F. J. G. Cunningham, Assistant Deputy Minister, Department of Northern Affairs and National Resources.

On motion of the Honourable Senator Aseltine, seconded by the Honourable Senator Haig, it was resolved that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

Further consideration of the Bill was postponed.

At 12.35 p.m. the Committee adjourned until 10.30 a.m. tomorrow, March 11, 1959.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 10, 1959.

The Standing Committee on Banking and Commerce, to which was referred Bill C-26, to amend the Northwest Territories Act, met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have before us Bill C-26, which is an act to amend the Northwest Territories Act, and involving certain amendments. We have with us Mr. Cunningham, who is Assistant Deputy Minister of Northern Affairs. The bill is a very short one. Possibly the simplest way to deal with it would be section by section, and have Mr. Cunningham give an explanation of each section as we move along, and you can address your questions to him. Will that be satisfactory?

Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Cunningham, would you just explain these sections as you go along? Would you explain what is the purpose of section 1? (Referring to section 1: Duration of council, elections. Tenure of appointed members).

Mr. F. J. G. Cunningham (Assistant Deputy Minister, Northern Affairs):

There are several objects of this first section combined together. The first section is to provide for the fixed term of three years for the life of each council, to start with the date of the return of the writs for the general election, rather than, as before, to have it run for three years from the date of the return of the writs of the election of each elected member.

The CHAIRMAN: All their terms will end at the same time?

Mr. CUNNINGHAM: Yes, instead of ending at different times. That is the primary purpose. The second purpose of this first subsection is to provide for by-elections, and this is the most important part. This is done by deleting the old subsections 4, 5 and 6, which spelled out the procedure to be followed, namely the appointment by the Governor in Council of someone to fill the unexpired portion of the term of an elected member who died, resigned, or became incapable of holding office.

Now, in the lefthand side of the material, the actual bill itself which is before you for consideration, there is no direct reference to by-elections, but the deletion of those three subsections 4, 5 and 6 of the old section has the legal result of making the provisions of the Canada Elections Act relating to by-elections apply in the Northwest Territories.

Senator ASELTINE: I was asked a question on this point last night, as to what section of the Canada Elections Act made this so.

Mr. CUNNINGHAM: Section 114.

The CHAIRMAN: How does it read?

Mr. CUNNINGHAM: "Elections of members to the Council of the Northwest Territories—(in this section called 'Northwest Territories elections') shall be conducted in accordance with the provisions of this act, subject to this section and to such adaptations and modifications as the Chief Electoral Officer, with the approval of the Commissioner of the Northwest Territories, directs as being necessary by reason of conditions existing in the Northwest Territories to conduct effectually Northwest Territories elections."

Senator ASELTINE: Does that apply to the Yukon Act as well?

Mr. CUNNINGHAM: No.

Senator REID: How does that fit in with the policy of saying that the Governor in Council is given power to dissolve the Council?

The CHAIRMAN: Wait a minute, until we get through with this point. Even with this reference to the Canada Evidence Act, were there any requirements, either in this act or the Canada Evidence Act, that a vacancy must be filled?

Mr. CUNNINGHAM: I will have to look up the section, because I do not know it. It is the section in the Canada Elections Act which provides for by-elections in the case of a vacancy in the House of Commons.

Senator CROLL: Is it the same period of time?

Mr. CUNNINGHAM: Everything is identical.

The CHAIRMAN: Is that section made applicable to the Northwest Territories?

Mr. CUNNINGHAM: It is, by the section 114 which I just read. To repeat the operative words only: "Elections of members to the Council of the Northwest Territories shall be conducted in accordance with the provisions of this act"; and the Department of Justice and the Chief Electoral Officer both agree, and so advised us, and the bill was drafted accordingly.

Senator CONNOLLY (*Ottawa West*): Is that section 114 of the Northwest Territories Act?

The CHAIRMAN: No, of the Canada Elections Act. Is there anything in the Northwest Territories Act which says that when there is a vacancy in the Council, or whatever they have there, it must be filled?

Mr. CUNNINGHAM: No, Mr. Chairman.

Senator ASELTINE: A vacancy is filled by appointment.

The CHAIRMAN: No, not once this bill goes through.

Senator ASELTINE: No, but at the present time.

The CHAIRMAN: Then what is there, once this bill becomes law in the form it is, that requires a by-election to be held to fill a vacancy?

Senator CROLL: He says it is the same procedure as applies to a House of Commons vacancy.

The CHAIRMAN: I am not sure that it is.

Senator CONNOLLY (*Ottawa West*): What is there in the Northwest Territories Act which brings into force in the Territories the provisions of the Canada Elections Act in that respect?

Mr. CUNNINGHAM: Nothing, but the same thing is done by section 114 of the Canada Elections Act.

Senator HAIG: It is the Elections Act that brings it in.

Senator CONNOLLY (*Ottawa West*): Perhaps it is the other way, then. Does the provision in the Canada Elections Act, which I have not read, make that act applicable to the Northwest Territories?

Mr. CUNNINGHAM: Yes, Mr. Chairman.

The CHAIRMAN: All it says is this:

> "Elections of members to the Council of the Northwest Territories (in this section called "Northwest Territories elections") shall be conducted in accordance with the provisions of this Act, subject to this section and to such adaptations and modifications as the Chief Electoral Officer, with the approval of the Commissioner of the Northwest Territories, directs as being necessary by reason of conditions existing in the Northwest Territories to conduct effectually Northwest Territories elections."

That deals with the conduct of the elections.

Senator CONNOLLY (*Ottawa West*): That is right.

The CHAIRMAN: But I was dealing with a different point. I was referring to the requirement of a vacancy that occurs in the Council of the Northwest Territories, that it must be filled. To me there seems to be a difference between the procedure of conduct for an election and the requirement that you must fill a vacancy.

Mr. CUNNINGHAM: I find that very interesting because that same doubt occurred to me when I got the bill back from Justice. I discussed it with the Deputy Minister of Justice, and the Chief Electoral Officer and they both assured me there was no question whatever but that section 114 of the Canada Elections Act means that in the event of the death, resignation or incapacity of an elected member of the Northwest Territories Council there will, if this bill is passed deleting subsections 4, 5 and 6 of section 8, be a by-election to fill the vacancy. They assured me there is no question whatever about it, and that this is the proper technique to accomplish this result. I had to act on their advice and I accepted their draft as accomplishing this purpose. I assure this committee that it does accomplish this purpose. If further corroboration is wanted on this point, the committee might wish to call the Deputy Minister of Justice or one of his assistants who is in charge of this.

Senator CONNOLLY (*Ottawa West*): The word we are stumbling on is "conduct".

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): Well, I don't remember all the wording you read just now, Mr. Chairman, but the first part of that section 114 discusses the conduct of elections.

There is a section that begins with "subject" to something or other, and at the end of that clause the word "conduct" reappears. Mr. Cunningham may be completely right, and Justice may be right; but suppose it does not have to do with the calling of the election but only with the conduct of the election after it has been called. You may have a gap.

Senator REID: It certainly is not clear to a layman.

The CHAIRMAN: The connotation of the word conduct is not such as to mean it extends to include the requirement that a vacancy in the council must be filled. I can understand that the procedure in the Canada Elections Act is the procedure that you follow in any election in the Northwest Territories and not just a by-election.

Senator CRERAR: There is a provision in the General Elections Act that by-elections to fill vacancies caused by death or in any other way must be called within six months. I presume that will apply under this legislation in the Northwest Territories and the qualification in Section 114, as I understand it, is that the Chief Electoral Officer with the Commissioner may, in very special circumstances, vary that. That arises naturally from the conditions existing in the Northwest Territories.

Under the law, by-elections held in mid-winter might render it desirable to postpone the matter for a few months.

Senator CONNOLLY (*Ottawa West*): But that is a question of conduct.

Senator CRERAR: As I grasp it, perhaps imperfectly, that would be covered.

Senator CONNOLLY (*Ottawa West*): In the Northwest Territories, when a vacancy occurs, is a writ issued for a by-election?

Mr. CUNNINGHAM: Yes. There has never been in the past, but once this is passed the answer is yes.

Senator CONNOLLY (*Ottawa West*): Who would issue the writ?

Mr. CUNNINGHAM: The Commissioner of the Northwest Territories issues the writ to the Chief Electoral Officer, in consequence of which the Chief Electoral Officer proceeds in exactly the same fashion respecting a by-election.

Senator CONNOLLY (*Ottawa West*): I am not very familiar with the Act, but upon whose direction does he issue the writ?

Mr. CUNNINGHAM: The Commissioner issues the writ of election on the direction of the Minister of Northern Affairs. The Northwest Territories Act so provides.

Senator CONNOLLY (*Ottawa West*): That is in the act?

Mr. CUNNINGHAM: Yes.

Senator LAMBERT: Does the Deputy Returning Officer—

Mr. CUNNINHAM: The Chief Electoral Officer.

Senator LAMBERT: Has he the final jurisdiction in connection with this writ?

Mr. CUNNINGHAM: The final jurisdiction to execute the writ but not to decide upon the determinate date on which it shall issue.

Senator LAMBERT: Is it the governor in council?

Mr. CUNNINGHAM: It is the Commissioner of the Northwest Territories; he has that direct responsibility, but he acts under the direction of the Minister of Northern Affairs and/or the governor in council.

Senator LAMBERT: So that the final authority is really in the government here.

Mr. CUNNINGHAM: That is right.

Senator LAMBERT: On the recommendation of the Commissioner.

Mr. CUNNINGHAM: Yes.

Senator CONNOLLY (*Ottawa West*): What section of the Act is that?

Mr. CUNNINGHAM: The Commissioner shall administer the government of the Territories under the instructions, from time to time given by the governor in council or the Minister, and "Minister" is defined in Section 2 (f) as meaning the Minister of Northern Affairs.

Senator CONNOLLY (*Ottawa West*): I meant the section with respect to the issue of the writ. Is it a provision of the Canada Elections Act?

The CHAIRMAN: There are two aspects to be considered. One is the conduct of elections, and that is provided for in the Canada Elections Act. When you have an election it starts with the issue of a writ, but it seems to me that some authority has to go to the Chief Electoral Officer before he issues the writ.

Mr. CUNNINGHAM: That is right.

The CHAIRMAN: That authority, in relation to the Northwest Territories, should be provided in the Act.

Mr. CUNNINGHAM: Yes, it is in Section 8, the one we are discussing. You will note that the proposed bill deletes subsections 2 to 7 inclusive but does not delete subsection 1 of section 8 and as it now is and will continue to be it reads that there shall be a council of the Territories consisting of eight members,

three of whom shall be elected to represent such electoral districts in the Territory as are named and described by the Commissioner in Council and five of whom shall be appointed by the governor in council.

That is Chapter 331 of the Revised Statutes of 1952 and it was amended in 1954 to provide for four instead of three members. But that is the basic thing. There shall be a council of a certain number of members, of whom a certain number shall be elected. There is your obligation to elect.

The CHAIRMAN: They are elected, yes. But suppose one dies or disqualifies himself: where does the authority emanate from as a result of which a writ is issued for a by-election?

Mr. CUNNINGHAM: The Commissioner in Council.

The CHAIRMAN: Where does it say so? It should be in the Northwest Territories Act.

Mr. CUNNINGHAM: I should have said the Commissioner, not the Commissioner in Council.

The CHAIRMAN: What is the section?

Mr. CUNNINGHAM: There is none that covers it in any more specific way than subsection 1 of 8.

The CHAIRMAN: It does not cover it at all.

Senator CONNOLLY (*Ottawa West*): Would this help? Could we have the section turned up in the Canada Elections Act—the section which provides for the issue of a writ in the case of a vacancy in the House of Commons.

The CHAIRMAN: Section 113 says that notwithstanding anything in this or in any other act, whenever a writ has been issued ordering a by-election to be held, and so forth. That, therefore, contemplates the machinery of the Canada Elections Act starting to function when a writ ordering a by-election has been issued. Now the question I am asking is this: who has the authority to authorize that the writ be issued?

Senator CONNOLLY (*Ottawa West*): Under the Canada Elections Act, what provision is it that gives authority for the writ to be issued?

The CHAIRMAN: I have not found that in the Canada Elections Act and I am wondering whether it is there. I am wondering whether it is in some other statute, maybe the House of Commons statute.

Senator LAMBERT: It may be there.

Senator MACDONALD: When notice is given in the House of Commons of a vacancy, then a writ has to be issued.

The CHAIRMAN: But that notice is not in the Elections Act.

Senator MACDONALD: It is in the House of Commons Act.

Senator CONNOLLY (*Ottawa West*): We have on the Committee a gentleman who no doubt issued such writs. I wonder where he had the authority to do so when he was speaker.

Senator MACDONALD: On several occassions writs were issued in the event of death, when that event was brought to the attention of the Speaker. Then the Returning Officer was required to issue the writ.

Senator CROLL: On what authority?

Senator MACDONALD: In virtue of one of the acts.

Senator CROLL: But that is the point; which act?

Senator MACDONALD: The witness has made a suggestion. He has told us that Justice has informed him that the election can be held by virtue of Section 113—

The CHAIRMAN: Section 114.

Senator MACDONALD: Secton 114 of the Elections Act. He has suggested that it might be advisable to have an official from Justice come here and explain to us on what grounds he had made that statement. Senator Aseltine will know whether there is any urgency in asking the witness to go into this today. We could perhaps adjourn the hearing until a later date, perhaps tomorrow, or some other suitable time and have someone from Justice here to explain the matter. I believe that was the witness' suggestion.

Senator CROLL: Aren't we lawyers becoming a little technical while we are having a little fun over this? We know as a matter of fact what does happen and what they are doing is in accordance with the customary practice. Are we not indulging in a little mental exercise? It is not really necessary to bring anyone from Justice. The Chairman has seen through this.

The CHAIRMAN: We are striking out several subsections in the statute which provide for the filling of vacancies. Are we leaving ourselves without the right to fill vacancies.

Senator CROLL: It has been said that once we get away from the North-west Territories Act then they become Canadian citizens in the full sense and come under the House of Commons Act.

The CHAIRMAN: Not the House of Commons.

Senator CROLL: Under the Elections Act, and they are defeated or elected under that Act.

The CHAIRMAN: All that the Canada Elections Act provides for is that elections shall be instituted as heretofore by writs of election. I knew that. That is the way elections are instituted.

Mr. CUNNINGHAM: I have the point now, I think, Mr. Chairman.

The CHAIRMAN: Before we have any controversy the witness thinks he has the section in the Northwest Territories Act.

Mr. CUNNINGHAM: Subsection 2 will really cover the point once one accepts the proposition that election includes by-election. It is provided that the governor in council may cause a new Council to be elected, and so on. Those are the pertinent words. I think that is the legal thread we are seeking.

The CHAIRMAN: Cause a new Council to be elected.

Mr. CUNNINGHAM: Yes.

The CHAIRMAN: I can understand that, but I am not thinking of dissolution. When one person dies, however, you have to have a vacancy. How do you start the machinery in motion in that event?

Mr. CUNNINGHAM: If the governor in council has authority to cause a Council to be elected by virtue of the Election Act, it has authority to cause a by-election to be called to replace one of the new Council who dies, resigns or becomes incapable.

The CHAIRMAN: With all due respect, Mr. Cunningham, it has not been demonstrated.

Senator HAIG: Ask the Deputy Minister to come and tell us under what authority the by-election will be held in the Northwest Territories.

The CHAIRMAN: Suppose in the meantime we consider the various sections of the Bill. There may not be such a problem in connection with other sections, and with that reservation we might go on to some of the other sections.

Senator ASELTINE: The Committee will be meeting in the morning and we can leave that in abeyance.

The CHAIRMAN: Yes, the final report we will leave in abeyance until tomorrow morning. We still have a little time left and we might finish the bill, allowing Section 1 to stand.

Senator CRERAR: In connection with Section 1, there is a matter which is not related to the point we have been discussing. There is a change in the new Section 1 from the preceding one in the sense that the governor in council may dissolve the Northwest Territories Council at any time in its discretion. Under the existing legislation the governor in council did not have that authority until after two years had expired following the territorial election. I think the change is undesirable. After all, four members are elected. There are presumably the choice of the constituencies which they represent and simply to give the governor in council at Ottawa the authority to dissolve them one week after the writs are returned, if they wish to do so, is I submit undesirable.

The CHAIRMAN: It is something that takes us back to the early days when the King could do that sort of thing—could dissolve an elected parliament.

Senator CRERAR: I wish to move an amendment.

The CHAIRMAN: Before you move the amendment, perhaps the witness has an explanation to offer.

Mr. CUNNINGHAM: This point, or one similar to it, was raised in the other place and the Minister dealt with it there. This amendment is intended to be a forward step in establishing democratic procedures in the territories. There is representative government in the Northwest Territories but not responsible government. The members of the Territorial Legislature are not in a position to control the actions of the administration. It is not necessary for the administration to have the confidence of a majority of the members of the council.

The CHAIRMAN: Well, are the members of the Council, elected by the people, just going through motions? Does the administration carry on in spite of them?

Mr. CUNNINGHAM: No, but the system that we have in the provinces, or in the Canadian Government under which an administration resigns if it ceases to have the confidence of a majority of the members who are elected to the legislature or to the House of Commons, does not exist in the territories. There are four elected members and there are five appointed members who are chosen by the governor in council of the Federal Government. The time will come some day when the administration will be responsible to the legislature, but that time has not yet arrived. If the decision to dissolve the council were left to the council itself, it would mean that the five appointees of the Federal Government could out-vote the four elected members and the right to dissolve would rest in the five federal nominees. It is a more democratic procedure to have that right rest in the governor in council itself.

Senator MCKEEN: Could not the governor in council right now remove the appointed members of the council? Is there any difference there? The only group it would affect now are the elected members.

The CHAIRMAN: The great point of difference, Senator McKeen, is that under the present law the council, once it is elected, is guaranteed a life of two years before the governor in council may dissolve the Council. Under the proposed amendment the governor in council may dissolve the council at any time, so that the big difference lies in the question: why is it necessary to change the period of two years and make the power of the governor in council exercisable at any time?

Senator CONNOLLY (*Ottawa West*): Would the witness direct his remarks to that point.

The CHAIRMAN: That was Senator Crerar's question. Why have you made a change in respect to the two years?

Senator HAIG: The four members do not have anything to do; the business is done by the governor in council.

The CHAIRMAN: Why have a council.

Mr. CUNNINGHAM: For legislative purposes only.

The CHAIRMAN: Even that is not the question. The question is the narrow one which Senator Crerar has raised: What are the circumstances that now make it necessary, in the opinion of the Government to change that guaranteed period of two years before the governor in council can dissolve the council?

Senator HAIG: Bring the Minister and let him tell us.

Senator CRERAR: If Senator Haig's argument is sound, why have elected members?

The CHAIRMAN: Senator Haig is saying: if that is the question, why not bring the Minister to explain.

Senator HAIG: If this has anything to do with what Senator Macdonald suggests, you should have the Minister here to tell us what it does do. You can ask him the question. I am not prepared to vote on the motion without knowing what the Minister says.

Mr. CUNNINGHAM: It might help if I read the remarks of the Minister on the second reading of the bill. He said:

> The present act also provides that the "governor in council may, at any time after the expiration of two years from the date of the return of the writs of election of the elected members of the council, dissolve the council and cause a new council to be elected and appointed. It is now proposed, by the new amendment, to bring the principles relating to dissolution in the territories in accord with the principles followed in the provinces and in this house. A similar change was made several years ago in the Yukon Act, and its provision in this act is another step in the evolution of the Northwest Territories toward responsible government."

Senator HAIG: He means, if the Government has the power to veto them the same as the Government in the House of Commons has power to dissolve the House there.

Mr. CUNNINGHAM: It takes away the artificial and arbitrary limitation on the right to dissolve before the expiry of the two-year period. It removes that limitation and establishes a procedure more closely allied to the normal democratic process.

Senator CROLL: But the life of a parliament is not two years or one year or any specific time.

Senator LAMBERT: I submit, with respect, that this suggestion in the bill represents a step in the wrong direction in the democratization of that district. It is getting farther away from the theory of representation which is supposed to be embodied in the reforms that took place there in creating a new district out of the Northwest Territories.

Mr. CUNNINGHAM: The situation is this—

Senator LAMBERT: I should like to complete the expression of my thought in this regard, which I think is fundamental. The pattern that has been adopted is not unlike the one that exists in colonies throughout the West Indies where you have the governor in council nominating legislative assemblies or the legislative council. Even if the legislative council may outnumber in representation the executive council, the government and the executive council are still the boss there. It seems to be that if you had the two-years provision nothing could be done within that period and you would at least be preserving that step in the direction of the democratization of the district until the population grows. To revert to the complete power of the governor in council to eliminate the two years is in my opinion, I repeat, a step in the wrong direction.

Mr. CUNNINGHAM: The brief sentences which I quoted a minute ago from the Minister of Northern Affairs were spoken at the resolution stage in the other place. The point that has been raised here this morning was raised in the other place on the second reading and the Minister spoke somewhat more fully at that time in support of this amendment. He said:

> The second point is the key one, I believe, and this was the reason why there was added in the first section these words:
>
> '—but the governor in council may at any time dissolve the council and cause a new council to be elected and appointed.'
>
> The first change was in the use of dissolution to make it similar to the provinces. Now you can dissolve at any time like the provinces and this house. It is the next stage which causes concern. If you can visualize this council made up of five appointed members, appointed by the minister under the governor in council, with a commissioner who happens to be my deputy minister, and then four elected members you see the picture a little more clearly. Supposing we had put in 'dissolve on the advice of the commissioner, on the recommendation of the council', what would that mean? It would mean the five appointees of the federal government and the commissioner would be given the power to recommend dissolution.

Senator CONNOLLY (*Ottawa West*): He was talking to the amendment proposed in the other place, was he not? All that that amendment proposes to do is to give the commissioner the right to dissolve at any time. He did not on that occasion, as I read the discussion that took place in the other place, speak to the question of the removal of the two-year limitation.

The CHAIRMAN: No, he did not deal with that. Do you still wish to propose your amendment, Senator Crerar?

Senator ASELTINE: Why not leave the matter until we see the Minister tomorrow.

The CHAIRMAN: Very well. There are a couple of other sections we could deal with.

Senator CROLL: I am going to raise a serious objection to something in section 5. I am going to raise the point and you might as well prepare to answer it tomorrow. There may be others who will join with me, but I raise serious objection to giving them the right to seize and take action without warrant.

The CHAIRMAN: In view of that, is there any point in our going further with this bill at this time. Should we not let it stand until tomorrow.

The Committee thereupon adjourned.

3- For the Library

2nd Session, 24th Parliament, 1959.

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill C-26, intituled: "An Act to amend the Northwest Territories Act."

The Honourable SALTER A. HAYDEN, *Chairman*

No. 2

WEDNESDAY, MARCH 11th, 1959.

WITNESSES:

The Honourable Alvin Hamilton, Minister of Northern Affairs and National Resources; Mr. E. A. Driedger, Assistant-Deputy-Minister of Justice; Mr. F. J. G. Cunningham, Assistant-Deputy-Minister of Northern Affairs and National Resources.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20825-6—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor *(Norfolk)*
Connolly *(Ottawa West)*	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

**ex officio member.*

(Quorum 9)

ORDER OF REFERENCE

Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Brunt, that the Bill C-26, intituled: "An Act to amend the Northwest Territories Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

20825-6—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, March 11th, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Brunt, Connolly (*Ottawa West*), Crerar, Croll, Farris, Gershaw, Golding, Gouin, Haig, Hardy, Horner, Isnor, Lambert, Leonard, Macdonald, McDonald, McKeen, Monette, Power, Reid, Turgeon, Wall, White and Woodrow.—27.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-26, An Act to amend the Northwest Territories Act, was further considered clause by clause.

Heard in explanation of the Bill: The Honourable Alvin Hamilton, Minister of Northern Affairs and National Resources; Mr. E. A. Driedger, Assistant-Deputy Minister of Justice; Mr. F. J. G. Cunningham, Assistant-Deputy Minister of Northern Affairs and National Resources.

The Honourable Senator Crerar moved that the Bill be amended as follows:—

Page 1, line 11: After "time" insert the following: "after the expiration of two years"

The question being put on the said motion, the Committee divided as follows:—

YEAS	NAYS
5	9

The Motion was declared passed in the negative.

On Motion of the Honourable Senator Haig, it was RESOLVED that a Subcommittee composed of the Honourable Senators Hayden, Aseltine and Macdonald be appointed to consider certain proposed amendments to the Bill and make a report of their findings to the Committee.

At 12.35 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, WEDNESDAY, March 11, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill C-26, to amend the Northwest Territories Act, met this day at 10.30 a.m.

Senator Hayden in the Chair:

The CHAIRMAN: Gentlemen, we are ready to proceed with the further consideration of this bill C-26. You will recall that yesterday, after some discussion on sections 1 and 2 of the bill, we decided to adjourn to hear the minister and also to get the opinion of the Department of Justice on a matter which arises in connection with section 1; that is, how do you start the machinery going in connection with a by-election as the result of which the Canada Elections Act can start to operate and the writ is issued. There seemed to be some conflict of views, and I must confess that I was a major participant in that. Now we have the minister with us, and we also have Mr. Driedger, from the Department of Justice.

Mr. Minister, the bill is a short bill, and what we had decided to do yesterday was to proceed section by section and get the explanation, but we ran into two difficulties on the first section of the bill. One was the change which was made in the question of the dissolution of the Council. Under the present law, once a Council is elected the Governor in Council cannot dissolve the Council until two years have passed. Under the new, proposed section he may dissolve Council at any time. That was point number one. The other point was, what is the authority to call a by-election? We were referred to section 114 of the Canada Elections Act yesterday, but that section deals with the conduct of the election, and the conduct of the election starts with the issuing of a writ under the Canada Elections Act. But what we were concerned with was, what is the authority that starts the thing in motion, that authorizes the issuance of the writ, and where is the authority for it? I should think on the first point, and possibly on both points, if you wish to give us the benefit of your views, we would like to hear them.

Hon. ALVIN HAMILTON (*Minister of Northern Affairs and National Resources*): Mr. Chairman, in regard to the second point, how does this make by-elections necessary, I can assure you it is a very normal question. I had my own work-sheet on this bill, and the first thing I wrote on it—this was some months ago—was, how does this make by-elections necessary? Because I did not know. I asked the department, and they said that that was the same question they had asked. What is involved is apparently the rule of negative custom: "If you have not done this, the only thing you can do is this." But this is a thing for the subtleties of the legal mind to work on, and Mr. Driedger, from Justice, is here to give an explanation on that point.

I would like to just say a word or two about the first point. The general philosophy we are working on in connection with Government in the Territories is to build step by step towards self-government. You gentlemen here will be aware that this is not a new story. Around the world the British Commonwealth and Empire has had tremendous experience in these various stages. In the United States there is the story of the new virgin territory going into a territorial state, and then to statehood. Then we had our own experience

in Canada, particularly in that part of the Northwest Territories which is now divided into Saskatchewan and Alberta; and when you read back through these experiences, one of the things that strikes you is that it took so long to get action, and there was great dissatisfaction growing. Probably the outstanding example would be the uprising in Manitoba in 1870, and later on in 1885 in Saskatchewan. In a study of the Northwest Territories you will find there were long periods of inactivity. This was probably for a good reason. But when the flood of new settlers came in following the Yellowknife discovery you could not expect people who had been used to running their own affairs in the rest of Canada to move in there and be satisfied with direction from above. This has caused a situation in the Northwest Territories which is very difficult to describe. Generally speaking the people who have moved into the mining camps, and Yellowknife is a perfect example, are a little bit above average, if I may put it that way. They are the type of people who move into a new area and pioneer it. They are certainly able to look after themselves and they want self-government and they express themselves quite candidly on this. But the older settlers who have been there many years, the traders and trappers and people who have made it on their own without too much interference and whose only contact with the Government has been through the R.C.M.P., prefer to go much more slowly.

Here is the position of the Government. We are hopeful that as the rush of population comes into the Territories there will not be this frustration and all this unrest that has existed in other places. We are trying to set up the machinery of Government so that the people who are there now can get used to working by the processes we know in the provinces, and accept them, and we cannot go any faster than the people there will let us go.

So we have a situation in the Northwest Territories where we have elected members on the council. Without exception they are representatives of the people who have been there a long time. They want the federal Government to be in closer touch all the time and in a paternalistic way look after their interests. Those of us who look forward to an expansion of population, and we can see it happening very quickly without any warning, want to get these people ready to accept more responsibilities. We are giving them every inducement to take on more authority in the democratic processes. For instance, we discussed with them the advisability of making the number of elected members greater than the number of appointed members. At the present time there are five appointed members and four elected. But they did not want this at this stage. However, they have asked that if there is a by-election and somebody is appointed, that he not be appointed by somebody here in Ottawa. We had a man on the Northwest Territories Council who was moved to a different position last summer. You cannot allow a vacancy to stand so according to custom I had to appoint a man. This was in the district of Yellowknife where the people are politically conscious, to use a mild expression. They voice their opinions very strongly about these matters. If I appointed a man from the side of labour I would be in trouble with business interests, and vice versa. If I appointed a Conservative I would be in trouble with the Liberals, and vice versa. It is a bad situation all round. So we had to try to take a chap whose politics were unknown to anybody and who had not up to that time taken part in any politics. He has since told me what his politics were, but that is beside the point. The point is, if you have an area of very intelligent and aggressive people, like in the Yellowknife district, a real go-getting town, you should have the right to elect your own member, and not have to wait for a fixed term to be up.

Senator CONNOLLY (*Ottawa West*): Were you in that case making an acquaintance to replace an elected man?

Hon. Mr. HAMILTON: Yes.

The CHAIRMAN: That is under subsection (5) of section 8 of the present act where you are exercising that power. This is one of the subsections you are supposed to strike out?

Hon. Mr. HAMILTON: Yes. This is an abstract question of constitutionality on which no one knows the final answer; that is, if this body is going to be enlarged to a three-year term it would seem more sensible, or if you are going to move towards the provincial pattern there should be dissolution in the power of the executive. What is the answer? Well, the executive is actually the commissioner who sits with the council, and he would not want the right as a paid employee of the Government—he is my deputy minister—to dissolve; and the answer we came up with that was recommended to these members was that the Governor in Council, that is, the cabinet here, should be the only one given the power to dissolve an elected and appointed legislature—I should not call it legislature, but council, because at least we could be held responsible by some one. The reason for giving the power of dissolution was to make it different from a municipal council. This is where the local people feel a sense of discrimination, that where you give them a fixed term of say three years, with no by-elections, you are treating them as a municipal council. By giving the power of dissolution you are in effect making them more like a province, because they all know as the population moves up, and the elected member comes in, the executive more and more will come under the control of that group who are elected in the Northwest Territories, and therefore eventually should have the pattern set by keeping the dissolution not in the council but in the hands of the executive, and then when the evolution has developed to this point we will have the machinery set up.

Senator MCKEEN: Isn't the governing body actually elected?

Hon. Mr. HAMILTON: In our system of government we combine the legislative and the executive, and the executive always come out of the largest party.

Senator MCKEEN: But they are still elected.

Hon. Mr. HAMILTON: But it is still elected. That is right, but—

Senator MCKEEN: But I mean the members actually decide the election.

The CHAIRMAN: It is not a vote of elected members.

Senator MCKEEN: No, but it is the electors who make the decision; they are elected members.

Hon. Mr. HAMILTON: As a student of constitutional history, you will recognize that this power we have in the executive in our British system is the Crown, where the executive controls the elected members. It is the disciplinary factor they lack in the French system and the American system.

Senator CONNOLLY (*Ottawa West*): The procedure is actually order in council?

Hon. Mr. HAMILTON: Yes.

Senator POWER: It is a decision of the Crown on the advice of the executive; although he has been known to go against it.

The CHAIRMAN: On this point, you were dealing with this point yesterday, Senator Crerar. Have you questions you want to ask the minister?

Senator CRERAR: Well, I think the change is undesirable. What is the situation at the moment: we provide for four elected members in the Northwest Territories. This bill also provides that in the case of a vacancy in one of these four constituencies the machinery is to be available for holding a by-election, which is the normal procedure. The only possible reason with a colour of validity in the minister's statement is that if you have an election

say in 1957 or 1958, and you elect four representatives, you might have one constituency where in 1959 there would be a heavy influx of population and it would be desirable in those circumstances to dissolve the whole council and give the new people who come in an opportunity to express their wishes. But in my judgment that goes contrary to the process of democratic Government—to give an authority power to dissolve the council perhaps three weeks after the four elected members have been elected.

The CHAIRMAN: Would you permit a question Senator Crerar on that point. It appears to me if you were trying to locate the executive power in the Northwest Territories you would find that it is really the Governor in Council.

Senator CRERAR: That is quite true. But the conditions there are not comparable to a well organized province or a federal authority. As the minister has very properly stated, what we are doing in the Northwest Territories is to advance them step by step in the whole process of self-government, looking ultimately to the time when it may be a province and will run its own affairs as in other provinces. In the meantime we have to get them accustomed to this and they have to learn step by step what self-government means in this particular era under the powers they have, and I do think it would be a mistake to hold over them a power of dissolution by the Governor in Council. There is nothing wrong with the provision in the existing law, nothing wrong at all, and on this point I feel rather strongly—I think it is a retrograde step.

Senator ASELTINE: Senator Crerar, do you know that in the Yukon Act, in section 13, we have the same procedure?

Senator CRERAR: That may be. I do not recall that, and I cannot recall that I was here when that was done.

Senator ASELTINE: Would you mind if I read what is in that act?

Senator CRERAR: I will accept your word for it without any question. But my point is this, that if we made a mistake in the Yukon Act there is no reason on earth why we should duplicate that mistake here.

Senator HAIG: It did not work badly before; it has been working under the present law all right.

Senator CRERAR: You mean the Yukon law?

Senator HAIG: Yes.

Senator CRERAR: Well, it has.

The CHAIRMAN: That is not an answer to it, because I expect the old law has been working all right in the Northwest Territories. I think we have to get a more solid foundation than that.

Senator CONNOLLY (*Ottawa West*): Just speaking to the two-year point, I think we should tell the Minister that those of us who have read the proposed amendment made in the House of Commons are not very much impressed with it. It did not seem to me, speaking for myself only, that it added anything to the bill.

But as to this two-year point, I think the Minister and the officials are the people who could best judge it. If you do have a great influx of people into the territories in a given year, and there is a desire on their part immediately for more representation and more voice, is it likely to happen within a two-year period? I think that is the only question that may arise on this section. If that is the case, perhaps the section should stand.

The CHAIRMAN: Have you thought of this? The Government could move within a year or less by legislation to make changes in this statute.

Senator CRERAR: As a matter of fact, they could dissolve the council three weeks after the writs had been returned.

The CHAIRMAN: I am not talking about the affect of the proposed amendment.

Senator CONNOLLY (*Ottawa West*): We have annual Parliaments.

The CHAIRMAN: We have annual Parliaments, and the two-year period is put in the present statute for some purpose; but Parliament could move faster and introduce amendments, as it is doing now. If Parliament can move within a year or less, what is the purpose of imposing any restraint here?

Senator CONNOLLY (*Ottawa West*): What you say points up this question, and perhaps we might put it to the Minister now. What you are really doing by this amendment, in the circumstance where a group of people in that area demand more representation, is put the federal ministry immediately under the gun to give it.

The CHAIRMAN: That may be true, but if the Governor in Council dissolves the council at any period because there is pressure by reason of an influx of a great many people into the area, that does not give them more representation. If he dissolves the council and they have an election, they are not increasing the number to be elected. They would have to come back to Parliament to get an increase in the number of elected members.

Senator CRERAR: You would have to have a redistribution.

Hon. Mr. HAMILTON: You would have a redistribution. With the power we give to the Territorial Council, it is their right.

Senator CONNOLLY (*Ottawa West*): They can't increase the number of members of council?

Hon. Mr. HAMILTON: No, but there can be a redistribution of the Territories. In the minds of the Government there is no thought of dissolution whatsoever. This dissolution argument is purely an abstract discussion. As I say, we have no thought in our minds of an immediate dissolution. We simply want to set the pattern so that when they move into the next stage, which we foresee, of a completely elected council and a resident commissioner, there will be an intermediate body set up, which we think will be called the executive group. We are discussing this now with the Yukon council. They passed several resolutions in their last meeting, asking that an executive council be set up that could meet more frequently wtih the commissioner. In the Yukon the commissioner is appointed by the Minister, and they have a fully elected council. They want to go to the next stage and set up an executive group of two or three elected members who could meet with the commissioner.

Senator POWER: They want responsible government.

Hon Mr. HAMILTON: Yes. We look forward to this happening in the Territories. When the representation is big enough, I imagine they will follow the pattern of the provinces; they will have an executive group from among their elected members, and one of that group will become premier. By that means we get into the framework of the provinces, rather than the pattern of a municipality. At present, the council is something like a municipality, but by putting in provision for dissolution we place them more in the pattern of a province. But as I say, it is purely an abstract thing. It is something we can't be dogmatic on; we don't know yet whether it is right or wrong, but we are trying to make sure that there is no hold-up on our part in the normal progress of their democratic processes. There is nothing ulterior on our part; it is done for the purpose of creating a provincial framework for the Territories council.

Senator LEONARD: You visualize that this power of dissolution would probably lie in the commissioner, or the Lieutenant-Governor on the advice of the executive, rather than by the Governor in Council at Ottawa?

Hon Mr. HAMILTON: Yes.

Senator LEONARD: This is a step towards that development?

Hon. Mr. HAMILTON: Yes. I would suggest to you as reasonable men the Governor in Council is not going to be happy in having this power of dissolution in their hands for an indefinite period.

The CHAIRMAN: It puts you right in front of the gun.

Hon. Mr. HAMILTON: Yes. This is the funny part of it: this is what the elected members want, because they look on the Governor in Council as their great defender against the appointed members, if they ever clash.

Senator CONNOLLY (*Ottawa West*): You tell us that the elected members do not feel that this is a gun pointed at their head, and that if they do not behave they will be dissolved. Perhaps that is the answer to the problem that Senator Crerar raised.

Hon. Mr. HAMILTON: That is what I tried to make clear in the house,—that the reason that the power of dissolution is given to the Governor in Council is that the elected representatives should not be the ones to decide of dissolution.

The CHAIRMAN: Nor the Commissioner.

Hon. Mr. HAMILTON: Nor the Commissioner. But obviously it has to be in the power of some group who are responsible to somebody, and that is the Governor in Council.

On the second point, the question of what the elected members want, they feel that if we gave this power of dissolution to the Commissioner on the advice of council, the majority of people there, five being appointed over whom I have no control once they are appointed, because they all take the oath to act independently on their best judgment regardless of whether they are civil servants or not—the elected members feel we are their defenders, that they can appeal to public attention across the country and we will defend them. We can consider their point of view. It is purely an abstract, academic question, because there is no thought of the elected members forcing a dissolution.

Senator WALL: I was going to make this observation, that, since the situation seems to be abstract, sterile, and definitely prejudicial will have to be handled by a further statutory change anyway, this dissolution principle should wait until the majority of the Council is going to be an elected body, and that will require changes in the statute anyway.

The CHAIRMAN: This gets to be a matter of opinion. The way it strikes me, for what it is worth, is that it seems that the Government by legislation could move very quickly, and that would mean amending the statute from time to time, and the Governor in Council, being given this power of dissolution exercisable in his discretion, at least that is a source that goes back to the people, and to me it seems to be better to have it there than to have it any other place in the process and put a statutory limitation on by providing that the Governor in Council cannot move at an earlier date. That, to me, is more or less meaningless, because Parliament can move at any time. I think on balance you can argue yourself into the position that this provision is a progressive step towards the stage of responsible Government, and it is not going to hurt anybody. I think that if the Governor in Council arbitrarily dissolved a Council because it did not like the views they were expressing there would be a lot of noise and a lot of public discussion of it, Mr. Minister, all over.

Senator POWER: There is a representative of the Northwest Territories in this Parliament, and he is the one who would probably get it, and the party he represents will be blamed if the Governor in Council acts wrongly.

Hon. Mr. HAMILTON: I have had some conversations with the member for Mackenzie River about this, and he agrees that it is all just an abstract thing. He discussed the amendment with me before he made it. In his opinion it was no different from what we are doing, in reality, except he thought it looked better if the Commissioner in Council were doing it. But, with respect, if you think it true that it looks better, it is not really better.

Senator CONNOLLY (*Ottawa West*): I don't even think it looks better.

Senator CRERAR: It occurs to me, since the minister spoke the second time, that, though to some it may not be a very important consideration, that there has been a very noticeable tendency since the end of the war—there was in the days of the late Government—to gradually draw all power into the central executive. That, I submit, is unwise and dangerous. It is not the first time that I have protested against this sort of thing. I did it with the previous administration. You elect four members and then you give the Governor in Council authority to send them back home if he doesn't like them. I can understand circumstances where a threat of dissolution might be held over the heads of these four elected members to bring them into line on some particular thing. That, in my judgment, is definitely bad and unsound, and I can see no reason at all why, if four constituencies can freely elect four representatives to the Council, they should be disturbed in their judgment by some other factor which might come in which was really unrelated to the processes of Government.

Senator ASELTINE: They might want a dissolution. There would be no way of getting it. I mean that the four members might want dissolution.

Senator CRERAR: Well, if they want dissolution they can get it with the co-operation of the four appointed members.

Senator ASELTINE: No, there are five against them.

Senator CRERAR: I don't like this thing. I would leave these people alone as far as possible, and accustom them to running their own business. Let them become acquainted with democratic procedures. Let them make a mistake if they want to make it, once in a while, but don't hold over them from some distant authority the threat that something may happen to them if they don't toe the line.

The CHAIRMAN: There is another point on which I think we should hear Mr. Driedger before we consider this question, and that is, how does a by-election get called as and when these amendments become part of the statutes?

Mr. E. A. DRIEDGER (*Assistant Deputy Minister of Justice*): Mr. Chairman and honourable senators, before I begin to try to answer the question that has been asked I wonder if I might be permitted to state the question as I understood it, so that I will be sure of trying at least to answer the problem that you have raised.

The present statute provides for the election of some members and, in the event of a vacancy arising, a successor is appointed. Under the proposed amendment the provision for electing members is being continued but the provision for the appointment of a successor in the event of a vacancy is being discontinued. There is no provision in this amendment or in the Northwest Territories Act setting forth the machinery of an election, either of a general election or a by-election. There is section 114 of the Canada Elections Act which incorporates the machinery of the Elections Act with such adaptations or modifications as the Chief Electoral Officer finds necessary in order to make this statute fit the Territories. But, as has been pointed out, that establishes only the election machinery that is to be followed.

Senator CONNOLLY (*Ottawa West*): For a general election, is it not?

Mr. DRIEDGER: Yes. Well, for all elections. It says "for elections to members of Council." That would apply to all elections.

There is another provision in the Canada Elections Act indicating how elections are to be started. Section 7 says they are to be started by writs, and it also defines the functions of the Chief Electoral Officer. In subsection 2 it is provided that writs shall be issued by the Chief Electoral Officer, which shall be dated, and at a general elections shall be made returnable, on such a date that the Governor in Council shall determine. So far, we have the election machinery and we have power in the Chief Electoral Officer to issue writs of election, but the question arises: when does the Chief Electoral Officer issue the writs of election? Who directs him to issue them?

While the question has been raised here as to by-elections, I suggest that the same question arises in relation to general elections, to all elections. That is a question that was raised in the early stages of this bill, and which we did consider, and the conclusion that I came to after examining the present provisions of the Northwest Territories Act, the Yukon Act, the Canada Elections Act, and the House of Commons Act was that the power or the authority to direct the issue of a writ of election must reside in the executive authority.

Senator REID: May I ask you a question at this point? In the event that a vacancy occurs amongst the elected members, does the Governor in Council have the right to appoint a new member?

Mr. DRIEDGER: Under the present act?

Senator REID: Yes.

Mr. DRIEDGER: Under the present act my understanding is that in the event of an elected member ceasing to be a member, either by death or resignation, then the Governor in Council may appoint one member to succeed him.

Senator ASELTINE: Without any election.

Mr. DRIEDGER: Yes, without any election.

The CHAIRMAN: This bill is proposing to strike out those provisions.

Senator POWER: Yes, they are being changed by this bill.

Senator REID: The section provides for the appointment of a new council but not for the appointment or election of one councillor.

Senator CONNOLLY (*Ottawa West*): We are coming to that.

The CHAIRMAN: Yes.

Mr. DRIEDGER: As I was saying, I came to the conclusion that the authority to direct that a writ of election be issued, whether for a general election or a by-election, must reside in the executive authority, and the Northwest Territories Act does provide that the Commissioner of the Northwest Territories is the chief executive officer. I came to the conclusion that he has inherent authority to direct the issue of a writ of election.

The CHAIRMAN: Mr. Driedger, could I interrupt you for a moment? We are all interested in this problem. I should point out that in the case of election of members to the House of Commons and the replacement of members who have resigned or retired or died, the obligation is on His Honour the Speaker under section 10 of the House of Commons Act, which reads:

> If any vacancy happens in the House of Commons by the death of any member, or by his accepting any office, the Speaker, on being informed of such vacancy by any member of the House in his place, or by notice in writing under the hands and seals of any two members of the House, shall forthwith address his warrant to the Chief Electoral Officer,

for the issue of a new writ for the election of a member to fill the vacancy; and a new writ shall issue accordingly.

The effect of reading this statute, the House of Commons Act, together with the Canada Elections Act, is that when the Speaker issues his writ—

Senator MACDONALD: He issues the warrant.

The CHAIRMAN: Yes, when the Speaker issues the warrant then the Chief Electoral Officer, under the Canada Elections Act, must issue the writ and then the whole machinery of election is in circulation.

Senator POWER: It is not quite like that. There is something in between. There is a notification to the Speaker and the election might not take place for six months.

The CHAIRMAN: Yes, that is in the statute too.

Senator MACDONALD: The Speaker does not take any action until he is notified. Of course, if there is a resignation he gets a notification by virtue of the resignation. If there is a death the Speaker does nothing about it until somebody brings it to his attention. When it is brought to his attention he issues his warrant to the Chief Electoral Officer to issue the writ. There is a certain period of time, I believe it is two months, which is involved. In other words, not longer than two months can intervene before the writ is issued. The date of the election, if my memory serves me correct, is set by the Governor in Council.

Senator POWER: The date is fixed by order in council somewhere.

Senator CONNOLLY (*Ottawa West*): In that section you read, Mr. Chairman, is there reference to the issue of a writ by the Speaker?

The CHAIRMAN: No. The words are to the effect that he shall forthwith address his warrant to the Chief Electoral Officer and the new writ shall issue accordingly.

Senator MACDONALD: There is a period of two months before he issues.

Senator CONNOLLY (*Ottawa West*): And then the section to which Mr. Driedger referred to in the Canada Elections Act comes into play?

The CHAIRMAN: Yes.

Mr. DRIEDGER: Could I make this observation? That section relates to by-elections. Where is the provision authorizing the issue of writs for a general election of the members of the House of Commons?

The CHAIRMAN: It is not in the House of Commons Act.

Senator MACDONALD: No, it is not in the House of Commons Act.

Mr. DRIEDGER: I suggest the reason that you find a special provision for by-elections, but not for general elections, is not to give to the Governor in Council authority he did not possess but rather to regulate the authority and to prescribe the time limits within which writs should be issued for by-elections. But there is no provision in the House of Commons Act for the issue of writs for a general election. Similarly, in the case of the Yukon Territory where they have had an elected council for nearly 60 years, there is in the Yukon Act no provision for the issue of writs for a general election or for a by-election.

Senator CONNOLLY (*Ottawa West*): How is it done for a general election in the Yukon?

Mr. DRIEDGER: They have the same provision. There is another section in the Canada Elections Act which incorporates the machinery. The writs, I believe, are issued by the Chief Electoral Officer on the instructions of the Commissioner.

Senator CONNOLLY (*Ottawa West*): Is there no executive action by the federal cabinet?

Mr. DRIEDGER: Under the Yukon Act?

Senator CONNOLLY (*Ottawa West*): Yes.

Mr. DRIEDGER: Under the present Northwest Territories Act where you do now have elected members there is no provision authorizing anybody to issue the writ of election, and I came to the conclusion, as I say, after considering these various provisions, considering not only the Northwest Territories but the Yukon, and the House of Commons as well, that the authority to convene a legislative assembly and to direct the election of members must and does reside in the executive, and therefore no special provision should be made or need be made in this bill to provide for the authority to issue writs for by-elections or general elections.

The CHAIRMAN: I think I should point out to the committee that in the Canada Elections Act, section 7, subsections (1) and (2) read as follows:

> (1) Elections shall be instituted, as heretofore, by writs of election, which shall be in Form No. 1.
>
> (2) Writs of election shall be dated and, at a general election, shall be made returnable on such days as the Governor in Council shall determine; they shall be issued by the Chief Electoral Officer and directed to the persons appointed to be returning officers etcetera.

And when I look at Form 1 the Canada Elections Act, I find that is a form which is addressed to the returning officer, and in the writ of election the returning officers name is inserted. In the recital in this form which is issued by the Chief Electoral Officer it says: "Whereas, by the advice of Our Privy Council for Canada"; so that the institution of an election is provided for by statute.

Senator FARRIS: Where do you get the authority for dissolution?

Senator POWER: The Crown on the advice of the executive.

The CHAIRMAN: That must be a prerogative of the Crown. I have not looked to see where it occurs. If it were anywhere I suppose it would be in the B.N.A. Act. would it not? It is certainly a prerogative of the Crown. The advisers of Her Majesty confer with him and give him some advice if there should be an election, and he accepts the advice.

Senator MACDONALD: They give the advice that Parliament should be dissolved.

The CHAIRMAN: That is right.

Senator POWER: It is specifically stated there that it is the Crown on the advice of the Privy Council that has done this kind of thing, so it is a prerogative. What you have just read to us, Mr. Chairman, is practically a copy of the proclamation by the returning officer, and there it states our constitutional position more than we do in most other laws or enactments. We say that the Crown on the advice of Privy Council does so and so, is that it?

The CHAIRMAN: Yes.

Senator LEONARD: But that is not applicable to the Northwest Territories, except by inference. What bothers me is that if the authority to issue a writ only depends on the inherent authority of the executive, does he also have an inherent authority not to issue a writ. He does not have to?

The CHAIRMAN: No.

Senator HAIG: Question, Mr. Chairman.

The CHAIRMAN: The committee is not ready for the question yet, Mr. Senator.

Senator HAIG: It should be; we have been dealing with this for two days. We have got along pretty well for a good many years with the present law, and as the minister says, why change it now? We want to build up an understanding of democratic principles in that part of the country. Now my honourable friend from Churchill (Hon. Mr. Crerar) objects and says we should not have the power of dissolution. Well, the House of Commons has had the power of dissolution as long as I remember.

The CHAIRMAN: We are dealing now with the authority to hold a by-election.

Senator HAIG: I understand that, but why keep going over this again and again—the same principle all the time. If you want to do it, all right, but I do not think anything is gained. We all know whether we want to put that clause in the bill or not. If not, we can vote against it. The world won't come to an end if we do.

Senator WHITE: Is there a provision in the Northwest Territories Act to make the provision of the Canada Elections Act apply?

The CHAIRMAN: No, but section 114 of the Canada Elections Act makes the provisions of that act apply to the conduct of elections in the Northwest Territories.

Mr. DRIEDGER: Section 114 reads as follows:

> "114. Elections of members to the Council of the Northwest Territories (in this section called "Northwest Territories elections") shall be conducted in accordance with the provisions of this Act, subject to this section and to such adaptations and modifications as the Chief Electoral Officer, with the approval of the Commissioner of the Northwest Territories, directs as being necessary by reason of conditions existing in the Northwest Territories to conduct effectually Northwest Territories elections."

The CHAIRMAN: You see, that does not deal with who calls the by-elections.

Senator POWER: Is there a section in the Northwest Territories Act similar to section 13 of the Yukon Act?

Mr. DRIEDGER: Yes. Well, that Yukon Act was the one contained in the Revised Statutes. Actually the Yukon Act was revised and re-enacted in 1953.

Senator CONNOLLY (*Ottawa West*): Which puts the authority in the Governor in Council, both in the amending of the Northwest Territories Act as it does in subsection (2) of section 9 of the Yukon Act, for the Governor in Council to call a general election.

The CHAIRMAN: That is right.

Mr. DRIEDGER: If the Governor in Council dissolves a council, yes.

Senator CRERAR: Before the amendment was put through for the Yukon Act what was the provision for the elected members—for a period of time without dissolution?

The CHAIRMAN: In the House of Commons Act there is a specific provision as to how by-elections shall be called; there is no such provision in the Northwest Territories Act.

Senator POWER: We all agree on that.

The CHAIRMAN: That looks as if there is a gap there.

Senator POWER: It looks as if there is a gap, and it has to be filled somewhere.

Senator WHITE: Did the witness not state that the provisions referred both to general elections and by-elections?

The CHAIRMAN: Yes, but that is the conduct of them. The Chief Electoral Officer has no power himself to call an election under the Canada Elections Act. He must issue a writ when he is instructed.

Senator WHITE: What does the witness say?

Mr. DRIEDGER: The view I was putting forward was that these provisions in the House of Commons Act dealing with by-elections are not there because there is no power to issue a writ for a by-election in the absence of those provisions. They are there to regulate the calling of by-elections and to prescribe time limits within which it is to be done and to lay down the procedure for doing it; but it does not follow that if those provisions were not there, there would be no authority to call a by-election, any more than it would follow that there is now no authority to call a general election.

The CHAIRMAN: What we are saying is because the Northwest Territories is administered by a council which is appointed by the Governor in Council that the Governor in Council has an adherent authority that does not exist by statute, but has an adherent authority to direct the Chief Electoral Officer to issue a writ for a by-election.

Mr. DRIEDGER: No sir, that is not what I was saying. What I was putting forward is this, that the chief executive authority has authority to direct the issue of a writ, and the chief executive authority in the Northwest Territories is the Commissioner.

Senator CONNOLLY (*Ottawa West*): Maybe I do not follow this.

The CHAIRMAN: I am not quite clear about it either.

Senator CONNOLLY (*Ottawa West*): In the House of Commons Act you proscribe that within a certain time after a vacancy procedure is to be set up for the calling of a by-election. Now, in the Northwest Territories Act you are saying the Governor in Council or the Executive Authority has the right to call a by-election but you do not put any time limit on it as to when he does it.

Mr. DRIEDGER: If I may point out again, I was saying not the Governor in Council but the chief executive authority namely the Commissioner, under the Northwest Territories Act...

Senator CONNOLLY (*Ottawa West*): How do you reach that conclusion? From what is said in the definition section?

Mr. DRIEDGER: Section 3 of the Northwest Territories Act provides that the Governor in Council may appoint for the Territories a chief executive officer to be styled and known as the Commissioner of the Northwest Territories, and I was indicating that the conclusion I came to when I considered this question was that the authority to direct the issue of writs for an election resides in the chief executive authority. Section 4 provides that the Commissioner shall administer the Government of the Territories under instructions from time to time given by the Governor in Council or the minister, and if the Commissioner should neglect or fail or refuse to call an election...

Senator CONNOLLY (*Ottawa West*): Are you not giving a broader interpretation to the term Chief Executive Authority or Officer than is called for... You are practically assimilating his powers to the powers of the federal Cabinet.

The CHAIRMAN: You are overlooking the fact that this is a delegated authority to the commissioner.

Senator LAMBERT: Certainly it is a delegated authority but he is putting it in a different category altogether from the rest of the country.

The CHAIRMAN: If you have a delegated authority I do not know what the limits of discretion are to be on his part.

Senator CONNOLLY (*Ottawa West*): We are talking about a legal point here, Mr. Minister.

Hon. Mr. HAMILTON: Yes, and I am enjoying it.

Senator LEONARD: A nice law suit could hang on that.

The CHAIRMAN: I think you were about to ask a moment ago Senator Leonard if they would not feel happier if there was a statutory authority for this.

Senator LEONARD: That is right. I think that any administrator would like to have that spelled out.

Senator ASELTINE: Would it not be possible to put a few words in there to do that?

The CHAIRMAN: I think it would, very easily.

Mr. DRIEDGER: I might mention this though, Mr. Chairman that if you feel that there should be a provision to this effect in the bill then you are proceeding on the assumption that in the absence of such a provision you have no authority to call a by-election, and I would suggest to you that the same reasoning would apply to a general election under the Northwest Territories Act as well as to a general election and a by-election under the Yukon Act.

The CHAIRMAN: Mr. Driedger, all we are dealing with here is the Northwest Territories Bill. That is what is before us. If other statutes have something in them that may be wrong that is not before us. We have this problem immediately before us and you cannot say that if there is something in another statute that is a good reason for continuing it in this.

Senator LEONARD: Even if the amendment was supposed to be declaratory would it affect the other laws?

Mr. DRIEDGER: If you make this amendment to the Northwest Territories Act then would you not be implying that Parliament did not intend that under the Yukon Act the Commissioner has any authority to issue writs of election?

The CHAIRMAN: That is another problem, Mr. Driedger.

Senator HORNER: It seems to me that you lawyers are always arguing about precedent. I do not know why objection is taken to Mr. Driedger mentioning the Yukon Act. Lawyers are always arguing about precedents that are contained elsewhere.

The CHAIRMAN: Senator Horner, you need the assistance of the law from time to time so do not decry the lawyers too much!

Mr. Driedger, have you any suggestion as to appropriate words that might meet difficulties that a lot of the members here seem to feel they have.

Mr. DRIEDGER: I am afraid not sir. Perhaps I might state my position here, that I am a civil servant and I could not as a civil servant undertake at the request of the committee of either house to make an amendment that I know is contrary to Government policy. I would have to take my instructions from the minister or the cabinet.

The CHAIRMAN: Well, we have our Law Clerk here just for that purpose, Mr. Driedger.

Well, provision is made here that a commissioner shall have full executive powers in the same way as the Governor in Council has, and I do not see that from what has been quoted here.

In any event the minister has not told us that that is Government policy, that the commissioner is to have a power equivalent to that of the Governor in Council.

Hon. Mr. HAMILTON: Mr. Chairman, this point was discussed with the Minister of Justice, and as I am not a lawyer I have to take the decision of the Minister of Justice in these matters, that that is Government policy. I have listened to this discussion with great interest and as I said, the first question that I myself asked was why are these things not definitely spelled out. Apparently it has worked for many years in the Yukon and it has gone forward smoothly and maybe it will still go on smoothly in the Yukon Territory. Mr. Chairman, this has been good intellectual exercise for me listening to these fine points being discussed but what strikes me is that if the thing is working why not just move forward on the same basis?

Senator LAMBERT: Mr. Chairman, can we not leave further discussion on this point in abeyance in the meantime and try to work out something later on. It is as clear as a pikestaff that we are giving the commissioner an authority which certainly is extraordinary.

The CHAIRMAN: While we have the minister here and perhaps we can go through the other sections of the bill and then come back to this one. I think we have heard everything that can be said about it and I think it will be repetitious to go on. We can get the view of the committee after discussing the other clauses.

Is there any objection to section 2? This gives to the commissioner on recommendation of the council the right to determine where the sessions of the council shall be held.

Senator CRERAR: Have you disposed of section 1 Mr. Chairman?

The CHAIRMAN: No, section 1 stands.

Shall section 2 carry?

Some SENATORS: Agreed.

The CHAIRMAN: Section 3 deals with certain officials. I don't see any difficulty about this section.

Senator ASELTINE: It is the same as in the Yukon Act.

Some SENATORS: Carried.

The CHAIRMAN: Section 4?

Senator POWER: May I ask the Minister how he intends to interfere with our fundamental freedom to drink if we go to the Northwest Territories?

Hon. Mr. HAMILTON: This will make it legitimate. At the present time you have to go to the commissioner to get permission, and that is not always an easy thing in a big, sprawling country like ours. By the amendment the commissioner could appoint various persons in various centres to give authority to import liquor into the Territories. I think it is well known that at the present time with the various construction crews and so on in the North, they do take liquor in, but they do so illegally.

Senator CONNOLLY (*Ottawa West*): Have you a liquor commissioner there?

Hon. Mr. HAMILTON: We have a liquor store at Yellowknife. I may say that liquor sales is one of the primary sources of revenue in the Northwest Territories. This arrangement operates very well where you have a settled community, but in the scattered communities over the north-east Arctic, it would be a better arrangement to have a number of people who could give permission.

Senator LAMBERT: Is this not a measure of relaxation that should be very carefully considered, in view of the character of the country? I am not taking a holier-than-thou attitude in that respect, but we all know that there are a good many elements resident in those districts, which make it questionable whether the delegation of power should be extended too widely.

Hon. Mr. HAMILTON: I would imagine that the delegation of power would go in most places to an R.C.M.P. constable or the head of a detachment, or one of our northern service officers, or someone of that classification, who would have a keen interest in knowing where the liquor was and how much was around.

Senator LAMBERT: "A person authorized by him", is a pretty wide definition.

The CHAIRMAN: It is the definition that bothers me. I do not see why the commission could not have a staff under the law as it is, and let them deal with it, and he would continue to sign the authority.

Senator ASELTINE: They would be authorized by him.

The CHAIRMAN: Certainly, but under this section the commissioner would be able to authorize some person who could act fully without further reference to the commissioner, and it might apply to a whole series of persons in the area.

Senator CRERAR: Mr. Hamilton, have you liquor stores in the Territories, outside Yellowknife?

Hon. Mr. HAMILTON: There are three liquor stores: one at Fort Smith, which is the administrative centre of the Mackenzie district; one at Aklavik, a town at the mouth of the Mackenzie River; and one at the mining town of Yellowknife.

The CHAIRMAN: Is this proposal of an extension of authority, in addition to the liquor stores that you now have? Do the words "commissioner or a person authorized by him" mean that a person so authorized could authorize the setting up of liquor stores?

Hon. Mr. HAMILTON: No, this has nothing to do with liquor stores. I have discussed this with my Deputy Minister and Assistant Deputy Minister, and Mr. Cunningham is here now. Would it not be better to have him give the details of this proposal as to how we intend to protect the native people?

Mr. CUNNINGHAM: The liquor business in the Territories is run by the commissioner—there is no liquor commission. He superintends the store operations; he purchases the liquor for sale in the stores and sells it. These stores are patronized by the people to whom they are readily available, and they are all located in the Mackenzie District, which is the western part of the Territories.

There are, however, a very large number of settlements in the central and eastern Arctic where residents live and people come in on business from the south of Canada, who cannot buy liquor from Yellowknife because the distance is so great, communications are so roundabout and costs of transportation are so high; it is not sensible to require them to pay the cost of transportation and suffer the delays of getting mail to get their liquor.

Under the present arrangement the commissioner himself gives permission to import from the provincial liquor store a certain amount; it may be one bottle or one case. If the purchase is for a mess, it may be a substantial amount. But at the present time every such application must be routed through the commissioner at Ottawa, and actually signed by him personally.

There are a substantial number of these applications, and the commissioner does not now exercise an intelligent discretion in each case. He simply signs the ones that are passed to him by his officers. We think this is a waste of the commissioner's time. We are decentralizing a large number of functions as fast as we can, and passing them to the Territories rather than to Ottawa. This is one such step in the decentralization.

The CHAIRMAN: Mr. Cunningham, I notice the section not only entitles the persons who are authorized to permit the importation of liquor, but they could permit the manufacturing and the compounding of liquor in the area.

Mr. CUNNINGHAM: They would not do that.

The CHAIRMAN: But the amendment is drawn in such a form that it applies to both things.

Mr. CUNNINGHAM: That is correct. The only purpose of the amendment is to change the one point in the law, as to who may issue importation permits. The wider authority, namely the manufacturing as well as the importing, technically has existed in the act for many years. But I think there has been only one instance where authority to manufacture in the Northwest Territories was ever granted: that was about 40 or 50 years ago when a member of a religious order was given the right to manufacture sacramental wine, because of the difficulties and distances. But that permission no longer exists and this power has not otherwise been exercised.

The CHAIRMAN: That is not my point, Mr. Cunningham. You have said that because of the difficulties of distances etc., this proposal is to make it easier to give authority to some person to bring liquor in from a province for his own use. But to give any person, other than the commissioner, the authority to permit the manufacture of liquor in the Northwest Territories, is, I think, going too far. That is a question of policy that should stay with the commissioner.

Mr. CUNNINGHAM: The answer to that I think is this: certainly, no delegation of the power to permit manufacture would be made by the commissioner; and the person to whom this authority is delegated by the commissioner will be limited by the commissioner to issuing permits to import liquor.

The CHAIRMAN: Then why don't we limit that delegation?

Mr. CUNNINGHAM: We could.

The CHAIRMAN: I think it should be limited.

Senator LAMBERT: I think so too.

The CHAIRMAN: The only reason you have given for extending this authority from the commissioner to some person authorized by him, was because of the distance, the cost and expense to people to get liquor in the ordinary way from liquor stores located in the western part of the Territories—that is very well—and you want a person authorized, who is readily available in the area to give that permission. But, the commissioner should move slowly in passing out any right to manufacture.

Senator LAMBERT: Does not this really boil down to the circumstances where in order to eliminate a certain amount of red tape that affects the Minister now, you are proposing to substitute a new order of things which may be a real threat of a wide-open shop operation in the distribution of liquor in the Territories? I cannot see it any other way.

The CHAIRMAN: Mr. Minister, what would you say if this delegation of authority from the commissioner to some person authorized by him was limited to the importation of liquor into the Territories from the outside?

Hon. Mr. HAMILTON: That would be quite agreeable to me, Mr. Chairman. One thing I should like to make very clear regarding it: it appears from looking at the bill that that clause was just added here. There of course should not be any discrimination against the Territories, if any person wishes to set up a brewery there.

The CHAIRMAN: The Commissioner would be one.

Hon. Mr. HAMILTON: Yes. Therefore, in the redrafting of it, it would strike me that this should be very clear: the delegation authority only applies to importation.

The CHAIRMAN: This could be covered by a very simple amendment. The law clerk could supply the necessary wording on that. Mr. Driedger, will this conflict with your conscientious approach to Government policy?

Mr. DRIEDGER: No.

The CHAIRMAN: We have approved of the principle of the amendment. It stands, to get the actual wording.

Now as to subsection 5 of section 42, you will notice that the Importation of Intoxicating Liquors Act is not to apply. I think the reason is that they have already provided for that in another section of the act.

Hon. Mr. HAMILTON: Yes.

The CHAIRMAN: Now, as to section 5, dealing with archaeological sites: would you care to say something on that.

Hon. Mr. HAMILTON: Those of us who are historically-minded are quite conscious of the fact that much of our early history in this country is linked with the northern coasts, where they have come up with amazing finds, extending our history back thousands of years. With parties moving up there, there is a tendency, when these artifacts come to light, for the finder to put them in his pocket, and for them to disappear to other countries. So we want to put this type of section—there is one, I believe, in the Yukon Act—into the Northwest Territories Act. I believe we should have a statute covering, for all the territories of Canada, exportation of artifacts which are essential tools of our history. I do not think we have any complaint against authorized groups, coming, say, from American universities to study the archaeology of these areas; but we are trying to provide against an emergency situation where, for instance, aircraft land, camps are made, men go digging around and come up with these artifacts which are of tremendous importance to the study of our early history, take them away and move them out of the country. They may pop up in all sorts of places, and we have lost control of them.

Senator CONNOLLY (*Ottawa West*): Have you had many such experiences?

Hon. Mr. HAMILTON: It comes mostly in the way of complaints from archaeologists that these things are disappearing and turning up in other places.

Senator CONNOLLY (*Ottawa West*): It has been done, eh?

Hon. Mr. HAMILTON: Yes. This is mainly a defensive measure, a move for protection. As I say, it is my personnal opinion that there should be some sort of law to cover the whole of Canada, so that where necessary there will be some type of protection provision against the export of these finds from any province. So if some provinces are not yet covered, we could protect the history of our country in that way.

Senator REID: You do not object to the work of scientific groups?

Hon. Mr. HAMILTON: If they come and ask permission to look for a site, I think they can get a licence from us to go and do exploration. We have control over these scientific groups. But we are concerned with such a case as this, in a remote area: this is an imaginary illustration. I can visualize a Northern Service officer, a member of the Department of Transport, or one of my officials or any individual employed in a group and seeing these things happening, reporting it to a constable, and this peace officer, which I understand a constable is—would have the power of immediate seizure and would then file the necessary legal papers. In these remote areas it is very difficult to get warrants.

Senator REID: If some trouble arose between an individual who picked up one of these articles and a peace officer, and it was later found out that the article had no historic value, is there any means of appeal on his part?

Hon. Mr. HAMILTON: Yes, there is.

Senator REID: There should be.

The CHAIRMAN: In subsection 3 of section 45A it is provided that:

> "Every seizure made under section (2) shall be reported as soon as practicable to a justice of the peace, who may, upon satisfying himself that the object, specimen or document was removed, taken, shipped, had in possession or otherwise dealt with contrary to the regulations, declare it to be forfeited . . ."

So the person who is in possession of this object can make his defence, and if he makes a proper case he would be entitled to the return of the article.

Senator CRERAR: I think this section is all right.

The CHAIRMAN: I think it is desirable.

Section agreed to.

The CHAIRMAN: Going back to section 4, I read section 42, subsection 1, with the change incorporated:

> "No intoxicant shall be manufactured, compounded or made in the Territories except by permission of the Commissioner, and no intoxicant shall be imported or brought into the Territories from any place outside the Territories, whether it is in Canada or elsewhere, except by permission of the Commissioner or a person authorized by him."

Is that agreed to?

Amendment agreed to.

The CHAIRMAN: That leaves only section number one, which we stood.

Senator ASELTINE: Would it be possible to appoint a separate committee to further consider this matter, or can we do it now? It would take half an hour.

The CHAIRMAN: Our Law Clerk has suggested the addition of a subclause, in this language:

> "The Governor in Council may make regulations with respect to the calling of elections and by-elections under this section."

Senator HAIG: That is good enough.

Senator CRERAR: That covers the point.

Senator MCKEEN: Would the minister approve of that?

Hon. Mr. HAMILTON: I was talking to Mr. Driedger about that point, and I think I would have to reserve my decision on that, because it is a matter which I would have to take up with the Minister of Justice, because Mr. Driedger's opinion is pretty clear; he thinks this will embarrass us under the Yukon Act, seeing that we have not this power.

The CHAIRMAN: I think the proper course is the one suggested by Senator Aseltine, that we appoint a subcommittee, and we can work this thing around and report back to the committee.

Senator CRERAR: Just covering this point? The other point we have dealt with.

The CHAIRMAN: Yes. The other point we have not dealt with is, whether the Governor in Council should have the power to dissolve the Council at any time. We can vote on that aspect of it now and get that out the way.

Senator CRERAR: If you intend to vote on that I want to move an amendment.

The CHAIRMAN: Were you proposing that the two-year provision remain?

Senator CRERAR: My amendment would be this, that after the word "time" in line 11 we add these words, "after the expiration of two years".

The CHAIRMAN: I will not put the question on the whole section because there is one part of it we are standing for consideration by the subcommittee, but with respect to the aspect of it wherein the Governor in Council may dissolve the Council at any time, Senator Crerar has suggested an amendment, adding the words "after the expiration of two years" after the words "at any time".

Senator CRERAR: It would then read:

"Every Council shall continue for three years from the date of the return of the writs for the general election of the elected members thereof and no longer, but the Governor in Council may at any time after the expiration of two years dissolve the Council and cause a new Council to be elected and appointed."

That maintains the existing provision.

The CHAIRMAN: Yes. You would have to add the words "from the time the issue of the writs had been returned".

Senator ASELTINE: I do not see any harm in the present clause in the bill.

The CHAIRMAN: Are you ready for the vote?

Senator POWER: Does this mean now that if an elected member were to drop dead the night of the election he could not be replaced for two years? Is that what this means?

The CHAIRMAN: No, this deals only with the dissolution of the whole Council. The effect of Senator Crerar's amendment would be that the Governor in Council could not dissolve the Council until after the expiration of two years from the time the issue of the writs had been returned.

Those in favour of Senator Crerar's amendment to restore the present law, please indicate by raising their hands.

The CLERK OF THE COMMITTEE: Five in favour.

The CHAIRMAN: Those opposed?

The CLERK OF THE COMMITTEE: Nine opposed.

The CHAIRMAN: The amendment is lost. We still have one item which is now in the hands of the subcommittee. That concludes our work for the day.

Senator HAIG: I move that a subcommittee be appointed composed of the Chairman, the Leader of the Government and the Leader of the Opposition.

Hon. SENATORS: Agreed.

The committee thereupon adjourned.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-26, intituled:
"An Act to amend the Northwest Territories Act"

The Honourable SALTER A. HAYDEN, Chairman

No. 3

TUESDAY, MARCH 17th, 1959

WITNESS:

Mr. F. J. G. Cunningham, Assistant-Deputy-Minister, Department of Northern Affairs and National Resources.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20831-4—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

MONDAY, March 9, 1959.

"Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Brunt, that the Bill C-26, intituled: "An Act to amend the Northwest Territories Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20831-4—1½

REPORT OF THE COMMITTEE

TUESDAY, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-26), intituled: "An Act to amend the Northwest Territories Act", have in obedience to the order of reference of March 9, 1959, examined the said Bill and now report the same with the following amendments:—

1. Page 1: after line 14 insert the following:—

"(4) Writs for the election of elected members of the Council shall be issued on the instructions of the Commissioner."

2. Page 2: strike out lines 3 to 7 both inclusive and substitute the following therefor:—

"42. (1) No intoxicant shall be manufactured, compounded or made in the Territories except by permission of the Commissioner, and no intoxicant shall be imported or brought into the Territories from any place outside the Territories, whether it is in Canada or elsewhere, except by permission of the Commissioner or a person authorized by him."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 17, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden (*Chairman*), Aseltine, Beaubien, Brunt, Connolly (*Ottawa West*), Croll, Golding, Haig, Horner, Isnor, Kinley, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Reid, Thorvaldson, Turgeon, Wall, White, Wilson and Woodrow—24.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official Reporters of the Senate.

Consideration of Bill C-26, An Act to amend the Northwest Territories Act, was resumed.

Mr. F. J. G. Cunningham, Assistant-Deputy-Minister, Department of Northern Affairs and National Resources was heard.

It was resolved to report the Bill with the following amendments:—

1. Page 1: after line 14 insert the following:—

"(4) Writs for the election of elected members of the Council shall be issued on the instructions of the Commissioner."

2. Page 2: strike out lines 3 to 7 both inclusive and substitute the following therefor:—

"42. (1) No intoxicant shall be manufactured, compounded or made in the Territories except by permission of the Commissioner, and no intoxicant shall be imported or brought into the Territories from any place outside the Territories, whether it is in Canada or elsewhere, except by permission of the Commissioner or a person authorized by him."

At 11.00 A.M., the Committee proceeded to the consideration of other Bills.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 17, 1959

The Standing Committee on Banking and Commerce, to whom was referred Bill C-26, to amend the Northwest Territories Act, met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum.

We have before us for further consideration Bill C-26. The only item left open at the last meeting was in relation to section 1 of the bill, and the necessity which we felt for some provision for authority in some person to issue instruction for the holding of elections. We felt there was that gap in the scheme.

When we looked at the statute itself and the Canada Elections Act, and looked at the Yukon Act to which reference was made last day, we found there were complete provisions in relation to the calling of elections; we do not wish to model this amendment after the provisions in the Yukon Act, for reasons which I can state very shortly, namely, that the Yukon Act provides for the passing of an ordinance by the Government of the Yukon, which would mean they would have authority to lay out the whole plan of elections quite apart from the application of the provisions of the Canada Elections Act. That from the point of view of the minister does not seem to be desirable, nor is it in accord with certain amendments made to the Canada Elections Act so as to relate its provisions specifically to the Northwest Territories Act and the Yukon Act. You will find such provisions in section 114 of the Canada Elections Act.

Your subcommittee finally came up with this suggestion to close the gap, and it has been approved by the department and by the representative from Justice, that we give authority to the commissioner of the Northwest Territories so that he may issue the instruction for the issue of a writ, which instruction goes to the Chief Electoral Officer. He must issue the writ, and the machinery of the Elections Act starts to operate.

The suggested amendment is that we add a new subsection 4 to section 1 as follows:

> Writs for the election of members of the council shall be issued on the instruction of the commissioner.

Senator ASELTINE: That takes care of the objection.

The CHAIRMAN: Yes. Our objection was in relation both to elections and by-elections; and since a by-election under the Canada Elections Act is an election, we do not have to spell it all out.

Senator WALL: What is the interpretation of the word "shall"?

The CHAIRMAN: "...shall be issued on the instruction of..." that is a mandatory direction to the Chief Electoral Officer.

Senator POWER: I am questioning that proposed amendment, since there are two types of members of the council. The amendment would appear to include all members of council, when in fact it should apply only to the elected members.

The CHAIRMAN: Rather than argue the point—yes.

Senator POWER: It is for the election of the elected members to the council.

The CHAIRMAN: We could perhaps say the "elective members".

Senator BRUNT: I think there should be a distinction between the two.

Senator MACDONALD: There are no other members who are elected.

Senator POWER: There are members who are not elected. We are proposing to say that writs for all members of council shall be issued—it is mandatory. I would like to see it stated somewhere that it does not apply to those who are appointed.

Senator LEONARD: In subsection 2 the words used are "writs for the general election of the elected members."

The CHAIRMAN: That is why I think we have to stick with the word "elected".

Senator LEONARD: It was used twice in subsection 2 and there is no objection to using it twice in subsection 4.

The CHAIRMAN: This will be the wording: the writs for the election of elected members of the council.

Senator POWER: Is not the word "return" the proper term?

The CHAIRMAN: No.

Senator POWER: He is elected when the writ is returned. Of course it is almost a technical term.

The CHAIRMAN: The wording is: "writs for the election of the elected members of the Council shall be issued on instructions of the Commissioner."

Does the committee approve?

Hon. SENATORS: Carried.

The CHAIRMAN: You will recall we made an amendment the other day, so there have been two amendments made to this bill. We carried the other amendment at the last meeting, it was in section 4 of the bill which purports to amend section 42 of the act. The new subsection 1 of section 42 as set out in section 4 of the bill and as amended reads as follows:

> No intoxicants shall be manufactured compounded or made in the Territories except by permission of the Commissioner and no intoxicants shall be imported or brought into the Territories from any place outside the Territories whether it is in Canada or elsewhere except by permission of the Commissioner or a person authorized by him.

Senator POWER: Is there a definition of "intoxicant" anywhere?

Senator BRUNT: I think there must be one some place.

Mr. CUNNINGHAM: There is a definition of that word in the Intoxicating Liquor Act.

The CHAIRMAN: In the definition section of the Northwest Territories Act, which is section 2(e), "intoxicant" includes alcohol, alocholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating.

Senator ASELTINE: I move that we report the bill.

The CHAIRMAN: Shall I report the bill?

Hon. SENATORS: Agreed.

Senator WALL: Mr. Chairman, just before the bill carries: I notice that in section 45A under "Archaeological Sites", that power is given to seize archaeological specimens without a warrant.

Senator ASELTINE: That feature was fully explained the other day.

Senator WALL: I remember the explanation, but I wanted to ask à propos of that, does that kind of thing hold within Canada. Suppose I wanted to take out a certain object or specimen of an archaeological nature, is it subject to seizure?

The CHAIRMAN: If you were in the Northwest Territories and if you helped yourself to one of these archaeological specimens, and if a peace officer heard about it he would take it from you without a warrant.

Senator WALL: Could that happen in Canada?

The CHAIRMAN: I do not know what the jurisdiction of the peace officer is.

Senator WALL: It was just for clarification that I asked.

The CHAIRMAN: Gentlemen, we have reported the bill.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill (S-2), intituled: "An Act to amend the Public Lands Grants Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 1

WEDNESDAY, FEBRUARY 4th, 1959.

WITNESS

Mr. C. R. O. Munro, Chief of Legal Services, Department of Public Works.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20486-7—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
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Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, 28th January, 1958.

"Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Monette, that the Bill S-2, intituled: An Act to amend the Public Lands Grants Act, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20486-7—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, February 4, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Beaubien, Connolly (*Ottawa West*), Croll, Davies, Euler, Farris, Gouin, Hugessen, Kinley, Macdonald, McDonald, McKeen, McLean, Monette, Pouliot, Power, Reid, Robertson, Taylor (*Norfolk*), Turgeon, Wall, White, Wilson and Woodrow—27.

In attendance: Mr. Russel Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

Bill S-2, An Act to amend the Public Lands Grants Act, was read and considered.

Mr. C. R. O. Munro, Chief of Legal Services, Department of Public Works, was heard in explanation of the Bill.

On Motion of the Honourable Senator Macdonald, seconded by the Honourable Senator McDonald, it was RESOLVED to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

The further consideration of the Bill was postponed.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, February 4, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-2, an act to amend the Public Lands Grants Act, met this day at 11 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: Will the meeting come to order? We have before us Bill S-2.

Senator FARRIS: Mr. Chairman, I suggest that the main part of the section, of which this proposed amendment is a part, be read into the record.

The CHAIRMAN: Bill S-2 provides for the amendment of section 4 of the Public Lands Grants Act by adding thereto the following subsection 2. That subsection is set out in the bill before us. The first subsection in the act, which is 4(a), reads:

> The Governor in Council may (a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in law.

There you have a starting point.

Senator FARRIS: Now, what is your explanation of the extent of that?

The CHAIRMAN: The only explanation which I have is that the purpose, it is said, for this amendment is to give statutory effect to a practice that has gone on for very many years of making these transfers by Order in Council; and since that was questioned by Mr. Justice Rand in the Supreme Court of Canada decision in 1945—only an *obiter,* because he was the only one who delivered that point, and the judgment of the court did not turn on it—he suggested that there was a question as to whether or not the executive could transfer land in that way in the absence of specific authority to do it in that fashion.

In those circumstances it appears to me that the amendment is intended now to go far enough—whether the language is complete enough or not, I am not saying—but it is intended to give statutory authority to make transfer by order in council.

Senator FARRIS: It not only deals with form, but with the substance of the right.

The CHAIRMAN: It may. That is why I am not saying whether or not it goes far enough.

Senator WALL: May I ask a simple question? Does paragraph (a) by its use of the words "or other disposition", and by repeating it at the end "or other disposition of which there is no other provision in law" not cover that particular point?

The CHAIRMAN: No. What I would point out is this—and I am just expressing a point of view—there are words of limitation in the authority that exists in the act as it now reads; and those words of limitation are that the

public lands that are to be sold are not required for public purpose, and that for the sale, lease, or other disposition of which there is no other provision in law. First it says, this does not apply if there is some other statute that gives specific authority. Secondly, we have the words of limitation in the authorizing section. I am wondering whether the failure to put that in this subsection does not make the section broader than the one I originally read.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, may I ask a question, and perhaps make a speech in doing so? I wonder whether the right section is being amended? Section 2(a) of the act reads:

> In this Act, (a) "grant" means letters patent under the Great Seal of Canada, and any other instrument by which public lands may be granted in fee simple or for an equivalent estate.

Apparently those words "any other instrument" in the view of Mr. Justice Rand do not include an order in council, which is the way it was proposed that this type of action be carried out. I wonder whether, instead of amending section 4 by putting in a subsection that might create some equivocation, we should consider amending the section 2(a) of the act to read perhaps this way: "And any other instrument, including an order in council, by which lands may be granted in fee simple or for an equivalent estate."

Senator ASELTINE: They are not always granted in fee simple.

Senator CONNOLLY (*Ottawa West*): Or for an equivalent estate.

The CHAIRMAN: That covers it.

Senator CONNOLLY (*Ottawa West*): I don't think that would matter.

Now, I can say a good deal more about that, but I draw that point to the attention of the committee, as perhaps a simpler and more effective way of dealing with it, and then we would not destroy or interfere with the general powers that are contained in section 4. You see, section 4, reading it quickly, says that the Governor in Council may (a) authorize the sale, lease etcetera; (b) make regulations; (c) prescribe tariff of fees; (d) fix the rate. These are all things that are quite different from the manner in which the transfer is to be carried out.

Senator MONETTE: You mean a distinction between the authorization by the Governor in Council and the authorization by the act?

Senator CONNOLLY (*Ottawa West*): The method of doing it.

Senator MONETTE: If it is authorized by the Governor in Council, it is an order in council.

Senator CONNOLLY (*Ottawa West*): As I understand it the order in council actually carries out the transfer, in the contemplation of this amendment.

The CHAIRMAN: May I point out that the manner in which the executive expresses itself is by order in council. So, you start out with that. If it wants to express a decision, it is by order in council.

Senator CONNOLLY (*Ottawa West*): That is the authority for them.

The CHAIRMAN: So, your suggestion is that this amendment is not necessary, because it may be adding some substantive law. I am inclined to agree with that.

Senator CONNOLLY (*Ottawa West*): There is that aspect.

The CHAIRMAN: I am inclined to agree that it does add some substantive law, but if you can amend the definition of "grant" to cover transfer as well by order in council, which is the manner in which the executive functions, then that may meet the difficulties that are presented in this case.

Senator CONNOLLY (*Ottawa West*): I think we should hear from Mr. Munro. I have one further question to ask with respect to what Senator Monette raised.

The normal way in which a transfer is effected is by a deed. The order in council is intended to take the place of a deed. In other words, suppose the transfer is being made to a province, can the provincial authority take the order in council and register it, and thereby say that it is title for the land transferred?

The CHAIRMAN: If land is properly described in an instrument, so that it can be identified on the register, you may register it.

Senator CONNOLLY (*Ottawa West*): Quite right. I am talking now about the actual conveyance of title. Will this amendment have the same effect as the deed, in that title is actually transferred?

The CHAIRMAN: Any interest in land may be recorded, if you can identify it.

Senator ASELTINE: If the transfer is in the right of a province it has to be done by deed, by letters patent under the Great Seal.

Senator CONNOLLY (*Ottawa West*): Well, senator, I don't know that the explanatory note is so restricted, because it says it was suggested by some of the judges that the executive could not transfer lands in this way, but it does not say to a province. It simply says "transfer lands".

The CHAIRMAN: I should point out that a number of sections in the statute itself use the word "grant" in dealing with references to transfers and conveyances. So, I would not like to rush into an amendment. We might distort the whole statute. Besides, we should hear from Mr. Munro and see what he has to say.

Senator MACDONALD: Before we hear from Mr. Munro, may I say a word? The Chairman has pointed out that we might distort the whole statute. What concerns me is the present effect of the whole statute. It seems to me we are giving the Governor in Council—that is Cabinet—wider powers than the very wide power it has at the present time. As Senator Farris pointed out, we can transfer land after the passage of this bill by order in council from Canada to Australia; Senator Hugessen mentioned the same thing during the debate in the house the other day. And as Senator Power mentioned a moment ago we will be able, after the passing of this bill, to transfer by order in council such an airport as Gander to the United Kingdom.

Senator POULIOT: Goose Bay and Gander.

Senator MACDONALD: I am not saying whether or not that might arise or when it does arise that it should not be done, but it occurs to me it should be done by Parliament rather than by order in council.

Now, last week the Leader of the Government introduced into the house a bill effecting, if I recall the terms of the bill correctly, Indian lands to the province of New Brunswick, and that has to be done by Parliament, by statute. And yet by this bill we give the Dominion Government the power without coming to Parliament of passing an order in council and conveying these public lands; and in this amendment we do not see the words, "not required for public purposes" of conveying any public lands to any right other than Canada. I think when we are considering this bill we should keep that in mind and decide whether or not we are not giving the Government too much power.

Senator ASELTINE: Would it not be an imposition, Senator Macdonald, to have every case of this kind come before Parliament. For instance, we had a few cases in recent years where a part of a national park was taken out of the park for Hydro purposes and that kind of thing. It seems to me that it would be absolutely impossible to do anything else, if we had to come to Parliament every time a deal was made with regard to even a small parcel of land, transferring it to a province or in some other way.

Senator MACDONALD: That land was transferred by act of Parliament, as Senator Power suggested a moment ago.

THE CHAIRMAN (*Senator Hayden*): Shall we hear from Mr. Munro?

Senator CONNOLLY (*OttawaWest*): Might I say this, Mr. Chairman, that Senator Macdonald might keep in mind that this Public Lands Grants Act is not new—it was passed in 1950—and I would think that there would be many cases where the federal authority might have to make a transfer of lands not only to provinces but to other persons, as it is authorized to do by section 4. So, I see nothing wrong about having a statute of this kind on the statute books because I think it would be required in certain cases.

I do agree to this extent that when it comes to a question of transferring a sovereign right from one state to another state even within the Commonwealth —like the situation that Senator Reid describes—that type of thing, I think, which is more than a transfer of title, is a transfer of sovereignty over a territory without affecting title, might be done by Parliament.

Senator MACDONALD: Is there any limit now requiring the type of change from one sovereign right to another?

Senator CONNOLLY (*Ottawa West*): I do not think this quite covers the transfer as between sovereign jurisdictions except within Canada, and I do not know that that term applies as between the provinces and the dominion.

Senator MACDONALD: It does not go any further than that?

Senator CONNOLLY (*Ottawa West*): May I just finish one point Mr. Chairman.

Heretofore this kind of thing could be done by deed. Now it is proposed to do it by order in council. If it is done by deed by the crown, Parliament never knows about it, nor anyone else, unless the Registry Office is visited. At least it is going to be done by order in council which is reported to Parliament, and Parliament knows about it because it is a matter of record in Parliament.

The CHAIRMAN (*Senator Hayden*): I would suggest that we hear from Mr. C. R. O. Munro, the Chief of Legal Services in the Department of Public Works.

C. R. O. Munro, Chief of Legal Services, Department of Public Works:

I do not know whether I can begin to answer all the problems that have been raised. The basic principle behind the bill is and I think we have to start with that proposition that the crown is one and indivisible, and when we say that a province owns certain lands, the federal Government owns certain lands, and the United Kingdom Government owns certain lands, as well as Australia, what we are saying is that the provincial ministers, the federal ministers, the United Kingdom ministers and the Australian ministers of Government have the right to advise Her Majesty as to the disposition of those lands. The title is vested in the crown.

Now, when we propose to transfer lands from the federal Government to a province or for that matter to the United Kingdom Government, there is no transfer of title at all. Title remains vested in the crown. What we are doing is transferring to the ministers of the other Government the right to advise Her Majesty as to the disposition of those lands. That is why we cannot use a deed. A deed is a grant, it transfers title, and Her Majesty does not transfer title to herself if she has title.

The courts have for many years held that the proper method of transferring the right of administration from one Government to another is by order in council and this, in fact, is how we have done it for many years. In 1945 a case came up which dealt with the situation where the federal Government took legal proceedings against a chap by the name of Higbie in connection with the land he occupied in Cole Harbour, Vancouver. The defence which was raised

by Higbie was that the federal Government did not give these lands to the provincial Government, but the federal Government relied upon an order in council of 1924, passed by the provincial Government, transferring the administration of the land from the province to the federal Government. And every single judge of the Supreme Court hearing the case agreed that the order in council transferring the land from the provincial Government to the federal Government was the proper method. There was no dispute about the method. The only question was whether the provincial Government had the authority to pass this order in council without legislative approval.

Mr. Justice Rinfret looked at the Provincial Statutes and he found a section in the British Columbia Lands Act—I think it is called the Public Lands Act or the Crown Lands Act—which is very similar to section 4 of our act, the Public Lands Grants Act as it now stands. It authorized the Governor in Council to authorize the sale or lease of public lands. Mr. Justice Rinfret said he thought that the transfer of administration from the provincial Government to the federal Government was authorized by this section. Mr. Justice Rand said no, it did not authorize it because it referred to grants only, and when lands are transferred from the federal Government to the provincial Government there is no grant. Mr. Justice Kerwin and Mr. Justice Hudson said they did not have to decide on that point because there were other points on which they based their decision. Mr. Justice Rinfret said firstly, no legislative approval is required at all, that it is a matter of the prerogative of the crown, that the crown has the right without legislative approval to transfer the administration and control from one set of ministers to another set of ministers. But, he said, even if they did need legislative approval they have it under the Public Lands Grants Act. The other two judges said that legislative approval was needed, and there was only one judge who definitely said we need legislative approval. Mr. Justice Kerwin and Mr. Justice Hudson indicated that possibly the province needed legislative approval.

After that case the province of British Columbia, in order to make it quite clear in the transferring of administration and control of provincial lands to another Government of Her Majesty, amended their statute in a similar way to what we propose here, to authorize the Lieutenant Governor to transfer the administration and control of provincial lands to other Governments of Her Majesty. We are proposing merely to do the same thing here.

One senator raised the question as to why we had not done it before now. I do not think I can answer that question. One point I would make is that only one out of the four judges said it was necessary, and ever since the Higbie case we have been transferring lands to provincial Governments by order in council. Some question might be raised as to the sort of lands which are transferred. I only know what the Department of Public Works does, I do not know what other departments do; but the sort of thing we might do is that if we have an old penitentiary building that is falling to pieces and is of no use to us but it may be of some use to a province, we might pass an order in council transferring it to the province for "X" dollars. Then again, we may have a wharf that we no longer require, and the province wishes to retain control of the foreshore, so we transfer the wharf and the foreshore to the province.

SENATOR POWER: That is when they are no longer of any use for public purposes?

Mr. MUNRO: That is right. Mr. Chairman pointed out that section 4 as it now stands limits it to lands that are not required for public purposes. It seems to me there are two things a court might say about this: it could say that the court is going to decide whether it is for public purposes, or that it is up to the Governor in Council to decide if it is for public purposes; that it is a matter of

policy. I do not know which one the court would say, but I would not be surprised if the court held that this was a matter of policy.

Senator POWER: These lands might not be of any use to the federal Government for public purposes but might be of value to the provincial authorities.

Mr. MUNRO: That is right.

Senator POWER: And still under the act you believe that you could transfer?

Mr. MUNRO: To a province?

Senator POWER: Without this amendment at all?

Mr. MUNRO: This has been argued. This is what Mr. Justice Rinfret said but it is only because there is doubt about it, and it is to clear away any doubt that we want to amend the statute.

Senator WALL: Mr. Chairman, is this new subsection that is being added going to appear later as subsection (e) of section 4?

The CHAIRMAN (*Senator Hayden*): The numbering will have to be a little different. Section 4 will have to have subsection 1 and 2.

Senator WALL: Then this subsection 2 will be of equal importance?

The CHAIRMAN (*Senator Hayden*): That is right.

Senator WALL: Therefore the Governor in Council may use subsection 1 or the equivalent right in subsection 2; that is, there is no provision that these lands being not required for public purposes, is not a primary consideration.

The CHAIRMAN (*Senator Hayden*): No. In subsection 2 it does not say subject to the revisions of subsection 1 (a)—that is what you are thinking of?

Senator WALL: That is right.

The CHAIRMAN: It does not say that. Of course you accomplish the same thing if you put the same words of limitation in subsection 2 as you have presently in 4 (a).

Senator DAVIES: Is there now an appeal on anything that goes through by order in council?

The CHAIRMAN: As such, yes. To the public, ultimately, on election day. I don't know whether, if any member of the public felt that assets were being dissipated without authority, he might bring some kind of an action.

Senator DAVIES: If the Government assumes arbitrary powers such as this,—and they are arbitrary—there is no appeal to any court except through public elections.

The CHAIRMAN: The power is there now. This is only dealing with one way of exercising it.

Senator MACDONALD: But if the words "as required for public purposes" are deemed to be necessary in the section which the Chairman has read, does it not make the whole clause rather confusing by removing those words out of the amendment which is proposed?

Mr. MUNRO: Yes. If these words have any effect at all in the statute as it now stands, they will not affect the new section, and if Parliament feels that these words have some effect and should be in the new section, then we would have to revise the amendment.

Senator MACDONALD: But, whether Parliament feels that way or not, is it not confusing to leave the words in the section which the Chairman read and not have them included in this section?

Mr. MUNRO: Well, it may be confusing; it could be confusing, yes.

Senator MACDONALD: But would not the natural interpretation be that the words mean something, and therefore they appear in one section and, for some reason or other, they are left out of another section. Therefore, my friend says, it does not apply to the other section.

The CHAIRMAN: Oh, logic, I think, calls for this, that the same words of limitation should be in both sections or should not be in either section.

Senator POWER: And adding the words with respect to the right of the Crown.

Mr. MUNRO: The public purposes of Canada.

Senator POWER: If it were to be amended I think the amendment should be, "For the public purposes of Canada".

Senator HUGESSEN: Could you not start the new section something like this: "In cases where public lands are no longer required for public purposes of Her Majesty in the right of Canada"?

Senator MONETTE: Mr. Chairman, having heard the gentlemen, I think I can express my views up to now this way. By section 4 the Governor in Council may—and they do not say, in what form—authorize the sale, lease or other disposition of any public land. I wonder if that means only a lease or something like that, or if it could not apply to a donation, a gift. I know we are not amending the statute for that, but I am making that remark, that the Governor in Council may authorize the sale, lease or other disposition of any public lands. Now, this is limited in that context, "Any public lands not required for public purposes", for the sale, lease or other disposition of which there is no other provision in the law. That is the point. Now, having heard the explanation: the new bill does not purport to transfer the property. It says that the Governor in Council may, by order, transfer to Her Majesty in any right other than Canada, the disposition and control. So under the terms of the amendment it is only the administration and control that would be transferred, and therefore the objection to allowing Her Majesty to transfer by order in council the property itself does not stand. It is simply, as was explained, a transfer of the administration and control of the land. No more is required for our own public purposes. But having transferred the control, it could not be transferred, I suppose, *in aeterno,* but for the time being we remain the owner. On that basis I see no great objection to that being done by order in council.

Senator MACDONALD: If I may interrupt: the words are that the transfer can be "either forever".

Senator MONETTE: I will not suggest that we transfer the administration of our property "forever".

The CHAIRMAN: That is what it says.

Senator MONETTE: I see no great objection to having control for the time being transferred to Her Majesty even in the interest of the United Kingdom. It is to be transferred to Her Majesty in the right of any dominion or any part of the United Kingdom: I see no objection to that, because it is a transfer of the administration. That transfer could not be said to be forever.

Senator MACDONALD: But as the act now stands the word "forever" is right in the bill.

Senator MONETTE: "Either forever". I object very much to that. Though they say, transfer of administration.

Senator POULIOT: Mr. Chairman, I have an objection to that administration, but it is on a different ground. My objection is that there is too much administration. From what has been said by Mr. Munro, one judge expresses the opinion that the Government could act by order in council, another judge said no, and two other judges said they did not have to decide the point. The Supreme Court is composed of nine judges. I do not see why the Government does not make a reference to the Supreme Court instead of to a single judge. I find that this legislation is evasive. There are many brilliant minds among my colleagues, but no one can have a definite view about the matter. I do not

complain of Mr. Munro, who is a good jurist, but the Department of Justice itself comes along with all sorts of bills and legislation that cannot be understood by bench or bar; and this is a sample. I know; we have too much of that stuff in legislation. We should get back to the Ten Commandments of God.

Senator EULER: Mr. Chairman, as one who is not a lawyer may I rush in where angels fear to tread? If this is confusing to the lawyers around this table—and it is quite interesting to listen to their various viewpoints—it certainly is confusing to those of us who are not lawyers. I wanted to ask this question. The phrase is used, "...lands that are not required for public purposes." Who is going to be the judge of that? Does that phrase mean anything at all?

The CHAIRMAN: The cabinet has to be the judge.

Senator CONNOLLY (*Ottawa West*): In view of the explanation given by Mr. Munro, my idea about amending the definition section—because that involves a transfer of title which is not required here—is not a valid suggestion. However, I do think the amendment suggested by Senator Hugessen is a very practical one and I think the committee might well consider it.

The CHAIRMAN: I was going to make this suggestion. You hesitate to make an amendment of this kind hurriedly without considering the possible effect on other sections of the bill. Would it be practicable that a small subcommittee be set up to study the bill and possibly come up with some suggestion and report back to the main committee?

Senator CROLL: That is an excellent idea.

The CHAIRMAN: Would you suggest a subcommittee to be nominated by the Chairman?

Hon. SENATORS: Yes.

Senator DAVIES: I should like to ask one question of the Leader of the Government? Has this amendment been put forth with any specific transfer in mind or is it just a general amendment to the statute?

Mr. MUNRO: I am not aware of any specific transfer of land being in mind at all. As far as I am aware the sole purpose is to remove the doubts created by the decision of the Supreme Court in the Higbie case.

Senator MCLEAN: Why should we have waited fourteen years for this thing?

The CHAIRMAN: Well, they did not catch up with their reading. Would somebody move that 600 copies in English and 200 copies in French be printed of the proceedings?

Senator GOUIN: I so move.

Carried.

Senator MACDONALD: Senator Hugessen has suggested an amendment which is to be considered by this subcommittee, but Senator Monette has another amendment that I think should also be considered by the committee.

The CHAIRMAN: I can tell you now that if they are willing, both Senator Hugessen and Senator Monette will be on the subcommittee.

Senator GOUIN: I do not expect to be on the committee but may I point out that we had an explanation in the Senate chamber that the purpose of the bill was for the transfer of land from the dominion to a province. I suggest that where it reads "in any right other than Canada" in line 2 of subsection 2 of section 1 of the bill, it should logically read: "in the right of any province of Canada." It would meet the purpose.

The CHAIRMAN: We will look into that. Now, when shall this committee reconvene? I would think possibly that the subcommittee, with Senator

Monette, Senator Hugessen and myself, might be able to present something by tomorrow morning, if the main committee wanted to reconvene then.

Senator ASELTINE: We have another committee meeting at 10 o'clock tomorrow.

Senator MACDONALD: I don't think we can rush this through too hurriedly. There is also a caucus.

The CHAIRMAN: It will be time enough next week and we will send out the appropriate notices.

Senator WALL: Apropos of Senator Gouin's intervention, could I ask Mr. Munro whether there might be situations where, say, South Africa or Australia or some place may have land that they may wish to transfer to us for some consideration, for an embassy or something. Is that the kind of thing this legislation has in mind?

Mr. MUNRO: Not a transfer from South Africa to Canada; the other way around.

Senator WALL: I am thinking of a Commonwealth Government where, for example, we may need a piece of land that South Africa has had and it would be convenient for us to use it for some purpose, whatever it may be. Would this bill give the right to the ministers of the Crown of Her Majesty in Australia?

The CHAIRMAN: No, only in Canada.

Senator DAVIES: Shouldn't the Leader of the Government and the Leader of the Opposition be on your committee?

The CHAIRMAN: Yes, they are *ex officio*.

Senator KINLEY: I think these words "land not required for public purposes" are mostly drapery. Time would have a lot to do with whether it is needed for public purposes. It may not be needed today but it may be needed in 50 years' time. The question is who can decide whether it is needed for public purposes.

The CHAIRMAN: Those are matters that we will take up.

The committee thereupon adjourned.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill (S-2), intituled: "An Act to amend the Public Lands Grants Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 2

WEDNESDAY, FEBRUARY 18th, 1959.

WITNESS

Mr. C. R. O. Munro, Chief of Legal Services, Department of Public Works.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20488-3—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, 28 January, 1959.

"Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Monette, that the Bill S-2, intituled: An Act to amend the Public Lands Grants Act, be read the second time.

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

The Bill was then read the second time.

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

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

J. F. MacNEILL,
Clerk of the Senate.

20488-3—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, February 18, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Bouffard, Connolly (*Ottawa West*), Crerar, Euler, Farquhar, Farris, Gershaw, Golding, Gouin, Haig, Hardy, Horner, Hugessen, Isnor, Kinley, Lambert, Leonard, Macdonald, Monette, Power, Reid, Taylor (*Norfolk*), Turgeon, Vaillancourt, Wall and Woodrow—(28).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-2, An Act to amend the Public Lands Grants Act, was further considered.

On a motion to amend the Bill as follows:—

Page 1, line 9: after the word "lands" insert the following: "not required for public purposes of Her Majesty in right of Canada", the Committee divided as follows:—

YEAS	NAYS
13	2

The Motion to amend the Bill was carried in the affirmative.

Mr. C. R. O. Munro, Chief of Legal Services, Department of Public Works, was further heard in explanation of the Bill.

The further consideration of the Bill was postponed.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, February 18, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-2, to amend the Public Lands Grants Act met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: We have before us Bill S-2, which proposes an amendment to the Public Lands Grants Act.

Honourable senators will recall that this bill was before us several weeks ago, and that the point at issue was referred to a subcommittee to give it consideration and report back. I can say that the subcommittee has considered the matter in the light of the discussion which took place at that time, and of which you have a transcript.

Senator MACDONALD: Probably you might refresh our memories—two weeks have intervened.

The CHAIRMAN: The neat point that we were concerned with at that time—and there was a subsidiary one to which I will also refer—was that by section 4 of the statute as it stands at the present time authority is given to the Governor in Council to sell, lease or otherwise dispose of public lands not required for public purposes. Then, when we came to consider the amendment which provided for a particular way of dealing with the transfer of public lands from Her Majesty in the right of Canada to Her Majesty in any other right, the thing that presented difficulty was that the Crown is indivisible, and therefore it is not proper to do it as you would ordinarily do it, by deed or transfer.

This amendment proposed that the Governor in Council might order a transfer of the administration and control of those public lands that were moving from Her Majesty in the right of Canada to Her Majesty in any other right. You will note that in the amendment proposed the words of limitation, "not required for public purposes", which appear in section 4 of the statute are not repeated in this section of the bill, and there seemed to be a fair body of feeling that the words of limitation in some form should appear.

Your subcommittee recommends to you that after the word "lands" in line 9 of the bill, the following words be inserted:

"not required for public purposes of Her Majesty in the right of Canada."

It is recommended those words be inserted so as to make it absolutely clear that the same limitation applies in relation to any such transaction as generally applies under section 4 of the Public Lands Grants Act.

Senator POWER: In fact, it is clearer than the original act, which says, "...not required for public purposes." In this instance you cover the case where it would be required for public purposes in the province.

The CHAIRMAN: Yes.

Senator POWER: And you say, "not required for public purposes in the right of Canada."

The CHAIRMAN: That is right.

Senator POWER: So you clarify the original act and you put back the limitation.

The CHAIRMAN: That is right, so we put in this limitation. There is a subsidiary one but possibly before we proceed to that we should deal with this and ascertain whether this report of the subcommittee—on which I may say there was unanimity—meets with the approval of the committee. Senator Aseltine, have you anything to say on that?

Senator ASELTINE: No objection to that.

The CHAIRMAN: Mr. Munro is here from the department. Have you anything to say on this, Mr. Munro?

Mr. MUNRO: No, Mr. Chairman. I do not think there would be any objection on the part of the Government as to this proposal. I cannot say as to the actual wording of the revision but not as to the principle.

The CHAIRMAN: You will have another chance as to the wording if you do not get it here. Is the committee favorable to this?

Senator FARRIS: As I understood the explanation, section 4 originally gave authority to sell or otherwise dispose of land, and this amendment was intended to deal with the question of transfer. I am wondering why the question of transfer is so much more limited than the authority under section 4? Under section 4 you can authorize the sale or disposition of land not required for public purposes, whether the public purpose is federal or provincial. Why is it that the same limitation is not in section 4 that you are putting in what is now subsection 2?

The CHAIRMAN: Senator Farris, if you wish me to answer that I will. So far as section 4 of the act is concerned I think the limitation is intended to be a limitation on the granting or transferring authority, which would be Her Majesty in the right of Canada because this is a federal statute and we could not legislate limitations of what Her Majesty in the right of a province might do. I think the words, "not required for public purposes" would, if an interpretation was sought in the courts, be held to relate the position of Her Majesty in the right of Canada—that is not required for public purposes of Her Majesty in the right of Canada. Then we have not the broadness you are talking about except that section 4 is a more general section giving authority to Her Majesty in the right of Canada to sell, lease or otherwise dispose of public lands not required for public purposes. There is no limitation there as to who may acquire those lands. It may be Her Majesty in the right of a province. It could be Her Majesty in the right of some other Commonwealth territory of which she is the Queen, or it may be a person other than Her Majesty. It may be an individual or a corporation. But in all those cases under section 4 the broad limitation is that the Governor in Council must first decide that the lands are not required for public purposes of Her Majesty in the right of Canada. It may be an individual; it may be a corporation; but in all these cases under section 4 the broad limitation is that the Governor in Council must first decide that the lands are not required for the public purposes of Her Majesty in the right of Canada. All we are saying in this amending section by inserting these words is that when you come down to the case of a particular relationship—Her Majesty in the right of Canada, and Her Majesty in any other right—these words of limitation must be inserted in there, and the Governor in Council must first determine that the lands are not required for the public purposes of Her Majesty in the right of Canada.

Senator FARRIS: My perplexity still exists.

The CHAIRMAN: I did not expect that I could resolve it to the entire satisfaction of everyone, but I am personally satisfied.

Senator FARRIS: The right to authorize a sale is provided, "or other disposition". Now why should not the method of transfer be identical with the right to decide to transfer?

The CHAIRMAN: I think it is.

Senator CONNOLLY (*Ottawa West*): Does this help Senator Farris in any way? I have not got the original act before me, but as I recall it, when we were discussing it the other day the first part of section 4, which is now on the books, refers to a document like a deed or a lease or some other document of that kind where the fee goes. This was explained to me the other day on a point that I raised—that here it is not a question of a transfer of the fee, it is a question of the transfer of administration only. Is that right?

Senator HUGESSEN: That is right.

Senator CONNOLLY (*Ottawa West*): So that as between Her Majesty in the right of the dominion, and Her Majesty in the right of a province, the fee remains in Her Majesty: what is transferred is the administration of the property, to be dealt with by Order in Council. Am I right, Mr. Chairman?

Senator FARRIS: I will read the original section: I have it before me:

> 4. The Governor in Council may (a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes—

Senator MONETTE: The only difference in the two, on this subject under discussion, is that in the original section 4 the Governor in Council is given a power to authorize a sale, while in this amendment the Governor in Council is given the power to transfer the administration, and he can do that simply by Order in Council, while under section 4 the Governor in Council was empowered to authorize a sale, not to do it by Order in Council. It is a procedural amendment that we have.

Senator CONNOLLY (*Ottawa West*): Oh, yes, senator. Under existing section 4 it is the Governor in Council authorizing the sale, so it is done by the Order in Council.

Senator FARRIS: The point is that the amendment was to provide for a method of transfer after the authorization was made; and if that is all that is involved—

Senator CONNOLLY (*Ottawa West*): I don't think so.

The CHAIRMAN: May I just throw out this idea. I think subsection 2 is an independent section. You have got subsection (1), which deals with the situation referred to there, and subsection (2), which deals with a particular situation and independently. That is why we are repeating the words "not required for public purposes", in subsection (2), because we were not at all satisfied they would carry through into subsection (1).

Senator FARRIS: If that is so it means that the authority under subsection (1) is wider than subsection (2); and if that is so how are you going to make this provision that is not in the provision in subsection (2)?

The CHAIRMAN: When you say the authority is wider under subsection (1) of section 4, it covers a broader field of operation.

Senator FARRIS: The question has arisen that that authorization does not include the method by which the transfer is made.

The CHAIRMAN: In the decision in the Supreme Court of Canada it was obiter by one of the judges that it was questionable whether you could, without statutory authority, make a transfer from Her Majesty in one right to another by order in council, and this section is intended to make that authority.

Senator CONNOLLY (*Ottawa West*): I see that the explanatory note says, "it may be argued that this authorizes only grants from the Crown." In this case it was explained the other day that we were not talking about grants from the Crown, but transfer of administration.

The CHAIRMAN: Yes, on the theory that the Crown is indivisible and cannot transfer from one pocket to another.

Senator HUGESSEN: The Crown cannot sell to itself and it cannot re-sell.

The CHAIRMAN: Yes, that argues, too, that this is an independent subsection.

Senator MACDONALD: Under section 4 the Governor in Council can authorize the sale of any public lands to any one outright.

The CHAIRMAN: Or any lesser interest.

Senator MACDONALD: Or any lesser interest; but if it is desired to merely transfer the administration and control of those lands, then it would have to be done under subsection (2).

Senator MONETTE: You could do it by order in council.

Senator MACDONALD: But if it were the desire to sell outright the interest of Her Majesty in right of Canada of any public lands, then it can be done under (a).

The CHAIRMAN: No, if the transaction is one in relation to public lands and it is going to be between Her Majesty in right of Canada and Her Majesty in right of any other right—which would be in right of a province or in right of some Commonwealth country of which she is the Queen, then the form which the transfer takes must be under this new subsection (2), and it proceeds by way of order in council, because it cannot make a deed and an absolute transfer from one pocket to another, so you transfer the administration and control.

Senator MACDONALD: Subsection (2) is only limited to the transfer of the administration and control from Her Majesty in right of Canada to Her Majesty in another right, but it does not refer to the sale outright.

The CHAIRMAN: There is no such thing.

Senator HUGESSEN: There cannot be a sale from Her Majesty in one right to Her Majesty in another right, because Her Majesty is indivisible. All she can do is to transfer the administration from one right to another.

Senator MACDONALD: That answers my question.

Senator FARRIS: It does not answer mine.

Senator GOUIN: Before it is too late, Mr. Chairman, the other day I made a remark concerning the transfer to Her Majesty in the right of another member of the Commonwealth or of the United Kingdom. I am not opposed to such transfers but I do not think they should be made merely by an Order in Council. I am in favour of the amendment which the Chairman reported, when the land is not required for any purposes of Canada. I respectfully submit that we should also amend line 6, "in any right other than Canada" and replace them by the words, "in right of any other province of Canada". I understand this was the purpose of the bill when it was first introduced. When land is transferred, of course, all enjoyment of it is transferred too.

Senator MONETTE: Your remarks, Senator Gouin, are dealt with in another amendment.

The CHAIRMAN: We have an amendment such as you advise, Senator Gouin.

Senator GOUIN: I am sorry. I wanted to have that point clarified.

The CHAIRMAN: Senator Farris, I am bothered that we do not grasp the point that you are getting at.

Senator FARRIS: Well, let me try it just once more. In section 4 I agree with the suggestion that it might deal with the disposition of land other than by a mere transfer but it might go outside of the transfer to Her Majesty. If the transfer is merely to Her Majesty in another capacity you have limited the

words, "not required for public purposes" by the words, "in the right of Canada", but if you are disposing of it by deed to some corporation, let us say, Canada can do that even though it might be required for public purposes of the province.

The CHAIRMAN: I agree with that.

Senator FARRIS: What I cannot understand is why you put those words in in the one case and not in the other.

The CHAIRMAN: The answer is simple. This is, as far as subsection 1 of section 4 is concerned, now the law, and all we are doing is attempting to make the proposed amendment satisfactory to cover what we think it should.

Senator FARRIS: But when you put in another form of disposition words that are not in here you have an inconsistency in the two which I think does not clarify the meaning.

The CHAIRMAN: If the courts were asked to interpret this, "not required for public purposes" in subsection 1 of section 4 I think the interpretation would be that it would read into those words, "of Her Majesty in the right of Canada".

Senator FARRIS: But the very fact that you made a distinction in subsection 2 would take away that conclusion.

Senator CONNOLLY (*Ottawa West*): Perhaps Senator Farris has a point and so should the committee consider also amending subsection 1 (*a*) to have it read in the same way as the proposed new amendment for subsection 2.

Senator MACDONALD: Mr. Chairman, those words "not required for purposes of Her Majesty in right of Canada" were taken from a section of the act now in existence. Which one?

The CHAIRMAN: Subsection 1 of section 4, except the additional words, "of Her Majesty in the right of Canada" are in there, and what I say is that in any court interpretation they would be read in there.

Senator FARRIS: I agree, that would do; but I think when you put it in that section, you must also put it in the other section. If I were involved in litigation on that point, I would argue that the very fact you have made the change in this section and you have not changed the other section would show a distinction between the two.

The CHAIRMAN: What you are suggesting, Senator Farris, is that we should add only the words "not required for public purposes"?

Senator FARRIS: I think that you should put it back in section 4 too.

The CHAIRMAN: But you are dealing here with a particular relationship, which is an independent relationship.

Senator FARRIS: You are dealing with an amendment which may change the meaning of section 4.

Senator MONETTE: Perhaps I could add this comment. In the present act, as the Chairman put it, the transfer or sale authorized under section 4 could be made not only to the Crown but to an individual; therefore, if the Crown is authorized to make such sales, it is not necessary to say that the property sold is not useful for purposes of Her Majesty in the right of Canada, and should not be useful for Her Majesty in any right when the land is sold to individuals. It is a disposal from the Crown to the Crown, and therefore Her Majesty in the right of Canada could dispose of lands when they are not necessary for the public purposes of Her Majesty in the right of Canada. That would not obtain if you transferred the property under the section 4 to individuals.

The CHAIRMAN: May I suggest to Senator Farris that we in this committee have the right to make any amendment to a statute when we have an amending bill before us, and the amendment might be regarded as consequential to a change which we are making under the amending bill. Therefore, if we took the view that it was consequential to the amendment we are making to subsection 2 to add those same words "of Her Majesty in the right of Canada" to subsection 1, we would have the authority to do it.

Senator FARRIS: In any event, we don't enact it; we are only recommending it to Parliament.

The CHAIRMAN: We are one of the governing bodies.

Senator CRERAR: Mr. Chairman, I would like a little enlightenment on a point which is a bit beyond the non-legal members of the committee. This amendment, as I understand it, gives authority to the Governor in Council to transfer a piece of public lands not only to Her Majesty in the right of a province, but to any other person.

The CHAIRMAN: No, the amendment does not do that.

Senator CRERAR: Then what is the meaning of this:

> The Governor in Council may by order transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands . . .

What does "any other right" mean?

The CHAIRMAN: "Her Majesty in any other right" means Her Majesty in the right of a province, Her Majesty in the right of Australia, Her Majesty in the right of the United Kingdom and so on.

Senator CRERAR: Let me give a concrete illustration of what I mean. The national parks of Canada are property of Her Majesty in the right of Canada. During the war, for purposes of public policy, it was deemed advisable to alter the conditions in Banff National Park to give Calgary Power Company additional water stored in the park, and that had to be done through an amendment by Parliament to the Parks Act.

What I am interested in at the moment is, would it be possible under this amendment for the Government by order in council to make such a transfer in the future?

The CHAIRMAN: I think the answer is very simple, Senator Crerar, and it is this: in the present section 4 the Governor in Council may authorize the sale, lease or ony other disposition of public lands not required for public purposes, and then it provides an exception, that this authority is not exercisable under this statute if there is specific authority in some other statute providing for the disposition of the land. Section 4 says:

> The Governor in Council may (a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes—

And then it goes on to say:

> —and for the sale, lease or other disposition of which there is no other provision in the law.

Now, in the case that you were citing you had a statute, and you incorporated a provision there.

Senator MACDONALD: Getting back to Senator Farris' objection, I now find myself in accord with him. If I recall what took place last week, we decided to amend the bill which was presented to us because it was not in conformity with clause 1; in other words there was no reference to the lands not being

required for public purposes. As a result of that we decided that the bill should be amended so that clause 2 could conform with clause 1. Now we have made a change, but there is still no conformity.

The CHAIRMAN: That is, in the opinion of Senator Farris there is no conformity.

Senator MACDONALD: I will put it this way: whether or not there is conformity, the words are different. I cannot see that it is necessary to add more than the words "not required for public purposes" in clause 2: why should not the same words be added in clause 1?

Senator HUGESSEN: But surely, senator, the answer to that is this. In clause 2, dealing with transfer from Her Majesty in one right to Her Majesty in another right,—dominion right—you now require these lands, but if they are to be transferred to Her Majesty in another right they are obviously required for some sort of public purpose, or purposes.

Senator FARRIS: Supposing, as between British Columbia and Alberta, both provinces require land, just on the boundary, for public purposes, and the dominion turns it over to Alberta.

Senator HUGESSEN: But the point, Senator Farris, is that we have got to leave in this new subsection the statement that the lands dealt with in the subsection are not required for public purposes of Her Majesty in the right of Canada.

Senator FARRIS: In this case you give Canada the right to deprive British Columbia, because you can give the land to another province which has only the same need of it as British Columbia.

The CHAIRMAN: We are getting now into the particular field of provincial rights. Cannot we keep this on a "higher" plane?

Senator FARRIS: I refer you to Mr. Duplessis.

Senator MONETTE: May I take a concrete example. Under the old act, section 4 as it is, the powers given to the Governor in Council to authorize a sale to anyone provided the property is not required for public purposes. Supposing under that section the Crown decided to sell to any individual something that is not required for public purposes for Canada but may be required for public purposes of the province.

Senator FARRIS: Two different provinces.

Senator MONETTE: Then you would have the question: under the original act the power is given to sell only if this is not required for public purposes generally,—not limited to the Crown in right of Canada. But when it comes to the amendment which provides only for transfer in between the Crown—if I may so put it—in divers capacities, then it is the Crown that may transfer to any province, and it is no more necessary to leave the language general, but it is useful to say, provided the property is to be so transferred, provided the Crown in the right of Canada is not interested, it is not required for public purposes.

Senator HUGESSEN: That is entirely my point.

Senator MONETTE: That is why the difference exists between the two.

Senator FARRIS: You have ignored my illustration of where two different provinces have the need for the land, and they give it to one.

Senator MONETTE: That would double the interest of the Crown, and under section 4 there would be a public interest in the Crown, and therefore the Governor would not be authorized to sell it, as far as the transfer of administration is concerned. Under the amendment the deed could be simply an Order in Council, provided the property is not required in between the

provinces; and the other ground—if I may say so—provided the property is not required to be kept within the power of Canada or Her Majesty in the right of Canada.

The CHAIRMAN: We have, I think, exhausted the things that can be said pro and con in relation to the proposed amendment. If there is no further discussion on that could we have the opinion of the committee as to whether this insertion by way of amendment should or should not be made? Are you ready for the question?

Hon SENATORS: Question.

The CHAIRMAN: The question is, that we amend this bill by inserting after the word "lands" in line 9, "not required for public purposes of Her Majesty in the right of Canada." Those in favour signify in the usual way.

The CLERK OF THE COMMITTEE: Thirteen.

The CHAIRMAN: Contrary, if any.

The CLERK OF THE COMMITTEE: Two.

The CHAIRMAN: The amendment carries.

The other suggestion which the subcommittee wanted to put before the committee was this, that the words which immediately follow "public lands" in the bill—

Senator FARRIS: Before you pass on: take note that those in favour were 13!

The CHAIRMAN: You can also note that the Chairman did not vote!

Senator FARRIS: That intensifies it.

The CHAIRMAN: —the words "either forever or for a lesser term" have been bothering the subcommittee, and there was some concern at the last meeting about them. The suggestion we have come up with for the consideration of the committee is that the words "either forever or for any lesser term" be taken out, that they are surplusage; because if you take them out, as it appears to us, the authority given under this subsection would be exactly the same as if you leave them in there. To this opinion there was one exception. Senator Monette had the feeling that to take them out results in a better position, and leaving them in creates something more than the rest of us thought it did. Senator Monette may wish to explain his view. What we feel is that, if the Governor in Council may order the transfer of the administration and control of property, if he is given that authority, he has an absolute authority; and then you go on and you have your words of limitation in the bill, "subject to any conditions, restrictions or limitations that the Governor in Council considers advisable." So we say that with that language the Governor in Council has all the power. Then if you could go on and add the words, "forever or any lesser term" you are adding words that do not mean anything to the sense of the section.

Senator HAIG: You are right.

Senator MONETTE: Here the committee has joined, in advance, in the meaning of the remarks of Senator Gouin. This amendment provides not for the transfer of the property but for the transfer of the administration and control of the property. Therefore, if you add to that the words, "forever or for any lesser term" I cannot imagine it remains only a transfer of administration. It is a definite transfer "forever" and therefore there could never be a possibility for Canada having transferred the administration "forever", to recover any useful right in that property. Suppose there was a big island of some great importance but not populated at all. We feel at present that Her Majesty in the right of the United Kingdom would be the key state to utilize that island for the benefit of the whole Commonwealth of nations or for all the occidental nations; we therefore would transfer the administration

and control of such island to Her Majesty in the right of the United Kingdom. But suppose that in 25 or 50 years from now Canada should become the key country to help all those nations by having the control and the administration of the island; then we should have the right to take it back. Yet, if the terms of our previous transfer of "administration" to Great Britain are, under the terms of this amendment, a transfer "forever," we would have no right to take back the property. So instead of putting in the words, "forever or for any lesser term" let us omit them. We would simply transfer the administration of the property with or without mentioning a limit of time but not stipulating "forever". Therefore, when such time comes when we would like to take back the island we would then discuss, under the general law, whether we could claim and take back for the advantage of Canada that island, the administration of which we had not transferred "forever". So, I am afraid that these words "forever" might be construed as taking away Canada's right of sovereignty on the property in question.

Senator GOUIN: That is right.

Senator ASELTINE: I would like to hear what Mr. Munro has to say to this, if anything.

The CHAIRMAN: The earlier lines in the bill, where you talk about the entire or lesser interest of Her Majesty, would still remain. Mr. Munro and I have just been talking privately about the question of an easement which Her Majesty might wish to create. It seems to me that an easement is certainly an interest in land, and it is a lesser interest than an entire interest. So even with the words, "forever or a lesser term" taken out, an easement is a type of interest.

Senator CONNOLLY (*Ottawa West*): The words you propose to take out are only words of temporal limitation.

The CHAIRMAN: Yes. We were proposing they be taken out, and Senator Monette has expressed his view. I think the view of the rest of us on the subcommittee was that the words were unnecessary because the section gave full authority to deal with the entire interest or any lesser interest, and also the authority to impose terms and conditions. That is everything there is.

Senator HAIG: Leave it at that. Conditions might change in ten years.

The CHAIRMAN: Certainly we do not want to do anything on this particular item, Mr. Munro, without getting your viewpoint. Do you wish to express a viewpoint on this now?

Mr. MUNRO: In the first place I cannot advise the committee whether the Government would be agreeable to the amendment, for I have not had any instructions. As to the proposal itself, may I just say that when you grant land, for instance when you are selling your house, you normally grant it forever. You do not have the right to take it back at any time in the future. It is given forever. Under the present section the Governor in Council has authority to sell lands, and this also contemplates the idea of "forever". It used to be and it still is a common practice in some places in a grant of land to use the word "forever". But now we are not dealing with grants, we are dealing with the transfer of administration and control, and it may be necessary to spell out more specifically what exactly we mean rather than just use the word "sell" or "sale" which carries with it a lot of legal connotations. In dealing with transfer of administration, this is not a field where technical terms have received legal meanings over the years, and we have to spell it out more clearly. So I think there may be good reason for spelling out quite clearly what the right of the Governor in Council is with respect to the transfer of the administration of land.

The CHAIRMAN: Supposing by order in council there was a transfer of the administration and control of certain lands in Canada to Her Majesty in the right of the United Kingdom, and then some conditions were imposed in relation to payments and the use to which the property might be put? Would you say that in that kind of a document the transfer was for a limited period?

Mr. MUNRO: Unless there are words appearing stating the limitation, I would not say it was.

The CHAIRMAN: Then you don't need forever or a lesser term in the statute?

Mr. MUNRO: You might need "for a lesser term".

The CHAIRMAN: No. If the Governor in Council has the power to transfer the administration and the control, then that means he can transfer the entire interest, which the statute says, "or any lesser interest".

Senator CONNOLLY (*Ottawa West*): In your own example, Mr. Chairman, I suppose what would be done in that case would be that you would transfer, say, to the United Kingdom, the administration and control of these lands for a period of 25 years?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): I suppose it could be assumed that you would put further words into the document saying that at the end of that period the administration and control would revert to Canada?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): The question is, can you do that without these words being here?

The CHAIRMAN: I think you can.

Senator CONNOLLY (*Ottawa West*): I think you could. I think probably Mr. Munro would agree that you could.

Senator MONETTE: In Quebec, our law is that if you transfer, without determining a time limit, the administration, enjoyment or control of a property without transfer of ownership, it cannot be for more than 99 years. Moreover, within that time you could give a sufficiently long notice to take back what you have transferred, for you are not bound to wait until the limit of a term that was not fixed. If then, you simply transfer the administration and control of a property belonging to Canada, would you say it is "forever" by nature of such transfer?

The CHAIRMAN: The way to put the question is this. If the Governor in Council is given the authority to transfer administration and control of lands with respect to the entire interest or a limited interest, then he has the right to transfer forever if he wishes or for a limited period. But it is not required to have this said in the document.

Senator MONETTE: No; the whole aim of my question is this, that if you simply transfer the administration of a property without saying for how long a time—forever or not forever—would that make it permanent?

Mr. MUNRO: I would think so—it would be permanent.

Senator MONETTE: Well, then if this means permanently and forever we need not add it.

The CHAIRMAN: That is right.

Senator MONETTE: If it does not need that we are adding something of substance in the subsection which is unnecessary.

Senator MACDONALD: This does not meet the objection raised last week in the committee, which was that some members of the committee did not feel that this transfer of the administration and control should be given forever.

Senator MONETTE: That was my real question.

Senator MACDONALD: And that the amendement as proposed does not meet your view at that time.

Senator MONETTE: Not fully, because I was satisfied after discussion that it was not necessary to put in some other words, and simply to take out the words "forever or for any lesser term". I prefer to leave it as under the English law, and not that when we transfer the administration of a property it is a tranfer forever, which means a transfer of all the rights and interests. I cannot conceive of that. I would leave it as under English law, and say let us give only the power to transfer the administration, and later on if we need to take it back we will have to discuss the law as to whether we have a right to take back the administration which we have transferred for an indefinite time.

The CHAIRMAN: May I point out that I can appreciate Mr. Munro's position here today. He is not in a position to express a view that would say, "Yes, this is acceptable"; and I know that in making amendments, whether it is indicated to us that the amendment is acceptable or not, we still proceed with it. But in this type of bill what we are trying to do is to create the best sort of subsection in the amending bill that we can, when we have it before us, and we have not had any particular policies in mind that we are promoting from one angle or the other. If there is no urgency, and Mr. Munro felt that he wanted to discuss it with his seniors, I would have no objection to saying, "Well, subject to what the committee may say we will let it stand." What have you to say about it, Senator Aseltine?

Senator ASELTINE: I think that would be the right thing to do under the circumstances. There are no politics or anything like that involved.

The CHAIRMAN: In a very subtle way I suggested that, too.

Senator GOUIN: May I ask a question, because Mr. Munro might take it to the proper officers of the Government? I would like to be satisfied that Canada does not lose her sovereignty.

Senator CONNOLLY (*Ottawa West*): May I ask a question, Mr. Chairman? Suppose in some of the northern areas where the DEW Line or Mid-Canada Line is, and where the installation was made, as it was in some cases by the United States, by a foreign power, if a Government of the day wanted to transfer administration and control of the land required for that installation to another country how could it be done?

Senator ASELTINE: They could not do it under this section.

The CHAIRMAN: No, they could not do it under this section.

Senator CONNOLLY (*Ottawa West*): But could they do it under this act?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): I was just giving an illustration.

The CHAIRMAN: But there may be some other statute, I do not know.

Senator MONETTE: Under an empyteutic lease you could transfer the use of the land, the right to build, and so on, for a term not exceeding 99 years, with the right to take it back with the buildings at the end of the lease, so that the parties could consider what would be their interest in incurring such expenses in having such a lease with a term of 99 years. But when you say you transfer the administration of a property, you do not say you sell it, and I cannot understand that expression, sir, when you say "transfer the administration and control", and then "forever". There is already in section 4 the right

to sell, so why not say "sell'. If you want to be authorized to sell land in right of the Crown to another right, why not say so? If you transfer administration, and you add "forever", it is equivalent to disposing of the whole thing forever—it is a sale.

The CHAIRMAN: Is it the pleasure of the committee that we adjourn?

Senator HAIG: I suggest we adjourn for one week.

The CHAIRMAN: Is that satisfactory?

Senator ASELTINE: I suggest that we follow your suggestion, Mr. Chairman, so that Mr. Munro can consider the matter further and consult the Department of Justice and any other department that is interested, and we will deal with it more fully say in a week hence.

The CHAIRMAN: Yes, and the point on which we are adjourning is whether or not we will strike out these words "forever or for any lesser term"?

Senator ASELTINE: Yes.

Senator POWER: Mr. Chairman, if I understand the observation of Senator Gouin, he is arguing on another point apart from this purely technical one, if I may say so, which you are referring to, as to whether we will strike out the words "either forever or for any lesser term"; he is discussing a matter of policy as to whether we transfer to another country other than Canada or a province; I think he has in mind that by order in council we could transfer to Great Britain—putting it quite frankly—islands in the north of our country, or Goose Bay, or some place like that. I think that is what you had in mind, Senator Gouin, is it not, as to whether we could do that by order in council, or should have legislation to do it? I understand that the words "administration and control of the entire or any lesser interest of Her Majesty" mean "forever".

Senator ASELTINE: No, I do not agree with that.

Senator POWER: I understand that the only reason that the Chairman would strike out "forever" is that he thinks that is in there already.

The CHAIRMAN: That is so.

Senator POWER: Therefore you have two arguments on opposite sides, one to strike out "forever" for two reasons or more.

The CHAIRMAN: That is right.

Senator MONETTE: But, senator, whether it is the title that is transferred or an interest in it, the transfer is only the administration of it, so it would be the administration of the whole thing or the administration of the interest —it is not a definite sale.

Senator MACDONALD: But the word "control" gives very wide powers. I think control would include the leasing of it probably to some other person. I think the word control is much wider than the word administration.

The CHAIRMAN: The question before us at the moment is whether we would defer further consideration of this so that Mr. Munro may come here at another time to discuss it from the department's point of view, and on that question how does the committee stand? Are you agreeable that we should adjourn further discussion.

Hon. SENATORS: Agreed.

The CHAIRMAN: There being no further business before the committee the committee stands adjourned.

The committee thereupon adjourned.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill (S-2), intituled: "An Act to amend the Public Lands Grants Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 3

WEDNESDAY, MARCH 4th, 1959.

WITNESSES:

Mr. C. R. O. Munro, Chief of the Legal Division, Department of Public Works; Mr. W. R. Jackett, Deputy-Minister of Justice.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20571-6—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor *(Norfolk)*
Connolly *(Ottawa West)*	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

*ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, 28th January, 1959

"Pursuant to the Order of the Day, the Honourable Senator Aseltine moved, seconded by the Honourable Senator Monette, that the Bill S-2, intituled: An Act to amend the Public Lands Grands Act, be read the second time.

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

The Bill was then read the second time.

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

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

J. F. MacNEILL,
Clerk of the Senate.

20571-6—1½

REPORT OF THE COMMITTEE

WEDNESDAY, March 4, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (S-2), intituled: "An Act to amend the Public Lands Grants Act", have in obedience to the order of reference of January 28, 1959, examined the said Bill and now report the same with the following amendment:

Page 1, line 9: after "lands" insert "not required for public purposes"

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 4, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Baird, Brunt, Burchill, Connolly (*Ottawa West*), Croll, Farris, Gershaw, Golding, Gouin, Haig, Hardy, Horner, Kinley, Lambert, McDonald, McKeen, Monette, Pouliot, Power, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Wilson and Woodrow—28.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-2, An Act to amend the Public Lands Grants Act was further considered.

Heard in explanation of the Bill: Mr. C. R. O. Munro, Chief of the Legal Division, Department of Public Works and Mr. W. R. Jackett, Deputy Minister of Justice.

On Motion of the Honourable Senator Gouin to amend the Bill as follows:

Page 1, line 7: After the words "Her Majesty" strike out "in any right other than Canada" and substitute "in the right of any province in Canada", the Committee divided as follows:

YEAS	NAYS
3	19

The Motion was declared passed in the negative.

On Motion of the Honourable Senator Monette to amend the Bill as follows:

Page 1, lines 9 and 10: strike out "either forever or for any lesser term" and substitute "for any term", the Committee divided as follows:

YEAS	NAYS
10	12

The Motion was declared passed in the negative.

On Motion of the Honourable Senator Pouliot to amend the Bill as follows:

Page 1, line 9: after the word "lands" insert "not required for public purposes, within the boundaries of each province concerned", the Committee divided as follows:

YEAS	NAYS
4	17

The Motion was declared passed in the negative.

A Motion carried in the affirmative on Wednesday, February 18, 1959, to amend the Bill as follows:

Page 1, line 9: after the word "lands" insert the following "not required for public purposes of Her Majesty in right of Canada", was rescinded.

It was RESOLVED to amend the Bill as follows:

Page 1, line 9: after "lands" insert "not required for public purposes"

It was also RESOLVED to report the Bill as amended.

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

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, March 4, 1959.

The Standing Committee on Banking and Commerce, to whom was referred Bill S-2, to amend the Public Lands Grants Act met this day at 10.30 a.m.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Gentlemen, we have a quorum; it is 10.30. The bill before us is Bill S-2. You will recall that when we adjourned our meeting several weeks ago it was on one point in the amending section that is before us, and that had to do with the words "either forever or for any lesser term", and whether or not they should be retained in the bill; that is, whether they were necessary or not. We adjourned for the purpose of giving the representative of the Department the opportunity of conferring with his department. Mr. Munro is here, and we will get what his ideas are now.

Mr. C. R. O. Munro, Chief of Legal Services, Department of Public Works: Mr. Chairman, the view of the department is that it would be preferable to leave in the words "forever or for any lesser term". The committee felt the words "the entire or any lesser interest of Her Majesty" were sufficient authority, without the words "forever or for any lesser term". Now, it is felt that it can be argued, based on the law of conveyancing, that the word "interest" refers only to the estate granted and not to the length of time for which the estate is granted. A court may not hold that this is right, but it could give rise to the possibility of technical arguments, and it is to avoid the possibility of these technical arguments that it is suggested that we leave in the words "forever or for any lesser term". These should not complicate the interpretation of the section, and if they help to avoid technical arguments it is felt they should be left in.

The CHAIRMAN: Just to clarify the situation, the reason of the committee was this, as I understood it at the last meeting, that if you omitted those words and then read the section there would be power in the Governor in Council by order to

> transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands, either forever or for any lesser term, and subject to any conditions, restrictions or limitations that the Governor in Council considers advisable.

I think the position we asserted in regard to that was that that was broad enough to permit the Governor in Council to order a transfer for a limited period or without limitation.

Senator POULIOT: Mr. Munro, you belong to the Department of Justice?

Mr. MUNRO: That is right, sir.

Senator POULIOT: It is not the practice where there is a transfer that it is preceded by an order in council both—

Mr. MUNRO: Yes, letters patent, which is the instrument we use for selling lands, are authorized by order in council.

Senator POULIOT: Well, then this bill would be superfluous if it is the regular practice to pass an order in council before signing a deed.

The CHAIRMAN: Senator, might I interrupt? This bill deals with a special situation where Her Majesty in the right of Canada, for instance, is going to transfer a property to Her Majesty in the right of the province of Ontario, for instance. Well, on the theory that the Crown is indivisible and is one, the position in law seems to be that you cannot make sections out of Her Majesty and transfer from one section to the other. So then where Her Majesty in the right of Canada is dealing with Her Majesty in the province of Ontario they plan on doing it in this fashion, that is in the fashion of an Order in Council transferring the administration and control from Her Majesty in right of Canada.

Senator POULIOT: Mr. Chairman, I was a member of Parliament when the Natural Resources were transferred from the federal Government to the provincial Governments, and they were transferred by way of legislation. I do not see why the same procedure is not followed with these other provinces.

The CHAIRMAN: This amendment would apply in cases where legislation is not specifically provided.

Senator POULIOT: I know, but it was done by a special bill. There was a special bill for each of the Prairie Provinces, and if I remember well there was one for—I am not sure about it—but I remember there were three distinct bills, one for each of the Prairie Provinces, and it was done by legislation. Why should we encourage the Government by allowing them to do that by Order in Council instead of following the old procedure?

The CHAIRMAN: There has been great debate on that from time to time Senator Pouliot.

Senator POULIOT: Yes, Mr. Chairman, but this is not a debate—I just am putting the suggestion before the committee.

The CHAIRMAN: Mr. Munro, would you illustrate the type of case where this amending section would be applied as against the case where you would have special legislation.

Mr. MUNRO: Mr. Chairman, here again I am only familiar with the sort of operations that the Department of Public Works engages in, and of course there are other departments which transfer lands to the provinces. The sort of case that arises with the Department of Public Works is, for instance, where we have a wharf on the water lot which we have acquired from the provincial Government, and as time goes by the wharf is no longer necessary for public purposes and so we transfer the water lot to the province by Order in Council.

Another example: recently there was a penitentiary which had not been used for many years by the federal Government. The province had in fact been using it and we transferred it to the province by Order in Council.

Senator CONNOLLY (*Ottawa West*): Can you not go further for Senator Pouliot, Mr. Munro? The explanatory note refers to a case in the Supreme Court of Canada where this had been done. Apparently one of the judges there objected and said that there might not be authority for this procedure to be followed.

Mr. MUNRO: This is the reason for the legislation now being proposed. There is some doubt as to the authority of the Governor in Council to do this without legislation.

Senator BRUNT: This will clear it all up.

Senator POULIOT: If we are to pass legislation every time a judge differs from the majority on the bench there will be no end to it, and moreover the very judge who differed in this case you are talking about has retired, he is no longer on the bench. I think he is on leave now. His term is finished. The department has waited 15 years to find a reason for doing this.

Mr. MUNRO: Well, Senator Pouliot, the judge himself may no longer be with the court but his judgment will form the basis of an argument in the future.

Senator POULIOT: No, but you could ask the bench as it is then constituted what it thinks about it and not act upon the opinion of one single judge. Ask the bench what they think of it now. New people are on the bench now.

Senator BRUNT: Is it not easier to clear it up by legislation? Every time you get new blood you are likely to get a new answer.

Senator POULIOT: Yes, but it is just as well to secure the views of the whole bench than to act upon the opinion of a judge who is on superannuation.

Senator BRUNT: In this way we clear it up for all time. It will be held for all time in the future and no matter what judge is on the bench.

Senator POULIOT: Well, if we were to look through the statute books with a magnifying glass we could find thousands of cases in which we could pass bills like this.

Senator BRUNT: You are fixing up the Civil Code now are you?

Senator POULIOT: If you will give me your assurance, Senator Brunt I will give you the benefit of the doubt.

Senator ASELTINE: Mr. Chairman, it seems to me if you read all of section 4 as it stands in the act, Chapter 224, and add this subsection 2, either with or without those words, it would be very clear to me that we have the power to make the transfer in this manner by order in council. I would like to hear from Mr. Jackett on that question of "either forever or for any lesser term".

The CHAIRMAN: Yes. We have the Deputy Minister here, and if it is important enough for him to attend, we should have the benefit of his view on this point.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, would you first help me on this point, and perhaps assist other members of the committee? I do not have a copy of the evidence taken at the last sitting before me, but did we not at that time change this subsection?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): Was that passed?

The CHAIRMAN: Yes.

Senator CONNOLLY (*Ottawa West*): Would it be possible to have the section as it is now proposed read to us?

The CHAIRMAN: I will read you the section as it stands in our deliberations at the moment:

> The Governor in Council may by order transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands, not required for the public purposes of Her Majesty in the right of Canada.

The change there is after the words "public lands" in line 9, we add the following "not required for the public purposes of Her Majesty".

Senator REID: Was that passed at our last meeting?

The CHAIRMAN: Yes. "In the right of Canada", was carried subject to any limitation on the words.

Senator CONNOLLY (*Ottawa West*): Did the committee strike out "either forever or for any lesser term"?

The CHAIRMAN: No. We had reached a consideration of those words. There was a fairly strong opinion expressed last day that those words added nothing to the section and therefore should be struck out.

Senator CONNOLLY (*Ottawa West*): But they are still in?

The CHAIRMAN: They are still in, because we gave Mr. Munro the opportunity of going back and discussing what was the attitude of his department and what representations they cared to make as to whether those words should be retained, in view of the rather strong view that they added nothing to the section and should be struck out. May we ask Mr. Jackett to address himself to those words "either forever or any lesser term".

Senator FARRIS: I might say for the benefit of Senator Connolly, that two very distinguished members of this committee opposed those words—Senator Ross Macdonald and myself.

Senator MONETTE: Mr. Chairman, before the Deputy Minister speaks may I explain my concern about this point? I am not objecting to the power given by order in council, if you restrict it to the transfer of administration and control of public property belonging to the Crown. What does, however, concern me is to make a transfer by order in council forever.

I have already mentioned in the subcommittee that public lands to be transferred might be of great importance; for instance, it might involve a large island in the north which the Government may for some years feel no need of, but in the event of a war Great Britain itself might find great use for it in common interest with ourselves. We could transfer by order in council the control and administration of that island for the time being or for a specified term, and I would not object to doing that; but if we transfer forever what is called the administration and control, I am in doubt as to whether that would not result for all practical purposes in the transfer of the property. When you transfer the administration and control of a property forever, it seems that there remains nothing to the original owner. He cannot have at any time any control or any administration of the land. So in my opinion a transfer of a property, although it is termed a transfer of "administration and control", if it is forever, is equivalent to a dispossessing by the state of the whole property forever; and I am concerned about giving that power to be exercised by Order in Council. The transfer in such a case should continue to be through an Act of Parliament. If we were to delete the word "forever" I see no objection to doing it by Order in Council; but as long as the word "forever" is attached to that, it seems to me in practice transfer of the property which will be left to the Crown. I am not making an objection, but I want to have my mind as clear as I can.

Senator POULIOT: I wonder if it would be a good thing to say, "within the established boundaries of each province concerned". The purpose of it is to prevent the sale of, say, part of Manitoba to Ontario, or part of Ontario to Manitoba. I submit that suggestion to the committee.

Mr. JACKETT: Possibly I might refer to that. It is basic to the point raised by Senator Monette. The thinking behind this, as I understand it, is that section 4, paragraph (a) at present gives to the Governor in Council unrestricted power to authorize a sale, lease or other disposition of public lands to any person; but in exercising that power the Governor General could enter into a transaction whereby public lands would be sold or otherwise disposed of for whatever consideration, in the wisdom of the Government, they decide to accept, and that would be a complete and permanent disposition of public property. The only reason, as I understand it—this is my own view—that you cannot, under section 4 (a) sell land to a province, is that the title to Crown land is in the Crown, whether it be held for dominion purposes or for provincial purposes or for the purposes of any other of Her Majesty's Governments.

Senator MONETTE: Australia, for instance.

Mr. JACKETT: Australia, or the United Kingdom. You cannot, for example, transfer a piece of Crown land in the environs of Ottawa for a High

Commissioner's office, and for that reason, because of that technicality, that you are not changing the title of the land when you are disposing of it to another of Her Majesty's Governments, the power is not included in section 4 (a) to make a sale to another Commonwealth Government or any other disposition to another Commonwealth Government that you would otherwise be able to do. As a matter of fact, two or three years ago the Government was acquiring property in London for a proposed public building in that city. We had to go to the extreme of setting up a company under the Companies Act to take title and hold the property in trust for the Government of Canada because the United Kingdom Government had no power to transfer the administration and control of such property. We were paying for the property. We were paying full consideration for it but there was this technical difficulty in the way of transferring the administration and control of that property to the Government of Canada.

Senator CONNOLLY (*Ottawa West*): Do you mean to say that United Kingdom legislation has not gone as far as this?

Mr. JACKETT: That is right. They have in certain limited areas.

Senator CONNOLLY (*Ottawa West*): Of course, they would not have the federal-provincial arrangement.

Mr. JACKETT: No. They have not got that problem.

Senator CONNOLLY (*Ottawa West*): It is only in a federal state where it is likely to arise often.

Mr. JACKETT: That is right. As Senator Pouliot said, there was this case 15 years ago but not much attention was paid to it. There is no harm in my saying that I probably started the machinery going for the introduction of this bill. Recently I have been seeing these transfers between the provinces and the dominion. They happen from time to time. British Columbia has legislation and we cannot question that they are giving us what we are paying them for when they transfer administration to Canada. But we are in this position. If somebody says, "Isn't there some doubt that the Governor in Council can transfer administration?" We have to admit that there is a doubt. So far the provinces have taken our orders in council but it does seem that in the ordinary business between provinces and Canada we ought to be able to assure them by referring to a statutory provision that the Government of Canada has authority, if it is selling a piece of land to a province, to give that province full and permanent administration and control of the property.

Senator FARRIS: Mr. Jackett, if you are right, should this not be retroactive as well?

Mr. JACKETT: Or declaratory, to make it clear. I think that might well be considered.

Senator CONNOLLY (*Ottawa West*): Do you think another point might be considered? The amendment we have now approved uses these words, "not required for public purposes of Her Majesty in right of Canada". But section 41(a) uses the words, "not required for public purposes." Perhaps that should be amended. In other words, I think the language in subsection (1) might well conform to the language in subsection (2).

Mr. JACKETT: I was going to raise that.

Senator CONNOLLY (*Ottawa West*): All right.

Mr. JACKETT: With great respect, I was going to suggest that you might reconsider the amendment. If it just occurred in paragraph (a) of subsection (4), then I would agree you might just as well put the same words in paragraph (a) that you are proposing to put in subsection (2), but what bothers me is that I am sure this expression "for public purposes"—I cannot put my

finger offhand on other statutes—is a common expression and it has always been used in the sense of public purposes of Canada. For example, in Head (1a), as it now is, of section 91 of the B.N.A. Act, it talks about public property. That obviously refers to public property of Canada, and ordinarily this expression "public purposes" or "public property" is used in federal legislation as being public purposes or public property of Canada. I would be a little apprehensive—I do not put it any stronger than that—that if you spell out here "public purposes of Her Majesty in right of Canada" you might then raise a question, and supply litigious lawyers with some argument to challenge the position, under other legislation.

Senator FARRIS: I would not think there is much doubt about that.

Mr. JACKETT: I am trying to put it as moderately as I can.

The CHAIRMAN: You mean about the litigious lawyers.

Mr. JACKETT: I was not looking at Senator Farris.

Senator REID: May I ask a question?

The CHAIRMAN: Yes.

Senator REID: If this passed in its entirety, would it affect transfer of land from the Government to the individual, or just to a province?

Mr. JACKETT: Just to another Government, and the main example is a province where the title is vested in the Crown.

Senator CONNOLLY *(Ottawa West)*: Do you think the committee would object to restricting it, as an amendment already passed, to the words "not required for public purposes"? I do not think that "Her Majesty in the right of Canada" was the important consideration when the amendment was moved, was it?

The CHAIRMAN: Well, it seemed to be, Senator Connolly, because there were only two who voted against it.

Senator CONNOLLY *(Ottawa West)*: But I do not think they were voting on that ground. I do not want to put words in people's mouths.

Senator GOUIN: May I ask a question? The deputy minister referred to the giving of a piece of land to the High Commissioner for the United Kingdom, but it seems to me that might include Goose Bay, for instance. Is it limited, in any way? Supposing the Government decided it did not want Goose Bay, or Gander, any more, could they give it away forever?

Mr. JACKETT: I have two comments on that. One, we are talking about legal title in property; and, secondly, you are in the same position in section 4(a), as far as property is concerned. That statute does confer on the Government of the day unrestricted power to authorize any transaction involving the title of the Crown. There is no limitation. As I interpret section 4(a) Parliament has entrusted the Government of the day with unrestricted authority to sell, lease or otherwise dispose of . . .

Senator LEONARD: Is that section of long standing?

Mr. JACKETT: Certainly I have had cases in the Supreme Court where we have gone back to 1910-1912. When was the Vancouver case, Senator Farris, 1908, I think, where you had the same language?

Senator POULIOT: Mr. Jackett, the amendment reads as follows:

> The Governor in Council may by order transfer to Her Majesty in any right other than Canada . . .

That means the United Kingdom, Cyprus; and the Government can transfer in virtue of that estate?

Mr. JACKETT: Yes, that is the way the section reads. But is there any difference in principle between that and section 4(a) which authorizes any sale at all or disposition to any person at all, and imposes no rules or restrictions on the exercise of the power?

Senator POULIOT: I know; but it will be crossed out of the bill?

Mr. JACKETT: Yes.

Senator MONETTE: I have one question in my mind I would like to ask, Mr. Chairman.

The CHAIRMAN: By the way, senator, I want to point out that Mr. Jackett has not as yet dealt with the point as to the necessity for those words "forever or for any lesser term". He has been talking about everything else but that.

Senator MONETTE: I am sorry, I thought he was through.

The CHAIRMAN: Then your question might fit in.

Senator MONETTE: Perhaps I may ask this question: You explained the other day about a transfer from the Crown in the right of a province, or in the right of Canada to the same Crown. Now, Australia is a different country.

Mr. JACKETT: Yes.

Senator MONETTE: May we understand each other well. What belongs to Canada will belong to the Crown in right of Canada, but does not belong to Australia?

Mr. JACKETT: That is right.

Senator MONETTE: Now, up north in the public lands area there may be very useful property at some time. We have some that is very close to Greenland which is very important, and if a transfer is to be made, the question is whether the transfer could be made under that amendment by order in council for the administration and control forever. Could you explain to me if the transfer of the administration and control forever means that the whole property is practically transferred forever?

Senator BRUNT: You talked about this land close to Greenland. Are you now speaking of Australia?

Senator MONETTE: Yes, I am speaking of a large piece of land that belongs to Canada. If the administration and control is transferred forever, is it not equivalent to a transfer of the whole property?

Mr. JACKETT: In the property sense; but not sovereignty. This expression "administration and control" are the traditional words well recognized in the cases as transferring the property interest from one group of ministers to another, the right to control and administer from a property point of view.

Senator MONETTE: From one country to the other?

Mr. JACKETT: Within Her Majesty's realm, yes.

Senator POWER: Have you any recollection of what happened to Anticosti Island? There was a lot of discussion about that. The ownership was transferred to the Meunier Chocolate people, but they exercised great powers of justice there; they had a commandant, and their own police. Apparently it was a sort of sovereign state within Canada, and there was a lot of criticism. Do you remember what kind of title they got?

Mr. JACKETT: I am afraid I have no recollection of that.

Senator POWER: There was a lot of discussion at that time as to just what kind of a title they had, because they acted as if they were in control of a sovereign state, and had practically their own navy, their own ships, and nobody could land there without permission. As a matter of fact, there was some discussion prior to the last war whether or not it could be transferred to the Germans. I am just wondering about that.

Mr. JACKETT: I think what is bothering Senator Monette, and the question you are raising, is, is this statute giving the Governor in Council power to put some area of land outside Canada?

Senator MONETTE: Yes.

Mr. JACKETT: My answer clearly is no, that in this form it can deal with nothing except as property, and that this statute cannot have the effect of putting land outside Canada, and it will continue to be within the sovereignty of Parliament in so far as section 91 is concerned, and of the province that it happens to be in in so far as section 92 is concerned.

Senator FARRIS: It could have the right to transfer the control of that property outside Canada, say Australia, could it not?

Mr. JACKETT: In the same way you could transfer Crown lands to somebody in Australia, but it would still be in Canada and could be expropriated by the Crown.

Senator LAMBERT: May I ask regarding another case, that of Newfoundland, when that province transferred to the United States quite a section of its territory through, I presume, the auspices of the Crown in the United Kingdom under a 99 year lease? That was before Newfoundland came into Confederation. Now what status does that area hold today in respect to the possible expiry of the lease?

Mr. JACKETT: The reversion would presumably be to the Crown.

Senator LAMBERT: It would revert to the province of Newfoundland?

Mr. JACKETT: Yes.

Senator LAMBERT: Have they title to it now?

Mr. JACKETT: I should think that, from what you say, the title is in the Crown provincial subject to the leasehold interest.

Senator LAMBERT: At that time there was no Government there other than a Crown Commission; it was not a province, it was a ward of the British Government.

Mr. JACKETT: Yes, but the property would belong to the Crown subject to whatever administration was there.

The CHAIRMAN: Now, do you think we can get down to these words, Mr. Jackett?

Senator POULIOT: Mr. Chairman, let us proceed gradually. Would it not be possible to simplify the amendment so that it would not be required by Her Majesty in the right of Canada. It is understood that what is kept is for public purposes, so this is a redundance. We presume that Her Majesty in the right of Canada will not dispose of property that is required by her. So I would move that after the words "right of Canada" that we insert this, "within the boundaries of each province concerned." And then it would be either forever and so forth but that could be discussed after. But this is the part of a sentence that I would suggest we include between the word "lands" and "either": "it will not be required by Her Majesty in the right of Canada within the boundaries of each province concerned," or vice versa, "within the boundaries of each province concerned and not required by Her Majesty in the right of Canada".

Senator GOUIN: Mr. Chairman, would it not be more logical if the transfer was allowed only to a province instead of having the possibility of it being transferred to the Crown in the right of the United Kingdom, or of Australia and so on.

Senator POULIOT: Well, what might take place is that there would be a transfer of land made from the province of Ontario to the province of Manitoba or from Manitoba to part of Ontario.

Senator BRUNT: What if Manitoba was willing? Should we place any restrictions on it?

Senator POULIOT: Would the province of Ontario be willing to transfer part of her lands to the province of Manitoba?

Senator BRUNT: What objection would they have? It is only the ownership in land that is being transferred, it is not the sovereignty over it.

Senator POULIOT: But this may affect what is beneath the surface.

Senator BRUNT: Not necessarily; you can have surface rights transferred without the mineral rights being also transferred. That happens every day.

Senator POULIOT: You know very well, Senator Brunt, that when such reservation of mineral rights is not mentioned in the transfer, mineral rights are included in the sale.

Senator REID: "Forever" is a long time.

The CHAIRMAN: Senator Pouliot, I just want to understand your proposal.

Senator POULIOT: My proposal, Mr. Chairman, would be, "within the boundaries of each province concerned and not required by Her Majesty in right of Canada."

Senator POWER: What is the amendment now Mr. Chairman? How would the clause read now? I think one part of what Senator Pouliot seems to be speaking on is already in the amendment.

The CHAIRMAN: The section as it now stands before this committee has in it after the words public lands in line 9, "not required for public purposes by Her Majesty in the right of Canada."

Senator POULIOT: I suggest simplifying it and putting the words, "not required by Her Majesty in the right of Canada." That is what I suggest. I also suggest this, "within the boundaries of each province concerned". And "within the boundaries of each province concerned" could be put after or before, "not required by Her Majesty in right of Canada."

Senator POWER: Might I inquire if what Senator Pouliot has in mind refers to certain disputed territory between two provinces of Canada?

Senator POULIOT: Such an eventuality could come up later.

Senator ASELTINE: I do not think we should consider that point.

Senator LEONARD: Could we hear Mr. Jackett on the words, "either forever or for any lesser term".

Mr. JACKETT: My apprehension about leaving that out is that the words, "the entire or any lesser interest" might be regarded as going to the description of what is to be transferred—I mean you might be transferring surface rights or you might have the sort of transfer we had up in northern British Columbia some years ago, a right to lay a pipeline. In that case we entered into an agreement with the province of British Columbia under which they transferred to Canada the right to lay a pipeline, and there were very detailed covenants as to the responsibilities of the respective parties, and it was for a definite period of years. It was in the nature of a leasehold interest in an easement, and while I think it would certainly be arguable, if you leave out the words, "forever or for any lesser term", that the required authority might still be included in these words "for any lesser interest". As a lawyer working on it in advance I like to have it beyond doubt and not be open to the argument, when I am dealing with the purchaser, that we have not got the right to limit it, as to time.

Senator MONETTE: Mr. Jackett, I would not object to the transfer being made for a definite period. It is the word "forever" that shocks me perhaps unduly.

The CHAIRMAN: You suggest that "forever" is not a definite period?

Senator MONETTE: It is definite enough but I do not see what sovereignty would mean in that.

Senator FARRIS: It seems to me that Mr. Jackett might clear up what is bothering some of us, including my learned friend Senator Monette. That is the right of expropriation. I think there is no doubt that if the dominion transfers the land to a province of Canada that the dominion of Canada still retains a right to expropriate that land. But I think you ought to make it a little clearer that if that land were transferred in the way you are proposing,—"forever"—to Australia, not an individual but the Government of Australia, you would still reserve the right to expropriate it and take it back if you needed it for public purposes.

Mr. JACKETT: There is no doubt in my mind that that land would be in the complete sovereignty of Canada, within its legislative sphere. I understand Parliament can expropriate provincial Crown lands subject to paying reasonable compensation. That is a constitutional restriction on Parliament. Coming to Australia, the only doubt in my mind in whether we would be constitutionally restricted subject to expropriation and payment of compensation. There would be no doubt in my mind that this land would be subject to the sovereignty of Parliament within its legislative sphere.

The CHAIRMAN: You might not be able to take it back compulsorily.

Mr. JACKETT: We would be able to.

Senator MONETTE: We could expropriate it from Great Britain, if we had transferred it forever.

Mr. JACKETT: All we have transferred is the property interest in the land.

Senator CONNOLLY (*Ottawa West*): Could I take an example on that one point, Mr. Chairman? Suppose Canada had a piece of land in Canberra, and because it was found to be too big we decided to use the authority under subsection 2 and transfer the administration and control of it to the Australian Government and then bought another piece of land from a private individual or the Australian Government. What I understand Mr. Jackett to say is this: if Canada wanted to recover that original property that was sold to the Australian Government, we would have to expropriate it?

Mr. JACKETT: I was premising my remark with the fact that it was within the territory of Canada.

Senator CONNOLLY (*Ottawa West*): Yes, I see.

Mr. JACKETT: I did not have in mind property belonging to Canada in another country.

Senator MCKEEN: There is one point I should like to get clear. When a sale is made to Australia or any other country, the laws of Canada would still be in effect with respect to the territory sold to that country?

Mr. JACKETT: Yes.

Senator THORVALDSON: May I just point out, Mr. Chairman, that this phrase "forever or for any lesser term" is a standard phrase in conveyancing and no doubt appears in many acts. The word "forever" must have been adjudicated upon several times. It is something that appears in the English law. We also refer to the transfer of land in fee simple. Now, the words "fee simple" mean nothing as such, but they are a standard conveyancing term used for centuries in the English law. Similarly to my mind the word "forever" is simply a standard term in the law of conveyancing which means the same as when you convey land in fee simple, and convey everything that is stated in the particular document.

Senator REID: Why use the term "forever"?

Mr. JACKETT: As Senator Thorvaldson was speaking it occurred to me that normally we would not put in the word "forever." We would authorize the transfer of administration, and the result would be that it would be gone

forever. The reason the word "forever" is put in there is in order to put in the concept of a lesser term, and make clear that it can be done either permanently or for a term.

Senator MONETTE: Would not the right procedure be to transfer the property for a specific term, and to drop the word "forever"? In that way we would be sure it was a transfer for a specific term and we would retain our rights.

Mr. JACKETT: But you would be in this position, if a province required a bit of federal land for a building—

Senator MONETTE: I am not speaking of the relationship between Canada and a province; I am speaking of an independent state—the same Crown, but an independent state such as Australia.

Mr. JACKETT: If Australia wanted to put up a house for its High Commissioner in Rockcliffe, would you not sell the land to them?

Senator MONETTE: I am putting all my statements in the form of questions because our law in Quebec is not the same. We transfer property for 99 years, and no more, with a right to recover with all the buildings put on it in the meantime; and those who buy under what we call an enphyteutic lease, which is a transfer of property, they know they are liable to be dispossessed in 99 years, and they take the risk of losing the buildings put on in the meantime. I am unable to consider the question of the English law.

Senator GOUIN: May I say that I share the view expressed by Senator Monette. Under our system of law we cannot accept the naked ownership that would be involved—

Senator MONETTE: It would not be correct to say we cannot accept it. But I am at a loss to understand the English public law. If we transfer land to Australia—and I am not at all impressed by the fact that it is under the same Queen—which is an independent state, let us be practical about it, that by transferring by order in council the administration and control forever we are transferring every useful right we can have, and we cannot take it back.

The CHAIRMAN: We could take it back by expropriation.

Senator MONETTE: That is, if it is in Canada?

The CHAIRMAN: If it is in Canada.

Senator FARRIS: You mean the land?

Senator MONETTE: Yes.

The CHAIRMAN: You could expropriate the property.

Senator ASELTINE: We are dealing here with land in Canada.

Mr. JACKETT: May I add one further thought which I think is relevant? As I understand section 4(a), there would be no limitation on the Government of Canada with respect to selling a piece of Crown land to the Government of the United States; it would be done by an ordinary deed, and it would go from the Crown to the Government of the United States, or to an individual.

Senator FARRIS: And you could expropriate that land?

Mr. JACKETT: Yes. All you are considering here is the problem of technical conveyancing difficulties arising from the fact that you have the same legal owner when it involves Australia, the United Kingdom, or a province in Canada.

Senator MONETTE: Do I understand that if Canada sells to Belgium part of our territory, we could expropriate that from Belgium?

Mr. JACKETT: Yes, if the land is physically situated in Canada. I am just guarding myself against Senator Connolly's example of a site for the High Commissioner's office in Australia.

Senator MONETTE: I have explained my opinion to honourable senators who are familiar with the English law, and I am ready to vote on it.

Senator GOUIN: May I say a few words? I admit the English law is different, and it is difficult for us to reconcile the idea that the naked ownership would theoretically be separated forever from the use of the land, or what we call the fruits of its use. In the case of another province, I would have no objection. Subsection (a), to which we so often refer, in my opinion seems exceedingly wide. When we are looking again at these provisions, I think we should have certain safeguards. For that reason, Mr. Chairman, I would like to move an amendment to line 6 by striking out the words "in any right other than Canada" and to substitute therefor the words "in the right of any province of Canada."

With the inclusion of that amendment, I am quite satisfied.

The CHAIRMAN: Have we a seconder for that amendment?

Senator KINLEY: We do not need a seconder in committee.

The CHAIRMAN: The proposed amendment by Senator Gouin is as follows: that line 6 be amended after the words "Her Majesty" by striking out the words "in any right other than Canada" and substituting therefor "in the right of any province in Canada."

I should point out that the effect of that is to limit the exercise of this procedure to cases where you are dealing between the federal and provincial authorities, and it would have no application to areas beyond that. But I should also point out that under section 4 of the act, you can do it anyway.

The CHAIRMAN: Do you wish me to poll the committee?

Senator GOUIN: If you will, please.

The CHAIRMAN: Does the committee understand the amendment proposed by Senator Gouin?

Senator ASELTINE: I would like to hear what Mr. Jackett has to say about it.

Senator CONNOLLY (*Ottawa West*): In effect would not the amendment leave the right up in the air for Canada to transfer lands to Her Majesty in another part of the Commonwealth?

The CHAIRMAN: The amendment which Senator Gouin has proposed would have the effect of limiting the procedure which this amendment provides to use only in the case of a transfer between the federal and the provincial authorities.

Senator FARRIS: I think I would have supported that motion before I heard Mr. Jackett on the question of our right of expropriation. Having had that explanation, which appeals to me as reasonable, I feel I would vote against it.

The CHAIRMAN: Are you ready for the question?

Senator CONNOLLY (*Ottawa West*): May I ask Mr. Jackett one other question, because I think it is important to the committee. If this amendment passes, how would Canada—take Australia as an example—if she wanted to, sell an embassy property down there to the Australian Government. How would she do it?

Senator LEONARD: Did not Mr. Jackett explain that point when he spoke of his deal in London, England? They had to set up an intermediate company.

Mr. JACKETT: Either that, or do as we urged the United Kingdom people to do—get an Act of Parliament.

Senator MCKEEN: I would like to hear Mr. Jackett's views on this amendment.

Mr. JACKETT: As far as I am concerned, this is a pure question of policy. How far should Parliament go in authorizing the Governor General in Council, without coming back to Parliament, is something that I, as an official, should not express an opinion on.

The CHAIRMAN: Those in favour of Senator Gouin's amendment please indicate.

The CLERK OF THE COMMITTEE: Three.

The CHAIRMAN: Contrary.

The CLERK OF THE COMMITTEE: Nineteen.

The CHAIRMAN: The proposed amendment is lost.

Senator FARRIS: You did better, Senator Gouin, than I did the other day.

The CHAIRMAN: We are still back on those words, "forever or for any lesser term", and there is one question I would like to ask Mr. Jackett. If those words were out of there, and you were presented with a section in that form, would you or would you not reach the conclusion that Her Majesty could transfer the administration and control for all time, or for a limited period?

Mr. JACKETT: I would have no doubt you could transfer it for all time.

The CHAIRMAN: Why I asked the question was, if you put, instead of the actual wording, for a definite time, and included "forever", what would be your answer?

Senator ASELTINE: That would be forever.

Senator THORVALDSON: Forever. I do remember that the word "forever" was used in every Crown grant issued in western Canada. It is the standard word, and it comes out of the Dominion Lands Act. I have seen hundreds of these Crown grants, and I am sure Senator Aseltine remembers them, and the word "forever" is in all the Crown grants.

Senator ASELTINE: It will not interfere with expropriation.

The CHAIRMAN: No.

Senator BRUNT: Would this serve the purpose just as well—if we took out the words "either forever or for any lesser term" and substituted the words "for any term".

An Hon. SENATOR: I think the word "term" would imply what Senator Monette wishes; that it could not be forever.

Senator MONETTE: May I call the attention of honourable senators from the west to the matter of the Crowsnest Pass. It was a transfer "forever", and has it not created a situation that is not actually satisfactory?

Senator REID: It sure has. The word is "forever", and they are claiming that it is forever.

Senator ASELTINE: I think we have the right to expropriate, and we should not interfere with these words.

The CHAIRMAN: I have no motion to strike out these words that we have been discussing. We have heard Mr. Jackett's explanation, and the only thing that is left, since there is not a motion on this point, is whether or not it is felt we should make this amendment declaratory, since it is intended to go back and regularize or remove a doubt as to the authority of the Government to proceed by Order in Council.

Senator FARRIS: Can't you test that now? We have got to pass on the section. Shall the section pass as already amended?

The CHAIRMAN: Well, yes, I was just raising this, and I thought I should, since Mr. Jackett has said that possibly it should be declaratory.

Senator McKEEN: There is one point in the meantime, which Mr. Jackett has raised, and I wonder whether we should not take cognizance of it—that, by putting those words in, you raise a question of all the other acts that do not have any right of Canada as to public property.

The CHAIRMAN: I noticed in the report of the proceedings last time that when this question was up Senator Farris had made this statement, when we were discussing this amendment, "not required for public purposes of Her Majesty in the right of Canada": "But when you put in . . . words that are not in here you have an inconsistency in the two which I think does not clarify the meaning." Then I answered, "If the courts were asked to interpret this, 'not required for public purposes' in subsection 1 of section 4 I think the interpretation would be that it would read into those words, 'of Her Majesty in the right of Canada' ". Then Senator Farris said, "But the very fact that you made a distinction in subsection 2 would "take away that conclusion". There is the issue in a nutshell, in those half a dozen words.

Senator CONNOLLY (*Ottawa West*): In view of what Mr. Jackett has said, with great respect to the Chair, I think I would move that that amendment be amended by striking out "of Her Majesty in the right of Canada and not required for public purposes", and in this way it would conform to the wording of subsection 1 of the first section.

Senator LEONARD: I would second that motion.

The CHAIRMAN: Is that the feeling of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: We can have a different thought today from what we had yesterday if the committee is in favour of it. We will escape a very violent and vigorous debate in the Senate, I know.

Senator ASELTINE: Making it to conform to 4 (a).

Senator POWER: It was put in, if I remember rightly, largely for clarification. It was thought perhaps it might not be required for the public service of Canada but might be required for public purposes by a province, and that the words "not required for public purposes" might have the effect of limiting. I did some arguing on that. I think that was the point. I had in mind, for instance, the transfer of land belonging to the dominion Government to a province for use as a park. It would be required for public purposes by the province, and it should be land that would be of no use to the dominion Government.

Senator POULIOT: Senator Power, if the bill is passed this year with this amendment what will a judge say 15 years from now?

The CHAIRMAN: I refuse to speculate. Gentlemen, I think we have batted this around long enough. Shall I report the bill with the one amendment, which would be adding the words "not required for public purposes" after the words "public lands", in line 9 of the bill?

Senator MONETTE: I would like to submit an amendment to strike out the words "forever or for any lesser term" and substitute therefor the words "for any term".

The CHAIRMAN: Gentlemen, Senator Monette suggests that the words "forever or for any lesser term" be struck out and that the words "for any term" be substituted therefor. All those in favour of his amendment?

The CLERK OF THE COMMITTEE: Ten.

The CHAIRMAN: All those opposed to the amendment by Senator Monette?

The CLERK OF THE COMMITTEE: Twelve.

Senator POULIOT: Mr. Chairman, I move that after the word "purposes" in line 9 we add the words "within the boundaries of each province concerned".

The CHAIRMAN: Gentlemen, we have an amendment suggested by Senator Pouliot to the effect that after the words "public purposes" in line 9 of the bill we add the words "within the boundaries of each province concerned". The effect of that amendment would be to limit the application of this to a transfer, as between the federal authority and a province, of land situated in that province. Those in favour of Senator Pouliot's amendment?

Senator ASELTINE: Seeing that we have the right of expropriation I would not care to vote for that.

The CHAIRMAN: Well, we have the amendment. Those who are supporting Senator Pouliot's amendment please raise their hands.

The CLERK OF THE COMMITTEE: Four in favour.

The CHAIRMAN: Those contrary to Senator Pouliot's amendment?

The CLERK OF THE COMMITTEE: Seventeen.

The CHAIRMAN: The amendment is lost. Shall I report the bill as amended?

Hon. SENATORS: Agreed.

The committee thereupon adjourned.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-33, intituled: "An Act to amend the Public Servants Inventions Act."

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MARCH 17, 1959

WITNESS:

Dr. E. R. Birchard, President, Canadian Patents and Development Limited, Ottawa, Ontario.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20878-5—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Paterson
Baird	Gouin	Pouliot
Beaubien	Haig	Power
Bois	Hardy	Pratt
Bouffard	Hayden	Quinn
Brunt	Horner	Reid
Burchill	Howard	Robertson
Campbell	Hugessen	Roebuck
Connolly (*Ottawa West*)	Isnor	Taylor (*Norfolk*)
Crerar	Kinley	Thorvaldson
Croll	Lambert	Turgeon
Davies	Leonard	Vaillancourt
Dessureault	*Macdonald	Vien
Emerson	McDonald	Wall
Euler	McKeen	White
Farquhar	McLean	Wilson
Farris	Monette	Woodrow—50.
Gershaw		

(Quorum 9)

**ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

MONDAY, March 16, 1959.

"Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Emerson, that the Bill C-33, intituled: "An Act to amend the Public Servants Inventions Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

REPORT OF THE COMMITTEE

TUESDAY, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-33), intituled: "An Act to amend the Public Servants Inventions Act", have in obedience to the order of reference of March 16th, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 17, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Brunt, Connolly (*Ottawa West*), Croll, Golding, Haig, Horner, Isnor, Kinley, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Reid, Thorvaldson, Turgeon, Wall, White, Wilson and Woodrow—24.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-33, An Act to amend the Public Servants Inventions Act, was read and considered.

Dr. E. R. Birchard, President, Canadian Patents and Development Limited, Ottawa, Ontario, was heard in explanation of the Bill and was questioned.

On motion of the Honourable Senator Aseltine it was *resolved* to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

It was *resolved* to report the Bill without any amendment.

At 1.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

20878-5—2

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred Bill C-33, to amend the Public Servants Inventions Act, met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: The next bill, which is the last we have before us today, is the Public Servants Inventions Act, and Mr. Birchard, the president of the Canadian Patents and Development Limited, is here. The bill is being distributed now.

Senator Brunt explained the bill on second reading, and there was some debate on it. Now, Mr. Birchard, would you tell us, first, the reason for the amendment which is proposed?

Mr. E. R. BIRCHARD, (*President of Canadian Patents and Development Limited*): Our difficulty, operating under the bill as it stands at the present time, is that Canadian Patents and Development Limited pay for the expense of processing the patents, securing the patents, exploiting them to industry, drafting up the agreements, and any travelling expenses that are required to contact with industry. We have no vote from Parliament, but must turn over any profits that are received through royalties on the invention to the Consolidated Revenue Fund. It is a little difficult to carry on business in that manner.

Senator POULIOT: Well, Mr. Birchard, did you bring us copies of the regulations of your agency, Canadian Patents and Development Limited? In virtue of the Public Servants Inventions Act regulations can be made. Do you have special regulations for your agency?

Mr. BIRCHARD: I don't quite understand what you mean by regulations.

Senator POULIOT: The kind of things that all corporate agencies have in order to specify when the meetings will take place and what will be the quorum and how the patents will be disposed of, et cetera, et cetera.

Mr. BIRCHARD: Yes, sir, there are regular annual meetings of the directors of Canadian Patents and Development Limited.

Senator POULIOT: I do not mean special decisions made at different meetings. I want to know if you have separate regulations that apply to your agency?

The CHAIRMAN: The statute provides for it.

Senator POULIOT: Have you any bylaw?

Mr. BIRCHARD: Yes.

Senator POULIOT: That is what I mean. Bylaws and regulations have the same meaning. Did you bring them with you?

Mr. BIRCHARD: No, I did not.

Senator POULIOT: Do you know them by heart?

Mr. BIRCHARD: No.

Senator POULIOT: Why did you not bring them here to complete your evidence? You are here before a committee of the Senate of Canada and I want some information. I want some precise information and I am definite about it. The Minister told the house that you are only one agency and there are several others and this bill would apply mostly to you. What I said yesterday in the Senate was the way you have proceeded was a technical embezzlement because the money belonged to the Consolidated Revenue Fund. You know it and you have used it. Did you use it in your agency. Did your agency use it, part of the money that was the proceeds from the royalties?

Mr. BIRCHARD: That money was used to pay for the patents and to process the patents which were referred to us by other Government departments.

Senator POULIOT: With whose authorization?

Mr. BIRCHARD: The Ministers concerned referred the patents to us to process and exploit.

Senator POULIOT: Some Ministers did, but not all of them.

Mr. BIRCHARD: The Ministers which referred those inventions to Canadian Patents and Development Limited.

Senator POULIOT: Some of the Ministers, not all of them, because you know very well there are other agencies similar to yours in various departments. You know that.

Mr. BIRCHARD: There is only the one Crown corporation that handles patents the way the Canadian Patents and Development Limited does.

Senator POULIOT: Well, there are other agencies like Atomic Energy Board, Polymer, et cetera.

Mr. BIRCHARD: The Polymer Corporation does not come under the Civil Service Inventions Act.

Senator POULIOT: But it is another agency that looks after patents.

Mr. BIRCHARD: It might look after its own patents. It is a Crown corporation but it does not come under the Public Servants Inventions Act.

Senator POULIOT: Would you contradict what the Minister has said in the House of Commons, that there are other agencies—

The CHAIRMAN: Just a minute.

Senator BRUNT: Hold on now!

Senator POULIOT: Just a minute. If you are not satisfied with it I will ask the committee to have him sworn in.

Senator BRUNT: The witness says a few words and he is immediately interrupted.

Senator POULIOT: I will give him a chance. I want him to have every chance.

Senator BRUNT: Let this gentleman make his entire statement and then, having made the statement, let's ask the questions. I think that is only fair.

Senator POULIOT: He has made his statement and now we are asking questions and I want the full story, if we have to sit here all day.

Senator BRUNT: It doesn't matter to me how long we sit.

Senator POULIOT: I want the truth about the whole thing.

Senator BRUNT: Who says you are not going to get it, but just give him a chance to speak.

Senator POULIOT: I'll give him a chance to speak.

Senator BRUNT: Well, you are not giving him much chance now.

Senator POULIOT: I don't want him to be reluctant to answer.

Senator BRUNT: You are not giving him much chance.

Senator POULIOT: Neither are you.

Senator BRUNT: Let's listen to his statement.

The CHAIRMAN: Order. Senator Pouliot, there is one thing I want to mention to you before you continue your questions. When you mentioned that the Minister in the other place said there are various Government agencies, the witness said—and you may not have heard him—

Senator POULIOT: If he does not know—

The CHAIRMAN: What he said was that there were others like Polymer but they don't come under this statute. That is what he said. Have you any more questions, Senator Pouliot?

Senator POULIOT: Yes, surely.

The CHAIRMAN: Go ahead.

Senator POULIOT: I want answers and if I do not get satisfactory answers I will ask you, Mr. Chairman, to swear the witness. It is a procedure that I have used only once, but with success.

Senator ASELTINE: Let the witness go ahead and give his story.

The CHAIRMAN: No, we are in proper order so far because the witness gave his general explanation, which was very short, as to why they needed this bill to properly use the money. So we have reached the stage of questions.

Senator POULIOT: Now, Mr. Birchard, if Canadian Patents and Development Limited is a Crown corporation do you make any report to Parliament, any annual report to Parliament?

Mr. BIRCHARD: Yes, sir.

Senator POULIOT: How is it that we never get it?

Mr. BIRCHARD: Canadian Patents and Development Limited was organized under the National Research Council, and the annual report of the Canadian Patents and Development Limited is included in the annual report of the National Research Council. Here is our list of directors and the annual report, and the comments made by the Auditor General, in which this revenue earned by royalties from other Government deparments is mentioned, and the financial statement.

Senator POULIOT: Thank you. Now, what I want to know, Mr. Birchard, is the number of patents that you have now.

Mr. BIRCHARD: At the present time there are about 300 patents or, I should say, patents or patent applications because from the time you make a patent application until the patent issues may be one or two years.

Senator POULIOT: But if you wait one year to decide about the value of the patent you may lose some rights.

Mr. BIRCHARD: You may have misunderstood me, sir. What I said was that from the time the patent application is made until it issues may take from one to two years. Now, immediately you make your application with your patent office that gives you a date on which your invention was registered with the patent office, and that gives you priority to any other application.

Senator POULIOT: Do you have all of the patents that belong to the Crown?

Mr. BIRCHARD: Oh, no, just those that are referred to the Canadian Patents and Development Limited under the Civil Servants Invention Act. The Government department might wish to process the patent themselves, and under the act they are at liberty to do that.

Senator POULIOT: And will this bill apply only to your agency or to all the similar agencies of the Government?

Mr. BIRCHARD: There is only one agency similar to Canadian Patents Development Limited, so that the bill is drawn so that it applies to Canadian Patents and Development Limited; but should at any time the Government decide to create another patent corporation then that corporation can act on the same basis, or whatever it is established for, without amending this Public Servants Inventions Act further.

Senator POULIOT: You know that the minister in charge of patents is the Secretary of State?

Mr. BIRCHARD: Right.

Senator POULIOT: And did you induce your minister, the Minister of Trade and Commerce, to sponsor this application?

Mr. BIRCHARD: This legislation has been discussed back and forward with the various ministers, as it does not in any way affect the purpose for which the Public Servants Inventions Act was inaugurated, but only affects the Canadian Patents and Development Limited, which comes under the National Research Council, and the National Research Council comes under the Minister of Trade and Commerce, therefore it was decided through Justice, Secretary of State, and the Minister of Trade and Commerce that it should be sponsored by the Department of Trade and Commerce.

Senator POULIOT: You said that your agency had 300 patents.

The CHAIRMAN: Or applications.

Senator POULIOT: Or applications?

Mr. BIRCHARD: Yes.

Senator POULIOT: How many patents, and how many applications?

Mr. BIRCHARD: There will be approximately 250 patents, and 50 applications. Now, a lot of those come from the National Research Council.

Senator POULIOT: Well, do you have all the inventions of the National Research Council?

Mr. BIRCHARD: Oh, yes.

Senator POULIOT: But they are in the same department, under the same minister?

Mr. BIRCHARD: Under the same minister, that is right.

Senator POULIOT: And how many applications have been refused yearly, approximately?

The CHAIRMAN: Refused by whom?

Senator POULIOT: How many applications by civil servants through the heads of the departments, how many applications and inventions have been refused or declined by the Canadian Patents Development Limited?

Mr. BIRCHARD: You mean applications—a development brought up for consideration as to whether it is of value or not; is that what you mean?

Senator POULIOT: Yes.

Mr. BIRCHARD: Since the Public Servants Inventions Act was introduced there have been 357 cases submitted—do you want them broken down by departments?

The CHAIRMAN: No, the total first.

Senator POULIOT: Yes, I want them broken down by departments.

The CHAIRMAN: You want a total, and then by departments?

Senator POULIOT: I want a total, and then by departments.

Mr. BIRCHARD: I will give you first the number of cases on which patent actions have been taken since the Public Servants Inventions Act came into force, and these are the patents that come under the Public Servants Inventions Act. This does not cover the cases we handle for universities, or anything of that kind; National Research Council, 68; Atomic Energy of Canada Limited, 39; Department of National Defence, 41; Department of Veterans Affairs, 1; Fisheries Research Board, 3; Post Office, 4; Department of Northern Affairs, 2; Department of Agriculture, 2; Defence Research Board, 4; National Film Board, 1; Department of National Health and Welfare, 3; Canadian Arsenals, 2; making a total of 170.

Now I will give you the number of cases submitted to Canadian Patents and Development Limited by various Government departments that have been considered from all the various angles, that is whether they will be of value, whether of any interest to the general public, or whether they have been anticipated. The following are the number of cases that have been submitted, considered, and subsequently abandoned: National Research Council, 73; Atomic Energy of Canada Limited, 22; Department of National Defence, 1; Department of Veterans Affairs, 20; Fisheries Research Board, 3; Post Office, 15; Department of Northern Affairs, 1; Department of Agriculture, 1; Central Mortgage and Housing, 1; Department of Transport, 1; and then there are miscellaneous of 49; a total of 187.

Senator POULIOT: How many have been refused?

Mr. BIRCHARD: The last number, the same as we have dropped or abandoned.

Senator POULIOT: Yes, to make it clear.

Mr. BIRCHARD: Yes, to make it clear.

The CHAIRMAN: That will be over 300 that have been abandoned; is that right?

Mr. BIRCHARD: There have been 187 abandoned, the total that have been submitted is 357.

Senator POULIOT: Who decides whether an application should be accepted or rejected; it is a board, is it not?

Mr. BIRCHARD: It is done through various committees, because you have patents submitted in the various fields; there may be chemistry, physics, building research, mechanics, hydraulics, electronics, and all the various other fields; so that it takes a different group for each one, when an invention is submitted it is referred first to our patent officers; they look it over, and from their knowledge they can sometimes determine that the invention has been entirely anticipated and there is no possibility of securing a patent on it, therefore there is no use spending any more money on it because you couldn't get a patent on it. Then if it is considered that it might be patentable a committee is called, which consists usually of the directors of one of the divisions, such as the mechanical engineering division or the chemical division, to study the application to determine if possible whether it is workable, and at the same time from the combined knowledge of that committee to determine whether the product would be of any value if you did make it, and the process that is necessary to develop and produce the product. All this is checked into very carefully; then to double check on that, if it is decided that the development is of interest, we have regular checks with the patent office, our patent officers go into the patent office and search the files before we spend any further money on it to determine whether there is anything in the files that anticipates this patent and whether it would be possible to secure a patent covering that invention. Then if we are still uncertain about it we call in some of our advisers in the various types of industry to get a value on it.

We handle the processing of an invention as fast as we can because once an invention comes up and is written up then we must make sure it is protected.

Senator POWER: Why do you do this? Don't you sort of anticipate or give a judgment prior to a judgment which would be given by the patent office itself on the question of the newness or in its relation to a patent already existing? Why wouldn't you put that up to the patent office because, after all, it makes the final decision?

The CHAIRMAN: Having had some experience in this field can I tell you what the practice is: the practice is when somebody thinks he has an invention he consults a patent lawyer. The patent lawyer then makes a search of the prior art to determine whether the field is covered or whether there is some particular part of the field still free even though it is generally covered in which you might move with this particular application. All those things are determined beforehand because you have to draft your application, give the specifications and prepare the claim. The patent office does not prepare your claims for you, they review them.

Senator POWER: Somebody has to do all this work.

The CHAIRMAN: Yes, but before it goes to the patent office.

Senator POWER: I have not had experience with the patent office but I have had experience with inventors and they are the most persistent people on earth. I cannot imagine a person who thinks he has a good patent being satisfied by the decision of other civil servants who compose this Patents and Development Limited that his invention cannot be patented, and under the act I take it that if he has invented something he has to go through that process. What does he do when he finds that the company is not going to go ahead.

The CHAIRMAN: If this company decides it is not economic to proceed with the patenting of his invention he can get a waiver and go on on his own under the statute.

Senator POWER: That is under the act itself?

The CHAIRMAN: Yes, that is right.

Senator POWER: If your company decides it is no use he can nevertheless persist in his application and go to the patent office direct.

Mr. BIRCHARD: Definitely. The point you bring up is an interesting one, and that is an inventor who has been working on his invention for two to three years gets the idea that his invention is awfully good. One question that is pertinent, when you are talking to this fellow you may ask him would he invest his own money in a patent. We have carefully watched all that in the National Research Council and we have not yet found any inventions that have been turned down by the Canadian Patents and Development Limited, that the inventor although we release it to him, has proceeded to make application with his own money.

Senator POWER: Most of them have no money at all to start with.

Mr. BIRCHARD: This is one place where the act is beneficial to the inventor.

Senator WALL: Mr. Chairman, am I correct, Mr. Birchard, interpreting that waiver as a discretionary waiver at the mercy of the minister.

The CHAIRMAN: Well now, Senator Wall. If the department is not going ahead, do you think the minister would not give the waiver?

Senator WALL: The point is this, that the waiver is not a waiver of right. The minister has to agree to give that waiver.

The CHAIRMAN: Well, can you imagine a minister refusing to transfer when he says, I do not think that is any good and I am not going to do anything about it. I just cannot imagine that situation arising.

Senator POULIOT: What is the profession of the gentlemen who form the body to which the applications for patents are first sent?

The CHAIRMAN: In this organization that receives the material from the inventor?

Senator POULIOT: The minister or the deputy minister sends you an application for a patent.

The CHAIRMAN: It is still a description of an invention.

Senator POULIOT: Yes, it is a description because in the first place the civil servant has taken the matter up with the deputy minister or the minister and it goes to you. To whom do you send it?

Mr. BIRCHARD: Our patent officers look it over and see if we have as much information as is necessary to deal with it.

The CHAIRMAN: The witness says the patent officers in this limited company are the first ones who look at the material that comes in.

Senator POULIOT: Your own patent officers?

Mr. BIRCHARD: Yes.

Senator POULIOT: I would like to know what is the qualification of each of the members of your patent office.

Mr. BIRCHARD: Our chief patent officer is a graduate engineer, and also studied law and is a graduate in law; he has taken a considerable number of courses in chemistry, physics and other fields. He is the chief patent officer and oversees the work of the other patent officers.

Then we have a patent officer familiar with what you might call the mechanical end; that is, electrical, electronics, radar, physics, building research, mechanical engineering and aerodynamics. He is a university graduate and has had a great number of years experience on patents.

On the other side, in the fields of chemistry, biology and that type of thing, our patent officer is a graduate in chemistry and chemical engineering, and has worked in the patent field now for about 12 years.

Senator POULIOT: There are three?

Mr. BIRCHARD: There are three, yes.

Senator POULIOT: And they screen the descriptions that are sent to your agency?

Mr. BIRCHARD: Oh yes.

Senator POULIOT: That is their job?

Mr. BIRCHARD: That is their job.

Senator POULIOT: And besides that, do you have any boards of examiners for patents?

Mr. BIRCHARD: We have various committees, sir, which review them to determine that we may have an invention, and it might be patentable. Then we refer it to another committee to determine the value—

Senator POULIOT: In the first place, the three members of your patent office decide whether the application should be considered or not. They do not have the final say?

Mr. BIRCHARD: No.

Senator POULIOT: It is another committee that makes the decision?

Mr. BIRCHARD: That is correct, sir.

Senator POULIOT: How many committees have you?

Mr. BIRCHARD: We have a committee for each of various fields of activity. We have a committee on biology—this committee can vary, because there are so many different phases in biology, although the Director of Biology is always one of the members of that committee, provided the inventions under consideration is in his field.

Now, we have the same set-up in chemistry: we have the Director of Pure Chemistry, with the scientists who are familiar in the various phases under which he works. In applied chemistry we have the director, and his section heads that are familiar with the field. So on: we have 15 or 20 different committees to consider the patents, because no one committee is knowledgeable in every field.

Senator POULIOT: Are the members permanent or temporary?

Mr. BIRCHARD: That depends. I would say that the director of the division is a permanent member of the committee, if the invention is in his field and would come under his division.

Senator POULIOT: Who selects the members of the various committees?

Mr. BIRCHARD: That is done by the Canadian Patents and Development Limited, the patent officers.

Senator POULIOT: It is done by the three gentlemen you have mentioned?

Mr. BIRCHARD: Yes.

Senator POULIOT: They select the members of the committees?

Mr. BIRCHARD: And at the same time we will leave it to the director to determine and name the persons who are knowledgeable in that field. If there are not sufficient personnel on his staff, we might draw in someone from the Department of Agriculture or the Department of Fisheries to sit in on that committee, if they are really knowledgeable in that field.

Senator POULIOT: Who decides if the invention is to be accepted? It is considered by the patent office and then afterwards by one of the committees, and the committee makes a report. Does the committee decide whether the patent will be accepted or not, or is that matter referred to the Patent Office?

Mr. BIRCHARD: No. The Canadian Patents and Development Limited's officers sit in on those committees, and after discussing the matter backwards and forwards, the committee comes to a conclusion that an application should be filed on that development, or should be rejected, and their reasons why.

Senator POULIOT: To whom does the report of the committee go, to the Patent Office, or to you?

Mr. BIRCHARD: They report to me, also I sit on the committee.

Senator POULIOT: So the Patent Office is composed of the gentlemen whom you have mentioned, and of yourself. There are four in the Patent Office?

Mr. BIRCHARD: That is right; but, there will be one of the patent officers sit in on each committee. If it is in the field of chemistry the patent officer on electronics would not sit in on it, because he is not knowledgeable in the chemistry field.

Senator POULIOT: But the Patent Office consists of three, plus yourself?

The CHAIRMAN: The patent committee.

Senator POULIOT: Your Patent Office.

The CHAIRMAN: Yes.

Senator POULIOT: I will not insist on that. But I would like to know, to whom the report of any committee is sent. Is it sent back to your Patent Office?

Mr. BIRCHARD: It is sent to me.

Senator POULIOT: It goes all around?

Mr. BIRCHARD: Not a very long way, because there is a secretary who sits in the committee and writes up the minutes; a copy of those minutes go to everyone who was on the committee and I have a copy of what the committee decided they would do. Then we go ahead.

Senator POULIOT: You are with the Vice-President and Secretary-Treasurer. Do you ask for the opinion of the vice-president, Dr. Mackenzie?

Mr. BIRCHARD: Dr. Mackenzie is the vice-president, yes.

Senator POULIOT: And you are the president?

Mr. BIRCHARD: I am the president, yes.

Senator POULIOT: And you have consultations with him?

Mr. BIRCHARD: Oh yes.

Senator POULIOT: Do you make decisions alone or with him?

Mr. BIRCHARD: No. It is pretty well the committee that makes the decisions, unless there is an open and shut case and there is no doubt about it.

Senator POULIOT: Who assesses the value of an invention?

Mr. BIRCHARD: When an invention comes to Canadian Patents and Development Limited, it is reviewed first by the patent officers who determine whether it is worth while spending time to review it. If the invention is fairly well described in the original submission, we do some research on other patents to determine whether the invention is not anticipated. If at that point we find from our knowledge that the patent has not been anticipated, then it is referred to a committee.

Now, a committee consists of myself as president of the committee, together with a patents officer who is knowledgeable in that field, together with the secretary of Canadian Patents and Development Limited, the director of the division related to it, and other scientists that are knowledgeable in the same field.

Senator POULIOT: Do they decide about the value of the invention, or the royalties that should be asked for the invention?

The CHAIRMAN: Senator, I understood the witness to say earlier that at that stage they make inquiries in industry in that field to get some appreciation of values and public use and things of that kind.

Senator POULIOT: But who decides about value?

The CHAIRMAN: In the last analysis, I suppose, the president.

Senator POULIOT: You are the one who decides?

Mr. BIRCHARD: Well, I can override the committee, but if the committee recommends that we go ahead with a patent, and before we go ahead every one is agreeable.

The CHAIRMAN: That is not Senator Pouliot's question. His question is, let us assume that you have decided there is some invention there and that you should make some application for a patent, who takes the responsibility for determining the value of that and the question of the royalties you are going to get?

Mr. BIRCHARD: That has to be worked out with the industry and with the Canadian Patents and Development Limited.

Senator POULIOT: When and who makes the decision of accepting, and for what industry?

Mr. BIRCHARD: That is left to the president and vice-president and patent officers.

Senator POULIOT: In other words, yourself? Now, as you are familiar with the value of each invention, what is the total of the 250 inventions that you have now, and what is the prospective value of the 50 applications that are standing?

Mr. BIRCHARD: It is impossible to answer that, sir, because some of the patents cover new chemicals that have never been on the market. Scientists can say that "the thing is developing along that line, but what the volume will be we have no idea at the present time", and it changes from day to day. You might say at the present time "That is a very valuable patent", but by another month someone else has come up with a new idea, and this is obsolete, washed out. It is impossible to tell what the value of our patents will be, and we do not put anything in our financial statement about them.

Senator POULIOT: There is one piece of information you can give to the committee, and that is the amount of the royalties that you receive now.

The CHAIRMAN: What amount did you receive last year?

Mr. BIRCHARD: You have got my financial statement there, Mr. Senator. Royalties from licensing fees, et cetera, received up to March 31, 1958, were $237,248. The cost of those licensing fees we paid to the United Kingdom and Australians for the use of their patents was $174,232, so we had $63,060 net. We have an agreement with National Research Development Corporation in the United Kingdom that we handle their patents in Canada, and they handle our patents in England and on the continent, and we have a similar arrangement with Australia. Then we have considerable expenses over and above that, in that there are patent attorney fees of $50,938. Those are the fees that we pay the patent attorneys for completing patent applications. Then we have direct promotion expenses, awards to inventors, et cetera, et cetera; and on our operations last year we lost $3,825.

Senator POULIOT: Now, Mr. Birchard, do you have with the United States Government an arrangement similar to that which you have with the British Government?

Mr. BIRCHARD: It is handled a little differently down there; but there are a number of companies that will take a development for us and do the promotional work, do the development work that is necessary from the time—and act as our agent to do that development work, because we do not have very much money to gamble on that sort of thing.

Senator POULIOT: I have two questions to ask you, then I will be through. One of them is the meaning of the word "exploit" used in the act.

Mr. BIRCHARD: Well, "exploit" according to the dictionary, the way I interpret it, is to take something and secure the best out of it that you possibly can.

Senator POULIOT: One "exploits" a mine.

The CHAIRMAN: That is right. You exploit a development. You exploit an enterprise.

Senator POULIOT: Do you do that sort of thing in exploiting an invention?

Mr. BIRCHARD: We must, with industry. It is quite a job to get industry interested in taking these things up, because there is a certain amount of gamble on it.

Senator POULIOT: Why is that here in the bill when the thing is not done by your agency.

The CHAIRMAN: Yes, it is.

Mr. BIRCHARD: Pardon me, sir, we do it.

Senator POULIOT: You exploit?

Mr. BIRCHARD: Yes.

Senator POULIOT: You exploit for profit or for loss?

The CHAIRMAN: For profit, they hope.

Senator POULIOT: And what do you exploit?

Mr. BIRCHARD: The inventions.

Senator POULIOT: And what inventions do you exploit?

Mr. BIRCHARD: Those that are referred to us by the Research Council and other Government departments.

The CHAIRMAN: And are patentable.

Senator POULIOT: What are they?

The CHAIRMAN: These 250.

Senator POULIOT: But what are they, the 250? If they are sold for royalties they cannot be exploited by a Government office.

Senator BRUNT: When you sell it, is not that exploiting it?

The CHAIRMAN: That is the exploiting, when you make the agreement with somebody else.

Senator POULIOT: They do not mean, fabricating inventions.

The CHAIRMAN: Oh, no.

Senator POULIOT: Well, that is all right. My last question, about awards. Who decides about the awards, and how much do the civil servants get?

Mr. BIRCHARD: The amount of the award that may be paid to the civil servant is set out in the Public Servants Inventions Act, or, the Public Servants Inventions regulations. You will find it under section 11, subsection 1. That is, the amount of the awards. In subsection 2 is set out awards that may be made by any minister for a bright idea. Section 11, subsection 1 sets out the percentage of the royalties that may be paid to an inventor.

Senator POULIOT: How many civil servants receive such awards? Did 250 civil servants each get one award for the 250 inventions which are now held by your office?

Mr. BIRCHARD: There are a number of these inventions, sir, on which we have never got a cent back. In fact, some of them are perhaps before their time, and industry is not interested in even producing them at the present time. That is what they call, maybe, a "dud" patent.

The CHAIRMAN: But the question is, to what extent have you made awards and what is the amount of them? Let us have it in the year.

Senator POULIOT: I want to know about the 250 that have been accepted. They are there, and they represent the brainwork of 250 civil servants or, it may be, 200 if some have made two inventions.

The CHAIRMAN: How many awards have been made?

Mr. BIRCHARD: Please keep in mind that Canadian Patents and Development Ltd are not authorized to pay awards to civil servants of other Government departments until we get this amendment to the bill through, so that any awards that have been made have only been made to inventors from the National Research Council.

The CHAIRMAN: So far.

Mr. BIRCHARD: In 1956-57 there was a total of $1,422 paid in awards. In 1957-58 there was $3,423.19 paid in awards. We have not yet been able to compute the 1959 awards because they are not made up until all the royalties are received at the end of the fiscal year, which is the end of March. But that will be much larger. This year at the same time, if this bill goes through, we will pick up the civil servants from other Government departments and get a recommendation from their appropriate Ministers on paying the awards.

The CHAIRMAN: Those are the ones that have not been paid so far because there was some difficulty in having authority to pay out the money?

Mr. BIRCHARD: That is right.

Senator POULIOT: We have the aggregate yearly amount but I would like to know the number of awards that have been granted each year.

The CHAIRMAN: These are only from the National Research Council.

Senator POULIOT: That is all right.

The CHAIRMAN: The number would not be very great.

Senator POULIOT: That is all right, but I would like to have the information from this gentleman.

Mr. BIRCHARD: There were ten.

Senator POULIOT: How many of these applications belonged to the National Research Council?

Mr. BIRCHARD: Those are all National Research Council, ten.

Senator POULIOT: With respect to the 250 how many were from outside and how many from the National Research Council?

The CHAIRMAN: I would imagine that ten are from the National Research Council and the rest must be from all other departments, is that right?

Senator POULIOT: No, but do you expect to make awards to the 240 other inventors?

Mr. BIRCHARD: Oh, no, sir, because some of those patents have not even been licensed. There is no income from them.

Senator POULIOT: I understand that but, by your question, Mr. Chairman, one would have been led to believe that the 240 others were to receive awards.

The CHAIRMAN: That is a potential but out of those 240 the eligible ones would only be those whose patents have been licensed and there is some revenue.

Senator POULIOT: Now, considering the amounts you have mentioned for each year and the number of ten, it means that each award is between $100 and $300.

The CHAIRMAN: A year.

Senator POULIOT: Is it a year or is it paid like royalties are?

The CHAIRMAN: I will ask the witness. Tell me, Mr. Birchard, if your awards are paid on a percentage of royalties they would be paid annually, would they?

Mr. BIRCHARD: Yes. They are paid as soon after the end of the fiscal year as we can possibly have them paid.

The CHAIRMAN: Any other questions?

Senator WALL: I would like to pursue a different line of questioning altogether. I cannot rid myself of the feeling that this amendment to section 9, and all the attention that has been given to the Canadian Patents and Development Limited, is misguided. Section 9, subsection (1), talks about any corporate agency of Her Majesty, and the definition section talks about a department, which means a department as defined in the Financial Administration Act, and includes a Crown corporation named in schedule "C", and there are 12 of these agencies set out in schedule "C". My point is that I contend this amendment is directed to any department or any agency which may in effect receive or make money from the control of an invention or a patent, and that all the inventions or patents do not finally rest in this Canadian Patents Development Limited.

From that point of view I think it is rather important for us to understand that the purport of this amendment is not indicated only against this. It could be that some department or some agency may have a major break-through in something, and does not have to refer its break-through to Canadian Patents and Development Limited or, even if it did, it could be that such agency or department could make a tremendous amount of money and that money would be held within that agency and none would flow to the Consolidated Revenue Fund. There must have been some reason for that in the first place. That is the one thing that perturbs me.

The CHAIRMAN: I think you should cease to be perturbed, if I might suggest it, because this act provides for the relationship between the public servant who is an inventor and his appropriate Minister. That is the basic principle of the act, but that appropriate Minister, if he does not want to do it himself, can select some other Minister to whom he will transfer the administration and control of this particular thing and he may transfer the administration and control to any corporate agency of Her Majesty. Now, this agency has been set up as a corporate agency to which the appropriate Ministers will transfer the administration and control of an invention. We have been told by this witness today there are certain Crown companies that process their own inventions, like Polymer. We have no concern with them because if they process their own inventions they do so within the machinery and scope of the legislation they have. So it is true that the Government could set up another patent agency if they wanted to duplicate the features of this, but the responsibility is that of the Minister. He can delegate it to a corporate agency. This is the only corporate agency which exists at the present time to which there has been delegation, for in the case of Polymer there is no delegation. They process within the scope of their own corporate organization.

Senator POWER: Is there not probably an order in council of some kind practically instructing the Ministers to have that kind of thing handed over to this corporation?

Mr. BIRCHARD: There were no direct instructions given to the Ministers but there was a committee set up by Order in Council P.C. 1123, 1955, called the Interprovincial Committee on the Disposition of Patent Rights on Research and Development Contracts.

The CHAIRMAN: And you will notice the language of this bill reads:

> Where pursuant to the section the administration and control of any invention or patent has been transferred to a corporate agency...

Now, you only deal with that situation.

Senator WALL: Very well. Since we are discussing this problem, there are two questions I would like to ask, one of which is quite simple. The annual salary is $16,000, and that brings into focus the kind of staff we shall permanently be operating with, and the kind of establishment it will be. I am bringing that to your attention, because as I see the Canadian Patents Development Limited it is a public institution that will search out and study opportunities to cut costs of our great natural resources, reducing industrial wastage; in other words, an operational institution for public service.

The CHAIRMAN: I think you are at the wrong end of the process, are you not, Senator Wall, because the encouragement of all these things should come within the departments of Government where these men who become inventors are working. At that stage I would agree they should have encouragement, but this corporate entity is set up at the other end of the process where with or without encouragement they have developed ideas.

Senator WALL: My last question is this: Is this corporation acting as a public agency able to market patents abroad?

The CHAIRMAN: You mean licence them?

Senator WALL: Yes; in other words, doing an aggressive kind of job. Are we set up to do that kind of thing on a personal enterprise basis?

The CHAIRMAN: I would think if they applied for a Canadian patent the first thing they would do would be to make their application in other countries, and then if you have a patent in Canada you have patent protection in other countries of the world. Is that so?

Mr. BIRCHARD: If we consider it is valuable to do so in other countries.

The CHAIRMAN: Is any of your royalty income coming from the use of any of these patents in countries other than Canada?

Mr. BIRCHARD: Not that $6,900, but some of our National Research Council patents, yes, revenue comes in from other countries. For instance, we have just offhand received from France approximately $140,000 in royalties over the period of ten to twelve years. Now we have just cleared with the United Kingdom the difficulty on tax, because the United Kingdom Inland Revenue ruled that we had to pay a tax on royalties of 8 shilling and 2 pence, I think it was, on the pound, which works out at about 42½ per cent. As our tax department in Canada does not require us to retain tax on royalties which we pay to the United Kingdom we have taken up many times with the Inland Revenue in the United Kingdom that it was not fair and perhaps that Canada would have to review their tax situation. Just Monday of this week we finally got a ruling through that we didn't have to pay the tax. We have several things licensed in the United Kingdom. We have as representatives in the United Kingdom the National Research Development Corporation, which corporation was established by the United Kingdom, and they made £5 million available to them, interest free, for the first five years. They were set up after we were. At the end of five years, they set up another £5 million, and extended another five years, in which they did not pay interest.

The CHAIRMAN: Well, that is on the angle of how other countries exploit the development of ideas.

Mr. BIRCHARD: There are similar organizations who are as our representatives in other countries.

Senator POWER: I am curious to know why we are making this retroactive, and why we could not have taken some other method, on account of my ingrained opposition to retroactive legislation, and why it was not possible for any other steps to be taken.

The CHAIRMAN: I don't like retroactive legislation. The only reason I did not object to this one on that ground was that if we ratify what has been done—and that is the effect of this retroactive feature—then we make it possible for this company to recognize in awards all these inventors from which some royalties have been received but who have not been recognized so far.

Senator POWER: Rather than have this act come into force on the 1st of June 1955, personally I would prefer some way of confirming specifically what has been done. This is very broad. I do not remember ever having come across legislation with a declaration of retroactive activity as broad as this.

Senator BRUNT: Senator Power, the Fisheries Improvement Loan Act was retroactive, except that it was not for as long a period of time; it only goes back to December 12, 1958.

The CHAIRMAN: That might be one view. In the view that I have, I thought language.

Senator POULIOT: Mr. Chairman, as a conclusion, was not the procedure put out by this agency, technical embezzlement?

The CHAIRMAN: That might be one view. In the view that I have, I thought they could spend the money all the time. It just shows the meaning I can put on the word "exploit".

Shall we report the bill without amendment?

Carried.

We also need a motion for authority to print 600 copies of the proceedings in English, and 200 in French.

Carried.

The meeting is adjourned.

—Whereupon the meeting adjourned.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-25, intituled: "An Act to amend the St. Lawrence Seaway Authority Act."

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MARCH 10th, 1959

WITNESS:

Mr. B. J. Robert, Chairman of the St. Lawrence Seaway Authority.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20815-7—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

MONDAY, March 9, 1959

"Pursuant to the Order of the Day, the Senate resumed the postponed debate on the motion of the Honourable Senator Choquette, seconded by the Honourable Senator Emerson, for the second reading of the Bill C-25, intituled: "An Act to amend the St. Lawrence Seaway Authority Act".

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

The Bill was then read the second time.

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

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

J. F. MacNEILL,
Clerk of the Senate.

20815-7—2

REPORT OF THE COMMITTEE

TUESDAY, March 10, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-25), intituled: "An Act to amend the St. Lawrence Seaway Authority Act", have in obedience to the order of reference of March 9th, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 10, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day, after consideration of other bills, at 11.00 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien, Bois, Brunt, Burchill, Connolly (*Ottawa West*), Crerar, Croll, Golding, Haig, Isnor, Lambert, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Pratt, Reid, Robertson, Taylor (*Norfolk*), Turgeon, Wall, White, Wilson and Woodrow. 28.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-25, An Act to amend the St. Lawrence Seaway Authority Act, was considered.

Heard in explanation of the Bill: Mr. B. J. Robert, Chairman of the St. Lawrence Seaway Authority.

Also in attendance: Messrs. C. W. West, member of the St. Lawrence Seaway Authority and P. E. R. Malcolm, Secretary and Director of the Administration of the St. Lawrence Seaway Authority.

On MOTION of the Honourable Senator Aseltine, seconded by the Honourable Senator Haig it was RESOLVED to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

On MOTION of the Honourable Senator Aseltine, seconded by the Honourable Senator Haig, it was RESOLVED to report the Bill without any amendment.

At 11.30 a.m. the Committee proceeded to the consideration of other Bills.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 10, 1959

The Standing Committee on Banking and Commerce, to whom was referred Bill C-25, to amend the St. Lawrence Seaway Authority Act, met this day at 12 o'clock.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: We now have before us Bill C-25. Mr. B. J. Roberts, President of the St. Lawrence Seaway Authority, is here to answer any questions. The bill is a simple one, and is very modest in its demands, having regard to the amounts of money for which we have been asked for in connection with other projects. This involves really only $35 million.

Senator CROLL: At this time.

The CHAIRMAN: Yes, at this time. Does anyone wish to ask questions of Mr. Roberts?

Senator WALL: This is not directly concerned with the bill itself, but could Mr. Roberts tell us when the deepening of the locks and channel in Sault Ste. Marie area is to take place? Is there not going to be a bottleneck in that area?

Mr. B. J. Roberts, President of the St. Lawrence Seaway Authority: Yes. That is the responsibility of the United States Corps of Engineers and I think the date of completion is 1962 or 1963. The Minister of Transport made a statement in the house about three weeks ago with respect to that.

Senator ISNOR: I would like to ask Mr. Roberts a question. Is this $35 million to be used entirely for development?

Mr. ROBERTS: For construction.

The CHAIRMAN: For additional construction.

Mr. ROBERTS: To pay for the scheme as now planned.

The CHAIRMAN: Additional construction?

Mr. ROBERTS: To pay for the scheme as now planned; the construction costs of the Seaway, in accordance with the plan that was determined and provided in the 1951 act.

The CHAIRMAN: Is it for extra work or for increased cost of doing the work?

Mr. ROBERTS: To some extent it is increased cost, and extra work. The Minister of Transport, when the bill was before the House of Commons, listed a number of works which really had not been planned for in the original estimates, amounting to some $104 million. The chief items in general terms would be the additional cost of bridges over and above what had been anticipated previously in the Messina section, just south of Montreal; and the dredging in the international section, which was arranged between the two Governments by an exchange of notes subsequent to the production of the original estimate on costs of the Seaway.

Senator McDONALD (*Kings*): Has this money already been spent?

Mr. ROBERTS: No. At the moment we estimate by the end of March our total payment will be $270 million out of an original $300 million as borrowing power provided for in the act of 1951. The budget of expenditures for the current year is $52,500,000. So, we will be up to $270 million, plus $52 million to the end of 1959. There are still some expenses for dredging and other items which will be carried over into 1960.

Senator ISNOR: My question was not so much as to the cost and increased costs of the whole development, but rather as to the bills outstanding and accounts being incurred at the present time as incidental expenses. How are they going to be taken care of? I am thinking of such matters as the cost of ice breaking last winter. Would that be an outstanding liability, and how will it be charged?

Mr. ROBERTS: That was not a cost to the Seaway authority, but to the Department of Transport, St. Lawrence Channel Services.

Senator ISNOR: I just wanted to establish that, Mr. Chairman. The entire cost is borne by the Department of Transport, is that right?

Mr. ROBERTS: Yes; it has nothing to do with the Seaway.

Senator ISNOR: All such expenditures last year, the year before, and in future years will be taken care of by the Department of Transport?

Mr. ROBERTS: Well, the responsibility of the Seaway Authority is to construct and operate the Seaway, which commences just near the Jacques Cartier Bridge in Montreal. We have nothing to do with the ship channel or the harbour of Montreal, except in so far as the turning basin for the Seaway at its easterly limit is the harbour of Montreal.

Senator ISNOR: Mr. Chairman, I think this is an important question, dealing with the expenditures in the future of the Department of Transport, and of course its estimates will have to be brought down. I don't think Mr. Roberts has answered my question. It is a simple question, as to whether such expenditures as the cost of ice breaking will in future be charged to the Department of Transport.

The CHAIRMAN: I do not think Mr. Roberts should be called upon to answer that question. He is the President of the Seaway Authority. He has said that the expenditure in 1958 was not an expenditure of the Seaway Authority, but of the Department of Transport. That immediately takes it out of the subject matter of this bill. But as to future policy, I do not know that Mr. Roberts in his present position can say what will happen next year or any year after that. I am just calling his attention to the dangers inherent in any answer he may give.

Senator PRATT: Are we now only dealing with costs of construction of the Seaway?

The CHAIRMAN: Yes.

Senator PRATT: And this has nothing to do with its operations?

The CHAIRMAN: These items do not deal with the operation?

Mr. ROBERTS: No.

Senator REID: What is the total expenditure on the Seaway?

Mr. ROBERTS: The approved budget of costs on the Seaway was presented to Parliament a short time ago for $329 million, the accumulated total expenditures to take care of the work done to date, the balance to be done in 1959 and 1960. The difference between the $329 million and the $335 million which is put in here as the borrowing authority is to take care of unknown responsibilities.

Senator PRATT: You are anticipating that this amount here asked for is calculated to be the limit of what may be required in Seaway construction?

Mr. ROBERTS: According to our best ideas at present.

Senator ISNOR: I certainly do not want to ask for any information to which I am entitled, and I know that Mr. Roberts is well able to take care of himself. I know too by experience that he is a very able administrator. I just wanted to establish the fact for the future, and particularly perhaps as regards the past, 1958, as to this expenditure: he has stated definitely that it is now under the Department of Transport. That is what I want to establish.

The CHAIRMAN: Are you ready for the motion to approve the bill? The bill is reported without amendment.

I want a motion to print.

Senator ASELTINE: I move that 600 copies of the report be printed in English, and 200 in French.

Senator HAIG: Seconded.

Motion agreed to.

The CHAIRMAN: Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill?

Agreed.

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-29, intituled: "An Act to amend the Trans-Canada Highway Act."

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MARCH 17, 1959

WITNESS:

Mr. G. B. Williams, Chief Engineer, Department of Public Works.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

20876-9—1

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate

MONDAY, March 16, 1959.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Aseltine, seconded by the Honourable Senator Brunt, for the second reading of the Bill C-29, intituled: "An Act to amend the Trans-Canada Highway Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

20876-9—1½

REPORT OF THE COMMITTEE

TUESDAY, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-29), intituled: "An Act to amend the Trans-Canada Highway Act", have in obedience to the order of reference of March 16, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 17, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Beaubien, Brunt, Connolly (*Ottawa West*), Croll, Golding, Haig, Horner, Isnor, Kinley, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Reid, Thorvaldson, Turgeon, Wall, White, Wilson and Woodrow.—24.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official Reporters of the Senate.

Bill C-29, An Act to amend the Trans-Canada Highway Act, was read and considered.

Mr. G. B. Williams, Chief Engineer, Department of Public Works was heard in explanation of the Bill and was questioned.

On Motion of the Honourable Senator Aseltine it was RESOLVED to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

It was RESOLVED to report the Bill without any amendment.

At 11.30 A.M., the Committee proceeded to the consideration of other Bills.

ATTEST.

A. Fortier,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Tuesday, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred Bill C-29, to amend the Trans-Canada Highway Act, met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: We are now ready to proceed with C-29, which is an act to amend the Trans-Canada Highway Act. May I have a motion to print 600 copies in English and 200 in French?

Hon. SENATORS: Agreed.

The CHAIRMAN: Carried. Mr. Williams is here. He is the chief engineer of the Department of Public Works. Mr. Williams, would you just tell us why it is that this bill is before us, seeking more money in connection with Trans-Canada highway construction?

Mr. G. B. WILLIAMS: The amendment is merely to increase the amount from $250 million to $350 million. At the time the act was last amended, in 1956, the estimates were not final, as the routes were not completely surveyed nor were the locations firm. In addition to that, in the 1956 amendments provision was made in the act that any province that wished to leave an existing paved highway without reconstruction, could do so. Since that time some of the provinces have extended the construction that they originally contemplated and that, plus increase in the costs, has necessitated another $100 million.

Senator BRUNT: Is this the first request for an increase?

Mr. WILLIAMS: No, sir. There was an increase in 1956 from $150 million to $250 million.

Senator ISNOR: Which provinces are making extensions, Mr. Williams?

Mr. WILLIAMS: The province of Ontario, the province of Manitoba, and the province of New Brunswick.

Senator MACDONALD: How can they make extensions?

Mr. WILLIAMS: Sir, when we made the amendments in 1956 we went to the provinces and discussed their programs with them in the light that they might leave sections then built without reconstruction, and the provinces at the time, with their locations firm as they had them at that time—we agreed on an estimate of what work they would do. That is what they felt they could carry out. Since that time, in some cases, based on the record of the work they had done and the demands of traffic on it, instead of leaving some of these sections they decided to reconstruct within the period of the agreement.

Senator REID: Have you any information regarding the sections in British Columbia on which they are receiving 90 per cent?

Mr. WILLIAMS: Yes. Actually, the largest mileage of the 90 per cent section is in the Rogers Pass route—that is the largest continuous mileage. I believe there are two or three sections in the Fraser Canyon up to the Thompson

which are on the 90 per cent. They are relatively short sections, but naturally very expensive. They are proceeding with all of those, as well as additional work on the 50-50 basis on the Fraser, and also on the same basis for quite a big construction program from Abbotsford to the new Second Narrows Bridge.

Senator REID: Is that part of the Trans-Canada highway?

Mr. WILLIAMS: Yes, sir.

Senator REID: You provide 50 per cent of that?

Mr. WILLIAMS: Up to the Second Narrows Bridge.

Senator MACDONALD: Which section is under 90 per cent in the province of Ontario?

Mr. WILLIAMS: Roughly 135 miles of the gap section between Agawa and Marathon and an additional six or seven miles near Cavers, between Fort William and Marathon.

Senator ISNOR: Would you be good enough to give me the 90 per cent section in the province of Nova Scotia?

Mr. WILLIAMS: In Nova Scotia the 90 per cent is broken down in this way: from North Sydney to Little Bras d'Or, the Great Bras d'Or crossing plus the highway approaches on either side, the new grading in the vicinity of Baddeck, and a section between Queensville and Port Hastings.

Senator MCKEEN: What is that total mileage?

Mr. WILLIAMS: 31.8. I might say the mileages are tentative. There will be adjustments at the end of the agreement.

Senator MCDONALD: Has there been a definite decision as to the route throughout the province of Nova Scotia, particularly the Cape Breton area?

Mr. WILLIAMS: Yes.

Senator MCDONALD: This was recently decided, was it?

Mr. WILLIAMS: No sir. The location may have been changed in small detail, adjustments with respect to towns and that sort of thing, but it did run from Port Sydney to Port Hastings, crossing Great Bras d'Or in the vicinity of Baddeck.

Senator KINLEY: Has any consideration been given to extending the highway to the Yarmouth Gateway, that is the gateway to the United States?

Mr. WILLIAMS: No, sir. That would be an off-shoot highway.

Senator KINLEY: Well, I think it would be the principal road. The road goes into Truro and the province goes both ways, towards the gateway to the United States and towards the gateway to Newfoundland. They went to the east with the highway but not to the west.

Mr. WILLIAMS: When the first agreement was signed it was decided to take it to North Sydney, which at that time was the main ferry terminal connecting to Port Aux Basques, Newfoundland.

Senator MCKEEN: Is there provision for some assistance by the Government, not under the Trans-Canada Highway Act but under another act, with respect to international highways?

Mr. WILLIAMS: No, sir.

Senator MCKEEN: There was in connection with the King George Highway in British Columbia that was built to the American side to link up with Highway 99.

Mr. WILLIAMS: Was that in the 1930's?

Senator MCKEEN: Yes.

Mr. WILLIAMS: That would be an unemployment relief project.

Senator REID: Have you any direct information as to the cost of the 10 per cent through the Fraser Canyon compared to, shall I say, the rates in Saskatchewan?

Mr. WILLIAMS: The costs in British Columbia are, of course, substantially higher than they are in Saskatchewan.

Senator REID: What is it costing per mile?

Mr. WILLIAMS: It is very difficult at this stage to arrive at an average cost, because we do not know the total mileage; constructed in B.C. the cost per mile varies greatly, of course; however, on the overall average of their programme it would be in the range of perhaps $250,000 or $300,000 a mile.

Senator THORVALDSON: In regard to some of that mileage, from Banff to Field, how much would that run a mile?

Mr. WILLIAMS: In the national parks?

Senator THORVALDSON: Yes?

Mr. WILLIAMS: Oh, $350,000 a mile or $400,000 a mile.

Senator BRUNT: Has any estimate been made as to a completion date?

Mr. WILLIAMS: The completion date of construction is December 31, 1960, and this agreement terminates at that date.

Senator KINLEY: I think the Port of Yarmouth is reputed to have the most passengers coming into it in eastern Canada. We have the Bluenose running from Yarmouth to Bar Harbour, and it would seem to me that there will always be extensions of highways. I am thinking of federal aid highways. Western Nova Scotia has received nothing from the Trans-Canada highway; there is nothing west of Truro; it has all gone east. There should be some attention given to western Nova Scotia, especially from the fact that our biggest market is in the United States; our goods go through Yarmouth, and the people coming to Nova Scotia come that way. There is a good case for an extension of the highway down to Yarmouth, Nova Scotia. I should like that fact to be put in the limelight.

Senator BRUNT: Would Nova Scotia not have to request it from the Dominion Government, before the Dominion Government could do it? You could not stop off to build the Trans-Canada to the west end.

Senator KINLEY: Oh, I think we could.

Mr. WILLIAMS: This act is very precise; that is, it is to build one project.

Senator WALL: That is to run one ribbon from one end of the continent to the other?

Mr. WILLIAMS: Well, that is the definition.

Senator WALL: That is the concept?

Mr. WILLIAMS: Yes.

Senator WALL: Maybe the concept needs to be widened.

The CHAIRMAN: Well, may I point out, Senator Wall, that these agreements expire next year. Give them a chance to build that original concept before putting the branches on.

Senator KINLEY: Sure.

Senator John A. McDONALD: I hope when they do that that the senator from Queens-Lunenburg will agree there must be two branches, if one of them must go to Lunenburg.

Senator KINLEY: I don't want one to Lunenburg, but I would like one to Yarmouth, and I would like to have one branch go to Halifax.

The CHAIRMAN: Any other questions?

Senator ISNOR: Yes, I have one question. First, I will preface it by asking you this, Mr. Williams: How long have you been with the department?

Mr. WILLIAM: Since June 1955, sir.

Senator ISNOR: Then you do not know the original thought concerning this?

Mr. WILLIAMS: Well, I do, sir. I was with the province of Manitoba for 20 years before I came here, and I was at all of the original meetings with the provinces, and at that time before the federal Government prepared their act there were informal meetings of the provincial officials, setting standards and agreeing on what would be suggested for the acts.

Senator ISNOR: As far as Manitoba is concerned, no doubt you are familiar with the situation there as far as roads are concerned, in addition to which it has extensive forest trade?

Mr. WILLIAMS: In part, yes. There was a highway on most of the routes in existence before this act and naturally they wanted to rebuild it.

Senator ISNOR: Does the department at the present time think of this as a further investment or does it think of it in the form of an expenditure?

Mr. WILLIAMS: I am not quite clear, Senator Isnor.

Senator ISNOR: Well, a great many people refer to road building as a further expenditure. The other thought is that it is an investment so far as the country is concerned. Do you know what the thinking of your department is in respect to this additional $100 million—do they consider it an investment or an expenditure.

The CHAIRMAN: An investment is an expenditure.

Mr. WILLIAMS: I must speak for myself, but I would certainly say it is an investment. As a matter of fact this is a gilt-edged investment because it gives you a direct return on your money, and then it has a long range aspect in the development of Canada and the resources of the country at large.

Senator POULIOT: It is an expenditure which is an investment.

Senator ISNOR: Mr. Chairman, I was anxious to get that expression so far as the term investment is concerned because a great many are interested in the tourist traffic trade and particularly in the development of our own Trans-Canada Highway because of the large revenue derived on the better type of highways. I am glad to have Mr. Williams' opinion on that. Would you say that is the opinion of the department Mr. Williams?

Mr. WILLIAMS: I could not speak for the department, Senator Isnor.

Senator ISNOR: Would you be good enough to give us the figures for the three provinces you mentioned, the provinces that are still going to add to their mileage, Ontario, Manitoba and New Brunswick?

Mr. WILLIAMS: I should not say "are still going to add to their mileage". The mileage has been fairly firmly fixed since 1956, that is the total length of it, and the initiative for the work that will be undertaken lies completely with the province and when I said that they were extending their work, this has been my discussions with them as of 1956 and what they might do, and I have seen them doing a little more than they had originally planned. I cannot give details of that because they still have two complete construction seasons in which to put this work into effect, and I think they are going to get it done but they may decide not to.

Senator ISNOR: Could you give us the proportion of Ontario, New Brunswick and Manitoba in percentages, or miles?

Mr. WILLIAMS: I could not do that.

Senator ISNOR: Would you say that the present program, which you are familiar with in so far as Ontario's latest action is concerned—is that part of the Trans-Canada program in any particular?

Mr. WILLIAMS: The one that has just been announced?

Senator ISNOR: Yes.

Mr. WILLIAMS: Well, of the total funds that have been voted a proportion will be used to pay for their share of the Trans-Canada Highway, but I cannot say. The funds will be in the money they are voting.

Senator ISNOR: I take it from your answer that that comes within the Trans-Canada Highway plan to co-operate.

Mr. WILLIAMS: The only plan for co-operation at present is this agreement which covers to December 31, 1960.

Senator ISNOR: I was leading up to the thought as expressed by Senator Kinley in regard to that. There is an important highway running from Yarmouth to Halifax. The Bar Harbour-Yarmouth ferry brings the Maritimes a great influx of tourists, and when they reach there while they have a good highway it has not been undertaken as far as Trans-Canada is concerned and Nova Scotia bears the whole of the cost, quite differently from Manitoba, Saskatchewan and Alberta. They did not have roads to come there from Nova Scotia in that time but now they have completed the program according to the high standards of the Trans-Canada Highway system.

Senator BRUNT: A part of the roads in those provinces, are Trans-Canada. The rest of the roads they built to their own specifications.

Senator ISNOR: I am speaking only of the Trans-Canada Highway in those provinces. These Prairie provinces had nothing like the roads that were in Nova Scotia.

Senator BRUNT: Wait a minute. The province of Saskatchewan had a good highway across the south end of the province. It is true it was not up to the specifications of the Trans-Canada Highway but I have driven over it before there was any Trans-Canada Highway system, and I found it to be a good highway.

The CHAIRMAN: Mr. Williams can tell us what they do. Certainly you had to lay out what was to be your Trans-Canada road through the province and having done that they might have had existing roads of a certain character, and I understand they may designate those roads without further expenditure as being part of the Trans-Canada Highway.

Senator POULIOT: Did you travel on the Trans-Canada Highway sections that have been completed?

Mr. WILLIAMS: Yes.

Senator POULIOT: From coast to coast?

Mr. WILLIAMS: Over the period of the last two years, yes.

Senator POULIOT: Now, Mr. Williams would that increase in subsidies for the Trans-Canada Highway, the increase to $350 million, will it be enough to complete the Trans-Canada Highway or will the department come again for some more money later.

Mr. WILLIAMS: I think we have provided ample funds to cover us to December 31, 1960.

Senator POULIOT: Enough to finish the job?

Mr. WILLIAMS: Yes.

Senator LEONARD: Does that take Quebec into consideration? Suppose Quebec were to come into the plan now.

Mr. WILLIAMS: If Quebec entered into the agreement they would only have 1959 and 1960 construction seasons to make claims and undertake construction in those two seasons. I think we would have enough leeway, and I do think we would have enough money in this vote. This is a guess into what they might do.

Senator POULIOT: Have you travelled on the Quebec roads?

Mr. WILLIAMS: Yes.

Senator POULIOT: Are they as good as the Trans-Canada highways in the other provinces?

Mr. WILLIAMS: Some sections are I would say, equivalent to Trans-Canada Highway standards. But others are not quite so good. They would have to designate a route before we could really compare. There are many alternate routes you could travel through Quebec and they would have to designate some route connecting up to Edmundston, New Brunswick to roughly Hawkesbury in Ontario, which you could compare.

Senator POULIOT: You know the section from the border of New Brunswick to Rivière du Loup?

Mr. WILLIAMS: Yes.

Senator POULIOT: And from Rivière du Loup to Quebec City?

Mr. WILLIAMS: Yes.

Senator POULIOT: And from Quebec City on the south shore to Montreal?

Mr. WILLIAMS: Yes; as a matter of fact, all of it is equivalent to similar sections in the other Maritime provinces or to sections in Ontario.

Senator POULIOT: You find it is just as well built as similar sections in the Maritimes and in Ontario?

Mr. WILLIAMS: There are sections in these other provinces which are of equivalent standard.

Senator POULIOT: Are they acceptable for the Trans-Canada highway?

The CHAIRMAN: That is a hypothetical question, senator.

Mr. WILLIAMS: The provinces would have to enter into an agreement and designate it, before I could say that.

Senator POULIOT: But on the average, are not the Quebec roads just as good as the roads in any other province?

Mr. WILLIAMS: I could not truthfully answer that, sir; I don't know enough about them.

Senator POULIOT: But from the roads you have seen?

Mr. WILLIAMS: From the roads I have driven on in Quebec, I would say there are sections which are equivalent to those of other provinces—not necessarily continuous all the way through. Quebec could designate a paved route through the province which would meet Trans-Canada's standards.

Senator POULIOT: I am talking about the main arteries.

Mr. WILLIAMS: I must correct that: roads which might not meet the Trans-Canada highway standards, but would be acceptable under the concept of a paved highway.

Senator POULIOT: They don't meet the Trans-Canada highway standards because they are not 100 feet wide; but there is a double highway between Montreal and Levis, on the south shore, that is very good.

Mr. WILLIAMS: That is right.

Senator POULIOT: And I know personally that the highway between Rivière du Loup and Edmundston is just as good as the highways in the State of Maine.

Mr. WILLIAMS: That is right.

Senator POULIOT: But you would not judge these highways in the spring of the year when the frost is coming out; it is not a time to pass judgment on a highway, when it is prohibited to truck usage. You know what I mean?

Mr. WILLIAMS: Yes, senator. There is no doubt Quebec could designate a route which would meet the requirements of the Trans-Canada highway, that is, for a paved route across the province.

Senator POULIOT: There is highway No. 2 from the western border of the province of Quebec to New Brunswick. I ask you, do you find that highway No. 2 on the south shore from Montreal to Levis, and from Levis to Rivière du Loup, and from Rivière du Loup to New Brunswick, good or not good?

Mr. WILLIAMS: I can't say precisely as to highway No. 2. All I can say is that Quebec could designate a paved route across the province which would be acceptable under the Trans-Canada highway agreement.

Senator POULIOT: That highway is always considered as highway No. 2 on all plans for tourists—you know that?

Mr. WILLIAMS: Yes. I know the route; I travelled last summer a bit from Edmundston through to Quebec City.

Senator POULIOT: And the road from Montreal to Levis is in good shape too?

Mr. WILLIAMS: I don't know it well enough to say. I could not tell you what it is like now.

Senator POULIOT: I am only asking you to speak of what you know.

Senator BRUNT: I think the honourable senator knows the answers to most of the questions.

Senator POULIOT: Yes, and I could be a witness.

Senator TAYLOR: Mr. Chairman, I would like to ask Mr. Williams if in his opinion all provinces that now have an agreement with the dominion in connection with the Trans-Canada highway, would find it possible to complete their portions of the highway by the end of 1960?

Mr. WILLIAMS: No.

Senator ISNOR: Mr. Chairman, I was interrupted by Senator Brunt, when I was asking—

The CHAIRMAN: Not deliberately, senator.

Senator ISNOR: No, by no means, Mr. Chairman. I made a statement about the position in which Saskatchewan and Alberta found themselves in 1949 with regard to their roads, and I went on to say that I thought it was to their particular benefit as compared with some other provinces—I had in mind the province of Nova Scotia. That is a fair statement, is it not, Mr. Williams?

Mr. WILLIAMS: I would put it this way, sir. In 1949 the Trans-Canada Highway Act was passed, and agreements were signed in 1950, with the exception of Nova Scotia which signed at a subsequent date. But in 1949 or 1950 all provinces had the opportunity to enter into this agreement by which they would designate the route, and the federal Government would contribute 50 per cent at that time to the cost of reconstruction. Every province had the same opportunity to participate.

The CHAIRMAN: And to designate.

Mr. WILLIAMS: To designate the route. It was subject to the approval of the federal Government, because it was always necessary that they meet. But they did have the opportunity to proceed as quickly as they wished on this reconstruction. The provinces signed as they saw fit, and they proceeded with the work.

The agreement was extended in 1956 because the work was not completed; there was a lot of work under way, and in addition to that, once we got started everyone found the job was a little bit bigger than had been originally contemplated, and the construction period was extended to December 31, 1960. Now, I think all provinces had the same opportunity, and I think they would have the same benefit from this type of project.

Senator ISNOR: Mr. Chairman, may I pursue one further thought I had in mind? In 1949 I was one of those who advocated a four-lane entrance to the principal cities. Was that ever pursued in regard to your thinking of the trans-Canada highway?

Mr. WILLIAMS: Yes. There have been many discussions in respect to the construction of four-lane highways; but the standards contained in the agreement now in effect, and also in effect in 1950, was as a result of federal-provincial conferences. The concept of the Trans-Canada highway was to provide a national highway from coast to coast, and the federal Government was sharing the cost as a national project. It was felt that the necessity for four-lane traffic was created by the local condition, and to get this national highway built it was considered in the light a two-lane project; and that additional lanes were created by local conditions, and would be added by the province.

Senator ISNOR: Do you now say, looking back, if they have adopted the principle of four-lane entrances to the principal cities, we would have saved millions of dollars?

Mr. WILLIAMS: No, I could not say that.

Senator HORNER: Mr. Chairman, what part of the road in Saskatchewan was built on other than a 50-50 basis, if any?

Mr. WILLIAMS: There was 10 per cent.

The CHAIRMAN: There would be some part of it—that was 10 per cent—on which the federal authority paid 90 per cent?

Senator HORNER: Very little.

Mr. WILLIAMS: Ten per cent, sir. They got exactly the same arrangement as the other provinces. There were 40.6 miles—and these mileages are subject to minor revisions—10 per cent of the mileage on which the federal Government paid 90 per cent of the cost.

Senator HORNER: It would be much less expensive than, for instance, the road north of Lake Superior.

The CHAIRMAN: Oh, yes.

Senator HORNER: And we had a very good highway in northern Ontario. I have driven over it many times. There is the railroad, on which of course we have to pay fares, and now we are paying tolls on the St. Lawrence Seaway and tolls on the lakes, so I do not see why we should not have a toll highway as well.

Senator BRUNT: Where is the "good highway"?

Senator HORNER: That is the highway in the neighbourhood of Kapuskasing.

Senator BRUNT: Did you ever travel along it in the spring of the year? It would take a caterpillar to go over it at that time.

The CHAIRMAN: Senator Kinley has something which he wants to say, and which he will discuss with reference to a map.

Senator KINLEY: This is a very old map. We hear so much about the desire to do something from the Maritimes, and if you want to do something worth while here is something you can do. The Trans-Canada highway comes down into Nova Scotia, to Truro, in the middle of the province, and then it comes through here (indicating area on map) and out to Newfoundland, or to

connect with the ferry. This Yarmouth section is the shortest route to our markets here and the shortest route for the tourists who come to that part of the country, and it seems to me that this is the part of the province having highways that are provincial and not up to the standard, and that it should have the preference for Canadian highway expediture. This is a Maritime province, and there are two outlets to the world, one to Newfoundland and this one to the Maritimes. I want to bring this particularly to the attention of the engineer, that the difficulty with highways in this part of the province is that there are expensive bridges, and our bridges are terribly rundown. While the suggestion is on, and there is a feeling that something should be done for the provinces by the sea, I do not know of anything that would do us more good at the moment than to extend the Canada highway down to Yarmouth and into the city of Halifax. The Canada highway does not run into the city.

Senator ISNOR: It is 60 miles from Halifax.

Senator REID: Is the laying out of the routes a prerogative of the province?

The CHAIRMAN: No, the layout of the routes is a dominion Government matter.

Senator KINLEY: The Trans-Canada highway of course, is built in conjunction by the provinces and the dominion Government, and we want just that sort of co-operation for the western part of Nova Scotia. I think it commends itself to anybody, because when you are there at the ocean you have an outlet to the United States and actually, to Newfoundland; and they left this out.

The CHAIRMAN: We are wandering a little bit.

Senator TAYLOR (*Westmorland*): My thought is that if the Government wants to assist the Atlantic provinces in the field of development, I quite agree that the province should select the routes for the Trans-Canada highway—

The CHAIRMAN: That is a basic route which qualifies as Trans-Canada through the province, designated by the province, and still has to be completed.

Senator TAYLOR (*Westmorland*): If you want to assist the provinces and get the Trans-Canada highway built, let the Government pay 90 per cent of the cost of the Trans-Canada highway within the Atlantic provinces.

The CHAIRMAN: I am sure Mr. Williams can report that to his minister. Shall we report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Carried.

2nd Session, 24th Parliament, 1959.

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-43, An Act to amend the Unemployment Insurance Act.

The Honourable SALTER A. HAYDEN, *Chairman*

WEDNESDAY, JULY 8th, 1959.

WITNESSES:

Mr. C. A. L. Murchison, Commissioner of the Unemployment Insurance Commission; Mr. James McGregor, Director, Unemployment Insurance; Mr. R. Humphrys, Assistant Superintendent of Insurance, Department of Insurance.

APPENDICES

A. Unemployment Insurance Fund.
B. Statement Showing Contribution Revenue, etc.,
C. Statement of Fishing Revenue and Expenditure etc.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

21601-0—1

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Pouliot
Baird	Gouin	Power
Beaubien	Haig	Pratt
Bois	Hardy	Quinn
Bouffard	Hayden	Reid
Brunt	Horner	Robertson
Burchill	Howard	Roebuck
Campbell	Hugessen	Taylor (*Norfolk*)
Connolly (*Ottawa West*)	Isnor	Thorvaldson
Crerar	Kinley	Turgeon
Croll	Lambert	Vaillancourt
Davies	Leonard	Vien
Dessureault	*Macdonald	Wall
Emerson	McDonald	White
Euler	McKeen	Wilson
Farquhar	McLean	Woodrow—50.
Farris	Monette	
Gershaw	Paterson	

ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

THURSDAY, July 2, 1959.

"Pursuant to the Order of the Day, the Senate resumed the postponed debate on the motion of the Honourable Senator Emerson, seconded by the Honourable Senator Pearson, for second reading of the Bill C-43, intituled: "An Act to amend the Unemployment Insurance Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

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

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

21601-0—1½

MINUTES OF PROCEEDINGS

WEDNESDAY, July 8, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman;* Aseltine, Bouffard, Brunt, Burchill, Crerar, Dessureault, Euler, Farquhar, Golding, Gouin, Haig, Isnor, Kinley, Lambert, Leonard, Macdonald, McDonald, Robertson, Roebuck, Taylor (*Norfolk*), White and Woodrow—(23).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-43, An Act to amend the Unemployment Insurance Act, was read and considered.

Heard in explanation of the Bill were: Mr. C. A. L. Murchison, Commissioner of the Unemployment Insurance Commission; Mr. James McGregor, Director, Unemployment Insurance Commission and Mr. R. Humphrys, Assistant Superintendent of Insurance.

In attendance but not heard were: Mr. Claude Dubuc, Director, Legal Branch, National Employment Service and Mr. J. Kroeker, Actuary, Department of Insurance.

On Motion of the Honourable Senator Kinley, seconded by the Honourable Senator Macdonald, it was RESOLVED to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

It was RESOLVED to report the Bill without any amendment. At 12.45 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, July 8, 1959.

The Standing Committee on Banking and Commerce, to who was referred Bill C-43, an Act to amend the Unemployment Insurance Act, met this day at 11.15 a.m.

Senator Hayden in the Chair.

Moved by Senator Kinley, seconded by Senator Macdonald, that the proceedings of the meeting be reported, and that 800 copies be printed in English and 200 copies in French.

Motion agreed to.

The CHAIRMAN: In connection with our consideration of Bill C-43, we have certain representatives here from the particular branch concerned. We have Mr. C. A. L. Murchison, Commissioner of the Unemployment Insurance Commission; James McGregor, Director, Unemployment Insurance; Claude Dubuc, Director, Legal Branch V.I.C.; and R. Humphrys, Assistant Superintendent of Insurance. I think Mr. Murchison is going to carry the ball to the extent that he can; but with such a supporting cast I should think we ought to be able to get all the information we want. I think it would be hard to extract any principle from the bill, except that it involves the payment of perhaps more money to more people, and the collection of more money from people—maybe from less people. I am going to suggest that possibly if members have questions to ask it might be as well to have them out of the way first.

Senator KINLEY: Have you an estimate of what the loss of revenue to the exchequer will be by reason of this new legislation?

Mr. MURCHISON: Mr. Chairman, it is not a matter of loss, it is a matter of increasing the revenue to the fund.

Senator KINLEY: Well, let us take the example of a company making $100,000, having say 200 men. Now, the men pay a contribution and the company pays a contribution. The men of course get all the benefit. The company pays corporation tax of 50 per cent after they make $25,000, and this will go into the expense of doing business; and the Government will lose 50 per cent of what they make over the $25,000 and a lesser portion below that; so that the expense is going to be quite big.

Mr. MURCHISON: From the standpoint of the administration, sir, it is not a matter of concern to us what happens in the case of corporation tax. The increases in the contribution rates were brought about by reason of the inroads made on the fund, and in pursuance of advice given to us by the actuary the increase was made. Now, we have no knowledge at all of the effect that increase or outgo from the employers' money will have on his status as a taxpayer to the Government.

Senator KINLEY: I am not being critical, but I want to have it straight, because the Senate likes to have things right. The statement has been made that in this new thing the employer and the men are not paying all of the new cost. Well, if the Government is paying what they lose it will reduce their revenue.

Mr. MURCHISON: It should also be understood that the Government's contribution to the fund will increase, in this way, that they will have to pay 20 per cent of the combined contributions made by employers and employees. If the employer-employee contributions are higher, as we expect they will be, then, too, the Government's contribution will be increased.

Senator KINLEY: That is in the dollar sense?

Mr. MURCHISON: In the dollar sense, yes.

The CHAIRMAN: You say that the employer pays 40 per cent, the employee pays 40 per cent, and then the Government pays 20 per cent; is that correct?

Mr. MURCHISON: That is not quite so, sir. What happens is this, that the Government pays one-fifth of the combined contributions made by employer and employee. It is so stated in the act.

Mr. MCGREGOR: The ratio is 5/12, 5/12 and 2/12; that is, 5/12 by the employer, 5/12 by the employee, and 2/12 by the Government.

Senator KINLEY: It seems to me that the cost is rather disguised, and I am going by our own industry, in which it is a big item. We must pay more, and what we pay goes into our expense of doing business, and the bigger our expense the less the Government gets.

The CHAIRMAN: Could we get that translated into dollars? Perhaps we could get that for the first year in which the provisions of this bill will be in force. What is the estimate of the employers' contributions at the increased rate, and then what would be the estimate at the existing rate?

Mr. MCGREGOR: The full year's contribution is estimated at $337 million.

The CHAIRMAN: For employers?

Mr. MCGREGOR: That is by the whole three contributors.

Senator BRUNT: What about the employers?

Mr. MCGREGOR: Five-twelfths of that.

Senator KINLEY: That is with the amendment, is it?

The CHAIRMAN: This is the amount of money that will be contributed by all the parties, that is, the employer, the employee and the Government. If this bill becomes law that is the estimate for a full year, $337 million.

Senator BOUFFARD: What is the share of the employers?

The CHAIRMAN: Five-twelfths; about $140 million. Could we get the estimate for a year if the rates presently in existence had continued?

Mr. MURCHISON: On the basis of the experience for the fiscal year 1958-59 the employers contribution amounted to $91,205,000.

Senator MACDONALD: And how much is that by way of comparison?

Mr. MURCHISON: $218 million, Senator Macdonald.

The CHAIRMAN: In other words, a full year at the existing rates would produce $218 million, of which the employer's contribution would be five-twelfths. So the increase is about $119 million.

Senator BRUNT: What is the increase by the employers?

The CHAIRMAN: The increase in the employers contribution would be the difference between $91 million and $140 million.

Mr. MURCHISON: May the actuary have a word on that point?

The CHAIRMAN: Yes.

Mr. HUMPHRYS: On the basis of the fiscal year 1958-59 the total contributions by all three parties amounted to $219 million, of which $91 million was paid by the employees, $91 million by the employers and $37 million by the Government. Now, if these proposed amendments had been in effect during that year our estimate is that the total contribution for that year would

have been $307 million, of which the employees would contribute $128 million, the employers, $128 million, and the Government $51 million. So that for that particular year the increase in the contribution would have been $37 million for each of the employer and the employee groups, and $14 million for the Government. Now, those figures are based upon the fiscal year 1958-59. The calculations that we made as a basis for our advice to the Unemployment Insurance Commission were based upon a five year period ended March 31, 1958, and over that five year period had these amendments been in effect we have estimated that the revenue would be $337 million a year, and that is the meaning of the earlier reference to $337 million.

Senator CRERAR: As against the actual?

The CHAIRMAN: You have not the actual for the year that we are going into.

Senator CRERAR: But we are speaking of a five-year period, and I understand witness to say that if the new amendments had been in effect over that five years the income would have been $337 million.

The CHAIRMAN: The average of that would have been $337 million.

Senator CRERAR: Now actually, in place of that $337 million, how much did you receive? What were the average receipts—without these amendments?

Mr. HUMPHRYS: The yearly average over that five-year period was $208 million.

Senator CRERAR: So you go up from $208 million to $337 million?

Mr. HUMPHRYS: Yes, sir, but all that increase is not due to these amendments; part of it arises by reason of the fact that the insured population was rising over those five years, wages and salaries were increasing, so that my figure of $337 million is an estimate of what the revenue would have been for each of those years had the insured population been the same as it is now and had the distribution of contributors by salary and wages been the same as at present.

Senator CRERAR: To get the matter clearer, just take the current fiscal year. Under the act as it is what would the receipts have been?

Mr. HUMPHRYS: I have complete figures for the fiscal year 1958-59, and I think I gave those figures a moment ago, Senator Crerar. The figure was $219 million for the actual revenue from contributions in the last fiscal year, of which $91 million was for employers.

Senator CRERAR: What would it have been if these amendments had been in effect?

Senator MACDONALD: Senator Crerar, in order to compare this figure with the $337 million shouldn't the witness give the amount which would have been collected assuming the population during the last five years was as it is today?

Senator CRERAR: I am not interested in the five-year period at all.

The CHAIRMAN: What Senator Crerar wants is the figure for 1958-59 if the new rates had been in force.

Mr. HUMPHRYS: $307 million.

Senator CRERAR: That means you would have gone up $88 million?

Mr. HUMPHRYS: Yes.

Senator BOUFFARD: How much of the increase would be contributed by employers, by employees and by the Government?

Mr. HUMPHRYS: $37 million by employers, $37 million by employees and $14 million by the Government.

Senator CRERAR: And of that increase of $88 million the Government's share would be $14 million increase?

Mr. HUMPHRYS: Yes.

Senator CRERAR: To that extent that is an additional tax on our revenue. However, that is obvious.

What were the payments out of the fund last year?

Mr. HUMPHRYS: The total payments in the fiscal year ended March 31, 1959 were $479 million.

Senator CRERAR: And that would mean that even with these new amendments, if unemployment continued at the rate of the last fiscal year, you would still be in debt?

Mr. HUMPHRYS: Yes.

Senator CRERAR: You would still be in debt $172 million, the difference between $479 million and $307 million?

Mr. HUMPHRYS: Yes.

Senator CRERAR: In making the calculations you take into account the potential rise in the economy, of this thing we call the Gross National Product.

Mr. HUMPHRYS: In making my calculations I used the experience in the most recent period I had. I took a five-year period ended March 31, 1958 and I attempted to estimate what the benefit load would be over those years, and what the revenue would be, adjusting the actual experience in the light of amendments that had been made in the plan through those years, and in the light of changes in insured population and in the level of wages and salaries. On the basis of that, the contributions proposed in this bill would be sufficient to meet the benefit load under employment conditions at about the average of the five-year from 1953 to 1958. Now, the last fiscal year, 1958-59, has been considerably above that five-year average. If unemployment stays at the high level that we experienced in the last fiscal year or in the last two fiscal years, these proposed contributions would not be sufficient, but if the increase of 1958-59 was an upward swing that will perhaps be offset by an improvement in the next year or two then I think these contributions will be sufficient.

The CHAIRMAN: Senator Crerar, may I interject this question: Having regard to the expected increase in the Gross National Product in the present year, to what extent would you say that would provide a reduction in unemployment and close the gap that would otherwise exist between the revenues received and the payments that you have to make out in the current year?

Mr. HUMPHRYS: I have not attempted to make any specific estimate of that, Mr. Chairman. I have tried to avoid predicting what the level of unemployment would be—I do not know. What I have attempted to do is produce figures on the basis of what the level of unemployment has been in a particular period.

The CHAIRMAN: But you have taken an average of five years up to 1958, that is you have the 1958-59 figures which are very much out of line with the average of five years.

Mr. HUMPHRYS: Yes.

The CHAIRMAN: Then 1960 itself, with an increase in the Gross National Product should be somewhere between the 1958-59 level of unemployment on average?

Mr. HUMPHRYS: Yes.

The CHAIRMAN: I am trying to determine where in that area it would be, and then translate it into how that is going to affect the payments out.

Mr. HUMPHRYS: No one can say definitely of course. The experience that we have so far this year shows a considerable improvement over 1958-59 and it appears the figures may be somewhat better than 1957-58. I do not yet

detect enough evidence to suggest that the experience in 1959-60 will be better than the five-year average period that I used as a base.

The CHAIRMAN: Will it be better or worse?

Mr. HUMPHRYS: I don't think it will be below the average; it may be slightly above.

Senator BOUFFARD: Would it not be a good thing to have the total receipts and disbursements over the five-year period, year by year?

The CHAIRMAN: We have it for 1958-59.

Senator BOUFFARD: With a big deficit?

The CHAIRMAN: Yes. Mr. Murchison has handed me a table.

Senator BRUNT: Could that table be filed?

The CHAIRMAN: We will put it in as an appendix to our verbatim report.

I should state, as Mr. Murchison has indicated to me, that this is a statement of revenues and expenditures of the Unemployment Insurance Fund, and that it covers a broader period than Senator Bouffard has requested information on. If we look at these two columns Mr. Murchison has pointed to we can get the information requested: that is, a comparison of the total revenues and total payments appears under the headings, one "Total Net Revenue", and the other "Total" under a general column headed "Expenditures". By the comparison of those two items you will get the information for the period 1951-59.

Senator BOUFFARD: Does it include administrative expenses?

The CHAIRMAN: No.

Mr. MURCHISON: Mr. Chairman, would it be more meaningful to the committee if we eliminated the item, interest on investment? I have here another table, statement 4, attached to this document, which gives the exact employer-employee contributions, the exact Government contributions, and the expenditures in question.

Senator BRUNT: Let us put both tables on the record.

The CHAIRMAN: Yes.

(For "Statement of Revenue and Expenditure for the period 1 July, 1941 to 31 May, 1959," see Appendix A).

(For "Statement Showing Contribution Revenue, Benefit Expenditure, and Balance in Fund, for the Five-Year Period 1 April, 1953 to 31 March, 1959," see Appendix B).

Senator LEONARD: Mr. Chairman, may I ask Mr. Humphrys, while he made his calculation on the basis of the five-year period, did he test the effect as against a longer period than five years? In other words, what would have been the likely result of these new rates if we had the experience over a longer period of say six, seven or ten years? Did you test it against the longer period?

Mr. HUMPHRYS: No, I did not, sir. There was a limit to how far back I felt it was reasonable to go. By reason of the very extensive changes that were made in the nature of the plan in 1955, part of the experience, even in the five-year base period, had to be drawn from experience under the old act. I made an attempt to adjust that experience to what it might have been had the present plan been in effect.

Now, to carry those adjustments back further, the reliability would have become less as I went back. So, I did not go back any further. But I can say that the unemployment experience in the years prior to 1953 was very good, in the sense that there was very low unemployment. If we should experience that again, the fund will commence to grow.

Senator LEONARD: The receipts are more than adequate in that eventuality?

Mr. HUMPHRYS: Yes. From about 1953 or 1954 there seems to be something in the way of a break in the experience. Since that time, the unemployment has moved to, and remained at, quite a higher level than we experienced in those previous years. The aftermath of the war years and industrial development in those years may have produced an unusual set of circumstances that do not seem to apply now.

The CHAIRMAN: There is one bit of information I think we should put on the record. Mr. Murchison, am I reading these tables correctly? In 1954 it would appear that from the years 1951 to 1959 you had a high peak in the fund of $851 million-odd?

Mr. MURCHISON: That is right.

The CHAIRMAN: And as of March 31, 1959 the balance in the fund was $432,447,000.

Mr. MURCHISON: No, the balance was $499,811,000.

The CHAIRMAN: And since March 31, 1959 you have had further deficits develop in the fund until at the end of May, 1959 the amount is $432,847,000.

Senator LEONARD: Is that book value or market value?

Mr. MURCHISON: Book value.

Senator CRERAR: I have some further questions...

The CHAIRMAN: The further question would seem to be, if you treated those values at market instead of book, how much greater reduction would there be?

Mr. MURCHISON: That is difficult to say. The statement we presented to the committee indicates the loss that was suffered by the fund during the fiscal year just ended, in the sale of those securities. That loss amounted to $10,115,696.51.

Mr. MCGREGOR: The market value as of March, 1959 was $436,549,174.25.

Senator LEONARD: Compared with a book value of $499 million?

The CHAIRMAN: Yes.

Senator LEONARD: A drop of about $54 million?

The CHAIRMAN: About $63 million.

Mr. MURCHISON: If it had been necessary to dispose of securities at that time the loss would have amounted to that figure.

Senator CRERAR: I have two other questions, Mr. Chairman. Assuming that the benefit period had been 52 weeks instead of 36 weeks, as proposed by the amendments, what increased demand would that have made on the fund?

Senator BRUNT: It would be another 50 per cent.

Mr. HUMPHRYS: I have estimated the increased duration of from 36 to 52 weeks would increase the benefit load on an average by about 3½ per cent.

Senator CRERAR: Let us see if we can translate that into dollars. You paid out last year $219 million?

Mr. HUMPHRYS: Yes.

Senator CRERAR: If the benefit period had been 52 weeks instead of 36 weeks, what would have been the result?

The CHAIRMAN: In 1959 they paid out $478,631,000.

Senator CRERAR: I think this is a rather important point, because we are proposing to increase the benefits by these amendments.

Mr. HUMPHRYS: You would have increased the benefits last year by about $12 million.

Senator CRERAR: Surely it would have been more than that. In 36 weeks you paid out $219 million.

Mr. HUMPHRYS: That was the revenue. The payments out on the regular benefit plan amounted to $362 million.

Senator LEONARD: Based on 36 weeks?

Mr. HUMPHRYS: Yes.

The CHAIRMAN: That was the revenue.

Mr. HUMPHRYS: The ordinary regular benefit payments out of the fund in 1958-59 amounted to $362 million.

Senator CRERAR: That is on the basis of 36 weeks.

Mr. HUMPHRYS: Yes.

Senator CRERAR: What would it have been if it had been 52 weeks?

The CHAIRMAN: It would have been 3½ per cent more.

Senator BOUFFARD: You have an increase in the length of time of nearly 50 per cent. How is your calculation made?

Mr. HUMPHRYS: Not all the beneficiaries draw the full amount.

The CHAIRMAN: If they go back to work they do not draw for the full 52 weeks.

Mr. HUMPHRYS: Only a relatively small proportion of the claims draw the maximum.

Senator MACDONALD: May I ask a question? Under the new bill what do you anticipate the increased payments will amount to? I want to know the increase.

Mr. HUMPHRYS: We estimate these amendments will increase the out-go by about $24 million.

Senator MACDONALD: $24 million a year?

Mr. HUMPHRYS: Yes.

Senator MACDONALD: And what do you anticipate the annual increase in revenue will amount to?

Mr. HUMPHRYS: With all the amendments the increase in revenue will amount to about $97 million.

Senator MACDONALD: So you expect that the fund will increase by about $73 million a year?

Senator BOUFFARD: No.

Mr. HUMPHRYS: Yes.

Senator BOUFFARD: I would like to have the answer of the witness explained, because I do not think the difference is correct.

Senator BRUNT: The fund will not be increased by the difference.

Mr. HUMPHRYS: No, the fund will not necessarily increase by the difference. These amendments will result, by themselves, in an increased out-go, as compared with the benefits without the amendment, of $24 million a year, and the changes in the revenue will result in an annual increase in revenue of about $97 million. But the fact is that at the present time the revenue is not sufficient to match the benefits that are now being paid, so that the difference that you referred to, the $73 million, will be needed to bring the revenue into balance with the present benefits.

The CHAIRMAN: Mr. Humphrys, is it not a fact that it is quite likely that in the year 1959-60 that the overall position will not have been flattened out; that there will still be a deficit?

Mr. HUMPHRYS: Yes, I think so. At the present time my estimate is that we are short by about $73 million a year. That is, the present benefits exceed the present revenue on the average by about $73 million a year, so we will

need $73 million to bring it into balance, and then we need another $24 million to cover the cost of the changes that are now being made.

Senator MACDONALD: So that what you require is $73 million plus $24 million.

Mr. HUMPHRYS: Yes.

Senator MACDONALD: Wait a moment until I get that. That will amount to $97 million?

Mr. HUMPHRYS: Yes.

Senator MACDONALD: And what do you expect the increase under the new rates will amount to?

Mr. HUMPHRYS: That is included in the $97 million. I estimate that the change in the rates—that is, apart from adding the new classes, I estimate that just the change in the general scale of contributions will bring in $78 million, and the balance, or the difference between that and the $97 million, will be brought in by adding two new contribution classes and by raising the ceiling of coverage to $5,460.

Senator MACDONALD: So the total increased receipts will amount to about $116 million?

Mr. HUMPHRYS: No, $97 million.

Senator MACDONALD: That is the total, taking everything into consideration?

Mr. HUMPHRYS: Yes, $78 million of that will come from the change in the contribution scale, and about $19 million from the amendments that are being made adding two new contribution classes and raising the wage ceiling for coverage.

Senator MACDONALD: I see, and you estimate that amount will be sufficient to balance the disbursements with the receipts for this year?

Mr. HUMPHRYS: That is on the basis of the experience in the five-year period ended March 31, 1958.

The CHAIRMAN: The witness has voiced the opinion that in fact it would appear that we are headed for a deficit in the fund at the end of March, 1960.

Senator MACDONALD: Under the present increases?

The CHAIRMAN: Under the increases in this bill.

Mr. HUMPHRYS: Yes. Of course, we cannot say definitely what next winter will bring. If it should be very good we may break even, but unless recovery is very sharp I think that even this year we might find that the benefits will exceed the revenue. It must be kept in mind, of course, that if this bill is passed the new contribution rates cannot be brought into effect before the end of September at the earliest.

Senator CRERAR: Just on that point, will the changes which are to take place raise the level from $4,800 to $5,460?

Mr. HUMPHRYS: Yes, the coverage.

Senator CRERAR: I have two questions in regard to that. What increased revenue do you expect to get from that action, and what will be the increased outlay?

Mr. MURCHISON: Well, that evidence was given elsewhere, Mr. Chairman. The increase in the revenue over a twelve months' period would amount to $2 million, in round figures, and the out-go—

Mr. HUMPHRYS: That is the net increase.

Mr. MURCHISON: Yes, the net increase; I am sorry. There would be an advantage to the fund in the amount of $2 million by reason of the raising of the ceiling from $4,800 to $5,460.

Senator KINLEY: For what reason?

Mr. MURCHISON: Well, the people in the higher classes are in more stable employment and are not so liable to claim benefit.

Senator KINLEY: You have your unemployment amongst the unskilled workers, largely. The skilled workers do not get laid off so much. This act has been amended twice since 1955 and they took on obligations in these amendments that might have destroyed the actuarial significance of the whole thing.

The CHAIRMAN: That raises the question of the seasonal benefits that you are talking about.

Senator KINLEY: Yes.

Senator MACDONALD: Could I ask Mr. Murchison or one of the other witnesses on what information were these rates increased? Did the advisory board of the Unemployment Insurance Commission recommend these increases?

Mr. MURCHISON: The record shows that the Unemployment Insurance Advisory Committee concurred in the recommendation that there be two additional classes established and that there be a change in the allowable earnings feature of the act, and that the ceiling be raised from $4,800 to $5,460.

Senator BOUFFARD: Does that include seasonal employment?

Mr. MURCHISON: No. The seasonal benefits were not, at the time, in question. There was a division of opinion—

Senator MACDONALD: Just a minute. The advisory board recommended that the two additional classes be added and that the allowable earnings be increased.

Mr. MURCHISON: Adjusted.

Senator MACDONALD: Now, what else?

Mr. MURCHISON: The third one was the increase in ceiling from $4,800 to $5,460.

Senator MACDONALD: On whose recommendations were the other changes made?

Mr. MURCHISON: That was a decision of Government, sir.

Senator MACDONALD: Did the advisory board make any recommendation with regard to the other provisions of this bill?

Mr. MURCHISON: The actuary filed his report with the Unemployment Insurance Advisory Committee, and that report indicated a need for an increase in revenue. Generally speaking, the recommendation to the committee was that the increase in contributions be applied to the employer, the employee and the Government. Some members of that committee objected to the increase in the contributions because there was no commensurate increase in the rates of benefit, and so there was a compromise made, and the suggestion to Parliament was that the Government, out of the Consolidated Revenue Fund, should take care of the shortfall.

Senator MACDONALD: Of the what?

Mr. MURCHISON: Of the shortfall, of the shortage, that would occur. It was almost a coincidence that if the Government had increased its contributions so that it would equal 50 per cent of the combined employer-employee contributions, the difficulty would be overcome and that is what the committee recommended.

Senator MACDONALD: The committee recommended that the share of the Government, as I understand you, should be equal to the share of the employer and employee?

Mr. MURCHISON: Employee or employers. In other words, a one-third breakdown each way.

Senator MACDONALD: Yes. Instead of five-twelfths, five-twelfths and two-twelfths, it would be three, three and three.

Mr. MURCHISON: Yes.

Senator KINLEY: The employee gets all the benefit.

Mr. MURCHISON: I think you should understand that the only increase in the rate of benefit occurs in the new classes mentioned in this amendment. The other classes remain at the previous rate.

Senator LEONARD: So that the employee is paying more for the same benefit.

Mr. MURCHISON: That is right.

Senator KINLEY: Would you regard them all as employees?

Mr. MURCHISON: There are three classes of contributors: the employee, the employer, and the Government.

Senator KINLEY: And the employee pays a certain amount according to the schedule and the employee matches that figure, so how does one pay more than the other?

Mr. MURCHISON: They don't. They are equal.

Senator LEONARD: My point is that the employee is also making his contribution in this matter because he is now paying more than he did before for the same benefit that he has always been entitled to.

Senator KINLEY: Yes, but he has been getting too much because the fund is in debt.

Senator LEONARD: Not the same employee, necessarily.

Senator KINLEY: No, not necessarily the same employee.

Senator MACDONALD: In the lower category the employee gets less than previously.

Mr. MURCHISON: No, it is the same but he is paying more for it.

Senator MACDONALD: He is paying more for it but he is getting less.

Mr. MURCHISON: The rate of benefit remains the same for all classes that exist under the present law. There are two new classes for which there are increased rates of benefit.

Senator MACDONALD: The way I read the bill is that the two lower classes pay a little and they get less. Under the schedule of rates of benefit on page 4 of the bill I observe that under the old act anyone paying less than 20 cents a week got $6 if he was without a dependant. His average weekly contribution has been increased to "Less than 25 cents" and he still gets $6.

Senator LEONARD: He gets the same benefit.

The CHAIRMAN: He pays more for the same benefit.

Senator MACDONALD: No, no. The point is that the employee who contributed between 20 cents and 25 cents got more under the old act than he will under the present act.

Mr. MCGREGOR: The employee who contributes less than 20 cents in the schedule as it now stands will be the employee who will contribute "Less than 25 cents" in the new act. He will fall into exactly the same category, but with an increased contribution. Take the second item which is "20 and under 27" in

the present schedule. The person contributing that will fall into the category of "25 and under 34" in the new act. His rate of benefit is based on his average contributions over the last 30 weeks, and his average contributions will be raised by virtue of the fact that the contributions are all raised by 30 per cent. So he will fall into exactly the same category but his contribution will be up simply by reason of the 30 per cent increase.

Senator MACDONALD: But under the old act did not the employee who contributed between 20 and 25 cents receive $9?

Mr. MCGREGOR: Yes.

Senator MACDONALD: And under the present act he will get $6?

Mr. MCGREGOR: No, sir, if you will look at the schedule it is "20 cents and under 27 cents" giving a benefit of $9. Is that not right?

The CHAIRMAN: Yes.

Mr. MCGREGOR: That same employee will have his contribution increased by 30 per cent and that will bring him into the category of 25 cents and under 34 cents, and he will still benefit by $9. If he was paying an average of 25 cents, and you raised that 30 per cent, that would bring him to 32 cents, which brings him into the next bracket in the new schedule.

Senator BURCHILL: He gets the same benefit.

Senator MACDONALD: The man who pays 24 cents under the old act gets $9?

Mr. MCGREGOR: Yes.

Senator MACDONALD: Now he only gets $6?

Mr. MCGREGOR: Yes; but that same man who was paying 24 cents will not be paying 24 cents now; he will be paying 24 cents plus 30 per cent, which brings him into the next bracket.

Mr. MURCHISON: Probably it will be clearer to the honourable gentlemen if they realized that the rate of benefit has some connection with the range of earnings, and therefore if you note that under the range of earnings of $9 to $15 under the old act a man received $8 dependency rate, he will still be receiving that under the amendment.

Senator MACDONALD: But I understand that the man who was paying 24 cents is now going to pay more and get the same, but there are still going to be men who are going to pay 24 cents and they are going to get $6 instead of $9 under the old act?

Mr. MCGREGOR: But if they are going to pay 24 cents they are not paying 24 cents now, but 16 cents.

Senator MACDONALD: That is all right, but there are so many other people who are going to pay 24 cents.

Mr. MCGREGOR: In order to do that a man would have to fall into a different wage bracket.

Senator LEONARD: Can we have your assurance that no man's benefit is reduced as a result of this?

Mr. MCGREGOR: Yes.

Senator MACDONALD: I think we should get more information about the recommendations from the advisory board. The recommendations from the advisory board have been carried out in connection with three items only as I understand it; that is, the adding of the two classes, the increase in the allowable earnings, and the increase in the ceiling from $4,800 to $5,460; but in other respects the advice given by the advisory board is not followed by the Government; is that correct?

The CHAIRMAN: I do not think Mr. Murchison has said that.

Mr. MURCHISON: No, I am not prepared to say that, because that is a matter for the Government and not for the administration.

The CHAIRMAN: I think he said the rate increases were the result of the recommendation of the actuary; is that right?

Senator MACDONALD: Yes.

Mr. MURCHISON: That was not in our hands.

The CHAIRMAN: You did not make that decision?

Mr. MURCHISON: No, sir.

Senator MACDONALD: But the advisory board did make a recommendation as to how that increase should be made, and the advice of the advisory committee was that it should be met by an increased percentage of payment by the Government so that the Government would pay the same as the employer or the employee; is that correct?

Mr. MURCHISON: Yes, sir.

The CHAIRMAN: That would involve larger payments out of the consolidated revenue fund.

Senator MACDONALD: Yes, larger payments out of the consolidated revenue fund.

Senator CRERAR: May I ask a question, Mr. Chairman, lost as I am in this maze of figures?

The CHAIRMAN: I accept with reservations that statement of yours that you are lost in this maze of figures.

Senator CRERAR: The question is this: Under the new legislation (1) we increase the contributions that have to be made by the Government, employees and employers; (2) we increase the total benefits that will be received by the extension from 36 weeks to 52 weeks. Is that correct?

Mr. MURCHISON: That is one of the bases for increase; there are others.

Senator CRERAR: Is that statement correct or incorrect?

Mr. MURCHISON: Not wholly correct, because there are other items that involve increased outgo from the fund.

Senator CRERAR: But I am speaking of the fellow who is unemployed. His contributions are increased; that is clear. Then if he is unemployed he draws out benefits for 52 wees under this bill, instead of 36 weeks under the other; is that correct?

Mr. MURCHISON: Well, that is just a maximum duration, sir. It is possible for a person under the proposed amendment to draw benefit for 52 weeks.

Senator CRERAR: Well, the maximum under the old law is 36 weeks?

Mr. MURCHISON: Yes.

Senator CRERAR: Well, now the maximum provision is 52 weeks?

Mr. MURCHISON: Yes, sir.

Senator CRERAR: That is, after 36 weeks he does not find a job he still continues for the full period of 52 weeks to draw benefits?

Mr. MCGREGOR: Not necessarily. It depends entirely on his equity, the number of weeks he has paid in.

Senator CRERAR: Assuming he had met with that condition of paying in, and the man had been employed steadily for say five years and made his contributions for five years, he would qualify for 52 weeks?

Mr. MCGREGOR: Correct.

Senator CRERAR: Now, what we do is this, we increase the contributions made by the man, we increase the demands that may be made upon the fund, and we hope that through the balancing of this the fund will come out on the right side?

Mr. McGREGOR: Well, the way I would put it is this, I think, sir, that we are trying to ensure that the revenue will equal the expenditure, that the annual revenue will equal the annual expenditure. We are increasing the contribution 30 per cent, in addition to the other amendments which have already been stated.

Senator CRERAR: One other question. Have you any representations supporting these amendments from either employees organizations or employers organizations?

Mr. McGREGOR: We have had a number of requests over a number of years to increase the ceiling and to raise the classes, and we have had a great number of representations to restore the 52 weeks maximum which was in effect prior to 1955; and there has been some question about the allowable earnings.

Senator CRERAR: My question was, have you had any representations supporting these amendments from union organizations, employees organizations or employers organizations?

Mr. McGREGOR: From union organizations.

Senator CRERAR: You have requests?

Mr. McGREGOR: Yes; and in the annual brief to the Government by the Canadian Labour Congress, this 52 weeks maximum has been in there repeatedly, and also the question of raising the ceiling.

Senator CRERAR: At the same time did they suggest that the employers contribution should be raised by 30 per cent?

Mr. McGREGOR: There is no question about that, but that was never brought into the—

Senator CRERAR: In other words, increase the benefits and take it out of the treasury?

The CHAIRMAN: Well, Mr. McGregor has not said that, and that is an observation, senator. We have heard your observation.

Senator KINLEY: Mr. Chairman, I would like to see a clarification of section 14 which sets out what shall be deducted from the weekly benefit of an insured person, if he has no dependent, and if he has a dependent, and there is a schedule below showing weekly benefits and earnings not deducted.

The CHAIRMAN: Would you like one of the witnesses to give you an example, Senator Kinley?

Senator KINLEY: Yes, I would like to have a clarification.

Mr. MURCHISON: It is more equitable. The present law provides allowable earnings at fixed rates whether the claimant has dependants or is single. This change contemplates that the allowable earnings shall be adjusted to 50 per cent of the benefit, to the nearest dollar, and therefore under this new proposal the person with a dependant or who is on a dependency rate would be allowed to earn more money than would be the single man, without affecting the rate.

Senator LEONARD: That is very desirable.

Senator KINLEY: He can draw his unemployment insurance money and still earn that much more money a week?

Mr. MURCHISON: That is right.

Senator KINLEY: Well, that is very good.

Senator MACDONALD: Mr. Chairman, did one of the witnesses say that the increase in the ceiling would result in an annual payment of about $1 million?

The CHAIRMAN: The increase in the ceiling, the witness said, would result in a net contribution to the fund of $2 million in the year.

Senator MACDONALD: Has any witness said what the cost to the fund will be by increasing the periods of time from 36 to 52 weeks?

The CHAIRMAN: Yes, we were given that figure.

Mr MURCHISON: That is on the record.

Senator LEONARD: It is about $12 million.

Senator MACDONALD: Was there a recommendation from the advisory board with respect to the present condition of the fund and the manner in which it could be restored?

The CHAIRMAN: I take it that was in the actuarial report. Mr. Humphrys could tell us that.

Senator MACDONALD: Did the advisory committee recommend that the Government should make any payment into the fund at the present?

Mr. MURCHISON: On a one-time payment basis?

Senator MACDONALD: I would like to know what the committee recommended.

Mr. MURCHISON: Mr. Chairman, that committee report was tabled in the house and it contains precisely the information that is being asked for.

The CHAIRMAN: Could you tell us what it was? If it is so public, maybe you could tell us.

Mr. MURCHISON: I have not got that report here with me at the moment.

Senator MACDONALD: I thought you would be very familiar with the recommendation.

Mr. MURCHISON: We are familiar with it but it is a matter of getting the exact wording and comment in connection with it.

The CHAIRMAN: You are being properly careful, Mr. Murchison.

Mr. MURCHISON: I am very sorry. We could arrange to have that file here immediately.

The CHAIRMAN: Possibly we could get Mr. Murchison's best recollection on that point.

Senator MACDONALD: I think that will be advisable. It would be satisfactory at the present time.

Mr. MURCHISON: It was simply that the employer-employee contributions remain as they are and that the Government increase its contributions on the basis that each of the contributing parties would be contributing one-third of the whole. In other words, they were basing the Government's contribution on 50 per cent of the combined employer-employee contributions, so that it was being divided three ways.

Senator CRERAR: The poor old treasury!

Senator BURCHILL: Mr. Chairman, on the matter of administration. Mr. Murchison, I think the administration of this act is very difficult. I think your managers out in the various parts of Canada are having a tough job. There are terrific pressures on these men. Now, are you satisfied that they are being given all the possible support that you can give them?

The CHAIRMAN: There is only one answer Mr. Murchison can make: The answer is yes, is it not, Mr. Murchison?

Mr. MURCHISON: Yes, everything we can do.

Senator BURCHILL: Have you available personnel in order to support these district offices?

Mr. MURCHISON: We have a system that we use for the purpose of determining how many people are required in local offices. Time studies have been made on the various operations that go on in those offices and on the basis of the weights resulting from the work load in that office we are

able to determine how many people there should be in that office. Those people I am talking about are the people in continuing positions. We do not, we never have enough people in the continuing positions to handle the peak load that comes to us in the winter time, but we do have the authority to engage the services of what we call casual employees. They are hired by the hour. They are people who are in the community, people who have been with us in previous years and have a certain knowledge and experience in the handling of our work, and when that work load goes above that which is normal for the continuing staff then we bring in these casual employees.

Senator MACDONALD: I asked the witness previously did he recall whether there was anything in the report of the advisory committee to the effect that the Government should make a lump-sum payment at the present time into the fund in order to put it on a more satisfactory basis.

Mr. MURCHISON: There was no such recommendation.

Senator MACDONALD: Could one of the witnesses tell the committee what the cost to the fund has been by taking from it seasonal benefits.

Mr. MURCHISON: Yes, we have that information. Last year the total payment for seasonal benefits amounted to $116 million.

The CHAIRMAN: That information is in the schedule which is being filed.

Mr. MURCHISON: And I would point out to you also that a sum in excess of $63 million was paid out for what we call seasonal benefit "B". Referring to the act you will see that section 50 (b) provides that if a person has been on regular benefit and his benefit period is exhausted at any time after the middle of May he may on the first of December next, and without having worked a day, or having contributed to the fund in the meantime, draw seasonal benefits.

Senator CRERAR: That provision is in the law?

Mr. MURCHISON: It is in the law.

Senator MACDONALD: By virtue of an amendment to the act?

Mr. MURCHISON: It is in the law now.

Senator MACDONALD: By virtue of an amendment to the act?

Mr. MURCHISON: Yes, that was a 1950 amendment.

Senator MACDONALD: Is that included in the figure of $116 million for last year?

Mr. MURCHISON: Yes, that is included in the $116 million.

Senator MACDONALD: Do you recall what it was for the previous year?

The CHAIRMAN: The total for the previous year was $57 million.

Senator LEONARD: Compared with $116 million?

The CHAIRMAN: Yes.

Senator MACDONALD: So, if those amounts had not been taken out, the fund would have been in a fairly good position now?

Mr. MURCHISON: It must be remembered that the substantial increase in the payments of seasonal benefits for the fiscal year just ended, in part results from an extension of the seasonal benefit period. You will also remember that when, in 1950, the act was amended to provide for supplementary benefits, as it was then called, the benefit period ran from January 1, to March 31. Later on it was extended from January 1 to the middle of April. Then in 1957 the seasonal benefit period was extended from December 1 to the middle of May. Then, by special legislation it was extended again to June 28.

That was a substantial period of the year, which in part accounts for the large increase in the payment of seasonal benefits during the last fiscal year.

Senator MACDONALD: Have any repayments been made to the fund on account of payments of seasonal benefits?

Mr. MURCHISON: Payments from where?

Senator MACDONALD: From the consolidated revenues?

Mr. MURCHISON: No. Back in 1950, when seasonal benefits started, there were two classes, which no longer exist, for which the consolidated revenue came to the rescue of the fund and paid a certain amount. As I say, those two classes have long since disappeared and are no longer in issue.

Senator KINLEY: I refer to section 3 of the bill, Mr. Chairman, which has to do with excepted employment, which in the present act excepts a person whose earnings are in excess of $4,800 a year. The bill now before us would increase that amount to $5,460. That provision will catch a lot of salaried people, especially the Maritime provinces.

The CHAIRMAN: We have been told what monetary effect it will have.

Senator KINLEY: It is salutary for the fund, because these people are not subject to discharge. They are bank employees and such.

The CHAIRMAN: Yes.

Senator KINLEY: May I ask what is the meaning of subparagraph (ii) of section 3?

Mr. MURCHISON: If a person has been in insurable employment for a certain specified time, and he receives an increase in wages of salary to the point where his income goes above the ceiling, he may, notwithstanding, elect to continue to be a contributor; in which case he makes the election by means of an application to continue to be insured, and he pays both the employer and employee share of the contribution.

Senator ISNOR: I have one question, Mr. Chairman. Mr. Humphrys has mentioned the increase as being $78 million for the next 12 months. I make the calculation to be $88 million, instead of $78 million.

The CHAIRMAN: Those figures are made up 37, 37 and 14.

Senator ISNOR: Yes. I want to make sure which total is correct. As I understand it, the employer will be paying an additional $37 million, the employees will pay an additional $37 million, making $74 million, and the Government will be paying $14 million. Is that correct?

Mr. HUMPHRYS: Those figures are correct, sir, with respect to the one fiscal year, 1958-59. The figures that I gave, the $78 million and $97 million, were on the basis of a five-year average.

Senator ISNOR: Then I am correct in saying that the employer-employee class will now pay $74 million more?

The CHAIRMAN: That is right.

Senator ISNOR: As against $14 million paid by the Government?

The CHAIRMAN: That is right.

Senator GOLDING: Mr. Chairman, may I ask this question? Has the Government since 1950 paid into the fund any amount in addition to the 20 per cent which they are required to pay?

The CHAIRMAN: Yes. The witness has told us about two items of reimbursement in connection with some phases of seasonal benefits.

Senator GOLDING: Can you tell us what that amounts to?

Mr. MURCHISON: $1,800,000 supplementary benefits.

Senator GOLDING: What year is that?

Mr. MURCHISON: That was 1950-51 and 1951-52.

Senator CRERAR: Mr. Chairman, I have been waiting patiently to ask a few more questions. My first question has to do with administration.

We have roughly 4 million people, according to my information, in the insured class. We have today generally pension privileges by employers independent altogether of the unemployment insurance scheme. May I cite an illustration which I gave to Mr. McGregor the other day, namely, that of a railway conductor who retires at the age of 65 years, who is eligible for pension of perhaps a few hundred dollars a month, and then registers for employment. If you are unable to find suitable employment for him, is he qualified to draw benefits?

Mr. MURCHISON: Assuming that he is available for work, and capable of work, and if he asks for work and we cannot find work for him, he then becomes entitled to unemployment insurance.

Senator CRERAR: What kind of work do you find for him? Can you say to him, you can have employment as a labourer?

Mr. MURCHISON: You have hit upon probably one of the worst classes, from the standpoint of employment service. Here is an engineer who has been sitting up in an engine cab for 40 years, and who can do nothing else but drive an engine. No other railway company will employ him, because there is a general rule that the employees go out at the age of 65 years. Some engineers are quite prepared to take other work such as a watchman and so on. But of course, failing that we are in a situation where we cannot find them suitable employment, and they draw the benefits.

Senator CRERAR: Yes. My point is that that is in contravention of the intention of the act. I want to know something about how it originated.

Mr. MURCHISON: Some of us agree with that.

Senator CRERAR: In other words, if a person retires, whether he be a clerk or a railway employee or anyone else, at 65 years of age on pension he should not be entitled to insurance benefits. Probably you have not got this information, but I would like to know what drain there is made on the fund by people who have retired on pension. You have not that information, and I would not expect you to have it.

Mr. MURCHISON: No.

Senator CRERAR: But, that is a very important point, and I venture to say —and this is my last word, Mr. Chairman—that if that audit was available we would be surprised at the effect it has in reducing the fund.

Senator KINLEY: Is his pension regarded as earnings?

Mr. MURCHISON: No.

Senator MACDONALD: Mr. Chairman, I think Senator Bouffard has a question.

Senator BOUFFARD: Yes. I would like to know what the amount of revenue is that the unemployment insurance received from seasonal employment in 1958 and what was disbursed.

The CHAIRMAN: Well, we have been given the figure of disbursements.

Senator BOUFFARD: On seasonal employment?

The CHAIRMAN: Yes.

Mr. MURCHISON: Records of contributions are not maintained separately. The type of contribution is the same for seasonal employment as for regular employment. The reason a person gets into the seasonal benefit is because he has not enough contributions to qualify him for regular benefits, but it is the same contribution, and, consequently, there is no possible way of dividing it.

The CHAIRMAN: They have not the revenue end of it broken down.

Mr. MURCHISON: We do have a break-down of the figures on fishing if you, Mr. Chairman, and the honourable senators would be interested in that.

Senator BURCHILL: Yes.

Mr. MURCHISON: In the first two years of operation our total contributions from the employee, employer and the Government amounted to $1,795,701.05. The total benefit payments to fishermen amounted to $15,673,712.00, thus creating a deficit on this account of $13,878,010.95.

Senator BURCHILL: Over what period?

Mr. MURCHISON: The two fiscal years.

The CHAIRMAN: The two years ended March 31, 1958 and March 31, 1959; is that not correct?

Mr. MURCHISON: Yes.

Senator BURCHILL: That is one year.

The CHAIRMAN: No, two years. It is for the year ending March 31, 1958 plus the year ending March 31, 1959.

Mr. MURCHISON: This is the story from the start of the coverage of the fishing industry up to the present.

Senator KINLEY: Is not the same thing true of the employment on the lakes in the wintertime.

Mr. MURCHISON: Not exactly the same. There is a loss there, and there is also a loss in lumbering and logging. There is a loss in all seasonal employment, including building.

Senator KINLEY: Take the man from Newfoundland. He can come up here and work in the merchant marine in the summer, and then go back to Newfoundland in the winter. Now he can do it in the fisheries, when he comes to Nova Scotia.

The CHAIRMAN: I am going to suggest to the committee that this statement No. 8, which Mr. Murchison has referred to, might be attached to the printed proceedings.

(For "Statement of fishing revenue and expenditure for period 1 April 1957 to 31 March 1959", see appendix C.)

The CHAIRMAN: Are you ready for the question now?

Senator KINLEY: Could we not make a statement about these pensioners going on unemployment insurance when they retire.

The CHAIRMAN: Well, it is in the record, and the best place to deal with that would be on third reading, and the attention of the Government can be called to it then.

Senator BOUFFARD: Mr. Murchison, does not the same thing occur also in regard to the old age pension after 70 years of age. Old age pensioners are able to get unemployment insurance also.

Senator KINLEY: They are in the poorer class.

The CHAIRMAN: Shall I report the bill without amendment? Carried.

Whereupon the committee adjourned.

APPENDIX "A"

UNEMPLOYMENT INSURANCE FUND

STATEMENT OF REVENUE AND EXPENDITURE FOR THE PERIOD 1 JULY, 1941 TO 31 MAY 1959

Fiscal Year Ended March 31	REVENUE							EXPENDITURE			BALANCE
	CONTRIBUTIONS (Gross less refunds)							BENEFIT PAYMENTS			
	Employer and Employee	Government	Fines and Penalties	Interest on Investments	Profit or Loss on Sale of Securities	Less Interest Paid on Loans	TOTAL NET REVENUE	Ordinary	Supplementary and Seasonal	Total	BALANCE IN FUND
	$	$	$	$	$	$	$	$	$	$	$
TO 1951	773,530,580.72	154,683,635.01	76,196.49	77,620,643.71			1,005,911,055.93	335,401,495.46	5,929,183.68	341,330,679.14	664,580,376.79
1952..	153,887,858.49	30,805,704.77	33,344.00	19,046,503.98			203,773,411.24	85,559,677.68	4,594,758.92	90,154,436.60	778,199,351.43
1953..	155,184,595.03	31,036,836.18	36,085.94	22,950,737.44			209,208,254.59	128,814,174.79	7,008,266.57	135,822,441.36	851,585,164.66
1954..	158,673,276.19	31,735,867.91	36,833,77	26,094,504.24			216,540,482.11	174,619,903.03	12,231,610.40	186,851,513.43	881,274,133.34
1955..	158,860,309.41	31,771,463.88	36,787.72	26,378,268.64			217,046,829.65	232,757,808.10	24,870,838.12	257,628,646.22	840,629,316.77
1956..	169,726,970.28	33,948,572.66	31,070.00[2]	25,005,132.67			228,711,745.61	180,038,064.37	35,167,479.42[3]	215,205,543.79	854,198,518.59
1957..	188,001,489.34	37,587,449.77	43,826.63	26,039,086.03			251,671,851.77	201,196,193.03	30,099,525.67	231,295,718.70	874,574,651.66
1958..	192,395,408.61	38,484,149.23	46,685.92	23,775,559.95[4]			254,701,803.71	327,907,809.48	57,168,521.02	385,076,330.50	744,200,124.87
1959..	185,487,041.58	37,097,408.31	47,735.63	21,725,096.30	L. 10,115,171.51		234,242,110.31	362,155,761.67	116,475,316.00	478,631,077.67	499,811,157.51
TO 1959..	2,135,747,529.65	427,151,087.72	388,566.10	268,635,532.96	L. 10,115,171.51		2,821,807,544.92	2,028,450,887.61	293,545,499.80	2,321,996,387.41	499,811,157.51
April.	11,038,718.18[1]	2,196,049.36	3,288,22	1,434,199.21		90,410.95	14,581,844.02	37,518,022.59	22,412,480.03	59,930,502.62	454,462,498.91
May..	14,650,171.09[1]	2,934,492.15	4,249.12	1,487,552.99	L. 525.00	244,246.57	18,831,693.78	26,559,713.82	13,886,567.73	40,446,281.55	432,847,911.14
Sub-Total	25,688,889.27	5,130,541.51	7,537.34	2,921,752.20	L. 525.00	334,657.52	33,413,537.80	64,077,736.41	36,299,047.76	100,376,784.17	432,847,911.14
TOTAL..	2,161,436,418.92	432,281,629.23	396,103.44	271,557,285.16	L. 10,115,696.51	334,657.52	2,855,221,082.72	2,092,528,624.02	329,844,547.56	2,422,373,171.58	432,847,911.14

[1] April	STAMPS	$3,433,300.45	METER	$1,200,000.00	BULK	$6,405,417.73	TOTAL	$11,038,718.18
[1] May	"	$5,746,565.93	"	$1,200,000.00	"	$7,703,605.16	"	$14,650,171.09

[2] Penalties from 1 October 1955

[3] Seasonal from 1 January 1956 (Estimated)

[4] Included Security Transactions up to 31 March 1958

APPENDIX "B"

STATEMENT 4

UNEMPLOYMENT INSURANCE FUND

STATEMENT SHOWING CONTRIBUTION REVENUE, BENEFIT EXPENDITURE, AND BALANCE IN FUND, FOR THE FIVE-YEAR PERIOD 1 APRIL, 1953 TO 31 MARCH, 1958

Year	REVENUE			Expenditure	Balance
	Employer-Employee	Government	Total		
	$	$	$	$	$
1954	158,673,276	31,735,868	190,409,144	186,851,513	881,274,133
1955	158,860,309	31,771,464	190,631,773	157,628,646	840,692,317
1956	169,726,970	33,948,573	203,675,543	215,205,544	854,198,519
1957	188,001,489	37,587,449	225,588,938	231,295,719	874,574,652
1958	192,395,408	38,484,149	230,879,557	385,076,331	744,200,125
	867,657,452	173,527,503	1,041,184,955	1,276,057,753	
Yearly Average	173,531,000	34,706,000[1]	208,237,000	255,212,000	
Average Yearly Expenditure				255,212,000	
Average Yearly Revenue				208,237,000	
Average Yearly Shortfall				46,975,000	

[1] Government Share—one-fifth of combined employer-employee contributions.

April 1959.

APPENDIX "C"

STATEMENT 8

UNEMPLOYMENT INSURANCE COMMISSION

UNEMPLOYMENT INSURANCE FUND

Statement of Fishing Revenue and Expenditure for Period 1 April 1957 to 31 March 1959

Fiscal Year Ended 31 March	Revenue				Expenditure	
	CONTRIBUTIONS (gross less refunds)					
	Employer and Employee	Government	Penalties	Total Revenue	Benefit Payments	Balance
1958.....	718,409.64	143,681.93	—	862,091.57	5,438,446.00	4,576,354.43 (Dr)
1959[1]....	778,008.07	155,601.41	—	933,609.48	10,235,266.00	9,301,656.52 (Dr)
TOTAL.	1,496,417.71	299,283.34	—	1,795,701.05	15,673,712.00	13,878,010.95 (Dr)

[1] Subject to year end adjustments.
April 1959.

SENATE OF CANADA

Standing Committee on Banking and Commerce
2nd Session, 24th Parliament, 1959

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WITNESSES (CONT'D)

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